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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BLUMENAUER).

DESIGNATION OF THE SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
December 10, 2009.

I hereby appoint the Honorable EARL BLUMENAUER to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

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

Lord God, for people who live in the light of faith and who are attuned to Your greatest commandment, peace is always more than the absence of war. It remains a matter of the human heart.

Peace cannot be reduced to a human concept as only the balance of power for opposing forces. We know, Lord, peace cannot be imposed by human authority or by simple majority. Peace, Lord, is often illusive for us because it remains beyond our imagining or achievement. Peace is a gift.

Peace, Lord, is born out of the right ordering of things which You, the Creator, have invested in human society. Peace is realized by us, when our thirsting for an ever more perfect realm of justice and union reaches a certain plateau that invites us to go even further.

Lord, grant us peace of heart so we may bring this gift to our family life, work for justice, and so gift our world, both now and forever.

Amen.

NOTICE

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

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

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from Ohio (Ms. KILROY) come forward and lead the House in the Pledge of Allegiance.

Ms. KILROY led the Pledge of Allegiance as follows:

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

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to 10 requests for 1-minute speeches on each side of the aisle.

WAR IS A WEAPON OF MASS DESTRUCTION

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

Mr. KUCINICH. According to the Center for Economic and Policy Research, the sharp increase in war spending is taking up a greater portion of our gross domestic product, which will cost the United States about 2 million jobs because such spending ''is a direct drain on the economy, reducing efficiency, slowing growth and costing jobs.'' Contrary to popular assumptions, massive spending for war does not create jobs; it costs jobs. War spending is capital-intensive, not labor-intensive. War creates unemployment.

The current plans to make extension of unemployment benefits contingent on Congress' passing a war spending bill raises serious questions about economic policy, not to mention basic decency and common sense. We're telling people that as long as we're at war they'll get their unemployment benefits. And of course, as long as we're at war, there will be more people unemployed.

Instead of unemployment benefits, people need work. Instead of war, people need work. War drives up the deficit. War takes away money from job creation. War results in unemployment. War is a weapon of mass destruction.

THE NEW YORK TIMES REFUSES TO REPORT ON CLIMATEGATE

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

Mr. POE of Texas. Mr. Speaker, in the aftermath of the Climategate scandal, we now learn that prominent scientists were so determined to advance the idea of human-made global warming that they worked together to hide contradictory temperature data, blackballed dissenting scientists, and manipulated the peer-review process. The New York Times says that Climategate is no big deal. In a recent article in the Times, an editor, Clark Hoyt, responded to criticism that the newspaper has downplayed the story. Predictably, Hoyt, a ''Warmer'' disagreed, writing that Climategate is not a ''three-alarm story.'' He defended the Times' decision to ignore evidence that doesn't support global warming. He failed to mention that global warming alarmism and fears are largely based on discredited data.

The New York Times and the national media should report the news fairly, rather than downplaying stories that don't conform to their media bias agenda. Otherwise, Americans will continue to doubt the media's credibility. And that's just the way it is.

CLIMATEGATE

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

Mr. QUIGLEY. Mr. Speaker, scientists at the Climate Research Unit in eastern England have received more attention than their subject of study, global warming. Climategate, as it was dubbed, has been the focus of rampant speculation.

As some accuse these scientists of manipulating figures to conclude that global warming was man-made, we forget that polar ice caps are melting, and that we're hitting threshold points that cannot be reversed. We're forgetting that over 200 peer-reviewed, scientific studies have determined that global warming is real; and that man significantly contributes to global warming; and that zero peer-reviewed scientific studies have determined that global warming is not real; and that man does not contribute to that.

Today, over 1,700 scientists from the UK announced their belief that global warming is real and that man contributes to this. Congress must send climate legislation to the President for approval. And the United States must agree to a final and meaningful treaty this week in Copenhagen that binds countries to commit to reduce emissions.

AMERICA, YOU MUST TAKE NOTICE

(Mrs. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. EMERSON. Mr. Speaker, Fannie Mae and Freddie Mac send chills down the spine of Federal regulators, but the financial regulation bill before the House this week ignores those and other government-sponsored enterprises, the institutions at the heart of the worst financial crisis in modern American history.

The crisis was explosive, more than a decade in the making. During the slow lead-up to the crash, Fannie and Freddie guaranteed that a national subprime lending problem would seep into every other financial sector of our economy. The GSEs ignored their public responsibility to assure a stable U.S. market for lending. So if that's the case, then why is this bill silent on their misdeeds and the perverse incentives that drove our country to the brink of financial disaster?

As the government gets bigger, this bill requires government to regulate everything but itself. As of October 31, Fannie Mae held $771 billion in its gross mortgage portfolio, and another $2.8 trillion in mortgage-backed securities and other guarantees. Their omission from this bill is glaring. It's irresponsible to exempt GSEs from this legislation.

America, you must take notice.

GOOD NEWS ABOUT JOBS

(Ms. SCHWARTZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SCHWARTZ. The American people received much-needed good news last week. Job loss is slowing. In November the number of jobs lost was 11,000, quite a contrast to the 700,000 lost in January 2009. While no one should underestimate the challenges ahead or the struggles of far too many families whose wage earners are unemployed, this news shows that the policies of the Democratic majority are working. The economy is turning around.

Last Friday I joined President Obama in Allentown, Pennsylvania, to talk with and hear from business leaders and college students and veterans about how to create new jobs and grow the economy. The President laid out a jobs plan that will spur small business hiring, improve infrastructure, and encourage energy efficiency.

We need to take action on this plan that builds economic opportunity for the long term, new jobs that are sustainable for years ahead, in rebuilding our infrastructure, creating new energy sources, and developing new technology and innovative products and services that we and the world want to buy. We are committed to rebuilding America's economy, putting Americans back to work and ensuring our Nation's economic future.

MAKE SURE THAT WALL STREET PLAYS BY THE RULES

(Ms. KILROY asked and was given permission to address the House for 1 minute.)

Ms. KILROY. For 8 years the Bush administration and its Republican allies looked the other way as Wall

Street and the finance industry engaged in risky practices, risky practices which resulted a little more than a year ago in the whole house of cards tumbling down, and the American taxpayers had to pick up the pieces.

We can't let that happen again. And we know Wall Street won't police itself. We need tough new laws and regulations. H.R. 4173, the Wall Street Reform and Consumer Protection Act, will rein in those abusive practices. A new consumer agency will be established to protect consumers from fine print gimmickry and prevent fraud and abuse. It will end the ''too big to fail'' problem by creating a mechanism for the controlled dissolution of failed financial institutions, a financial death panel, so to speak, paid for, not by American taxpayers, but by the financial industry itself.

This bill will help protect Main Street and make sure that Wall Street plays by the rules.

ECONOMIC DISCIPLINE

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

Mrs. SCHMIDT. Mr. Speaker, I rise to once again report that we are in jeopardy of losing the AAA credit rating of the United States if we do not impose economic discipline in this Congress and impose it now. The record deficits, coupled with poor economic growth and high unemployment, are making it increasingly difficult for the U.S. to maintain its debt.

Last year this Congress created a deficit of $1.4 trillion. That's an average of $4 billion a day. Now we're being asked to raise our debt ceiling an additional $1.84 trillion so we can continue to borrow money. This spending must stop. It must stop now. And we need the discipline and courage in this Congress to do it.

OPTIMISM ABOUT CLEAN ENERGY

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

Mr. INSLEE. Mr. Speaker, I hear that the former Vice President has made an assertion about the Governor who quit in Alaska, Sarah Palin. He asserted that hers is the attitude of a denier, a denier of the clear need to address global warming. But that attitude is worse than being a denier.

It is the attitude of a defeatist, because the defeatists believe that we Americans can't build electric cars. The defeatists believe we can't, in America, build solar thermal plants. The defeatists believe we can't build offshore wind turbine plants. The defeatists believe that we can't build thousands of jobs here in America, rather than allow those jobs in clean energy to go to China.

When those people like Sarah Palin, who have the attitude of defeatists, join us in a sense of optimism that we can change our economy to a green collar economy, we will build a clean energy economy that is the envy of the world. And we urge them to join us.

AMERICA CANNOT AFFORD ANOTHER SPENDING SPREE

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

Mr. GINGREY of Georgia. Mr. Speaker, I ask you to reflect on the impact that Democratic plans for the economy have on working families across the United States. This past November we reached the highest level of unemployment since 1983, 10.2 percent. And given the Democrats' pending misguided ideas for overhauling the health care and the energy sectors, there is no end in sight.

And now, Mr. Speaker, we hear plans for, yes, you guessed it, more spending. After their failed ''non-stimulus'' stimulus bill, the Democrats are planning another reckless round of stimulus spending, even if they may call it something else.

Mr. Speaker, America simply cannot afford another spending spree by this Democratic majority. There's a way to boost the economy without relying on all this irresponsible and unnecessary spending. Simply put, Republicans have superior plans for energy independence and health care reform that are attainable. They will not drive our country further into debt and will not kill jobs.

□ 1015

RTD MANUFACTURING

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

Mr. SCHAUER. Mr. Speaker, I rise on behalf of RTD Manufacturing in Jackson, Michigan, and my constituents desperately in need of a job. Just 6 years ago, this family-owned auto supplier had 60 workers. Today, only 12 are left.

To diversify their business, RTD teamed with several other firms, and just 6 weeks ago, we learned that RTD would be the principal manufacturer for a major Army contract. What great news—until I was contacted by RTD's president last week.

Their long-time bank, Citizens Bank, denied RTD's loan to buy $85,000 worth of steel from another local company to produce components to protect our troops from improvised explosive devices, IEDs. So instead of hiring six workers to build supplies that our troops in the field need now, RTD is the latest victim of the credit crunch.

Get this. Citizens Bank—the number one small business lender in Michigan that has received $300 million in Federal bailout funds—denied this loan. I'm working overtime to ensure RTD doesn't lose this chance to create jobs and save soldiers' lives.

JOE WILSON WAS RIGHT

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

Mr. SMITH of Texas. Mr. Speaker, it has taken months, but there's one thing even the national media now acknowledges—Joe Wilson was right. Illegal immigrants are covered by the health care bill.

This week the Associated Press reported that the House health care bill, which was the bill under consideration at the time of President Obama's speech to Congress and Mr. WILSON's remark, will allow illegal immigrants to participate in the government-run and government-funded insurance plan. To its credit, CBS News said something similar back in September but only on a Web post.

These articles are few and far between and fairly well hidden from public view. They also fail to address the other illegal immigration-related loopholes in both the House and the Senate bills.

It's no wonder that only one in 10 Americans now have a great deal of faith in the media to report the news fully, accurately, and fairly, according to a recent poll.

THE LINK BETWEEN JOBS AND HEALTH CARE REFORM

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

Mr. YARMUTH. Mr. Speaker, our colleagues have asked a question, and many of the American people are asking a question which deserves an answer, and that is: Why should we worry about health care reform? Why don't we focus on jobs? Well, the truth of the matter is that no job strategy can avoid a health insurance reform strategy.

As Ezra Klein pointed out in The Washington Post earlier this week, the history of the last two decades have shown, when health care premiums go up, wages go down. Every dollar that is spent on health care in my district can't be spent to buy a Ford, can't be spent to buy a GE refrigerator, can't be spent to buy a package that UPS will ship.

The unavoidable truth is, if we don't get a handle on health care costs, jobs will never improve the way we need them to. We already know the automobile industry in this country has lost tens of thousands of jobs because of the unaffordable cost of the health care for their employees. No. A successful employment strategy must include a successful health care reform strategy, and that is why it's so critical that we pass that in this Congress.

WALL STREET REFORM AND CONSUMER PROTECTION ACT

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

Mr. HEINRICH. Mr. Speaker, when I took office back in January, the economy was on the verge of collapse. We've taken some tough votes this year to promote a strong economic recovery, and we're beginning to see some signs that the economy is turning around. But to avoid this sort of economic crisis from happening again, we need to rein in the Wall Street banks that brought us to this point and begin to make Washington more responsible.

The Wall Street Reform and Consumer Protection Act will prevent risky dealings by Wall Street and begin an end to the days of taxpayer-funded bailouts. At the same time, this bill ensures that small banks and credit unions, which play a key role in their communities, are not subject to undue regulatory burdens.

We must bring an end to the era of irresponsible and recklessness on Wall Street. Our country's working families, our small businesses are playing by the rules. It's time that Wall Street must learn to do the same.

I would urge my colleagues to support this legislation.

WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. HALL of New York asked and was given permission to address the House for 1 minute.)

Mr. HALL of New York. Mr. Speaker, I rise today in strong support of H.R. 1473, the Wall Street Reform and Consumer Protection Act. To help Main Street, we must reform the way Wall Street has done business and end the risky practices that have caused millions of Americans to lose their jobs, their homes, and life savings.

This legislation will protect American consumers and prevent the irresponsible behaviors and practices that caused the financial crisis last fall. H.R. 1473 restores responsibility and accountability on Wall Street through tough rules and regulations of risky practices. It protects consumers on Main Street by ensuring that bank loans, mortgages, and credit cards are fair and transparent. It also ensures that taxpayers will never again need to bail out Wall Street banks by ensuring the ''too big to fail'' firms don't have a stranglehold on the market.

These firms' practices led us to the brink of disaster last fall, and we cannot allow them to threaten our economy again with dangerous behavior. H.R. 1473 reforms these practices, and I urge my colleagues to support it.

INTERNATIONAL CLIMATE TREATY IS NEEDED

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

Mr. TONKO. Mr. Speaker, I rise today to talk about the 15th United Nations Climate Change Conference in Copenhagen, Denmark, that is currently underway.

First, Mr. Speaker, I wholly reject false notions and political attacks attempting to destroy sound science and evidence. This issue, from its environmental to its energy and economic impacts, is too important for false political attacks and deceitful op-eds and letters to the editor.

The Copenhagen discussions are about responsible governments coming together to negotiate an international climate treaty to better our environmental and energy outcomes, not to mention creating a fair marketplace in which the world's economies will indeed compete.

There is a global race today, a race for a clean energy economy, the outcome of which will allow the winner to export clean energy intellect and expertise. Other countries are passing us by in this race. Like the space race of decades ago, we must come together as a Nation bound by the common goals of reducing global emissions, bettering our energy outcome, and enhancing our economy. The future of our Nation depends on us.

PROVIDING FOR CONSIDERATION OF H.R. 3288, CONSOLIDATED APPROPRIATIONS ACT, 2010

Mr. MCGOVERN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 961 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 961

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3288) making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes. The conference report shall be considered as read. All points of order against the conference report and against its consideration are waived. The previous question shall be considered as ordered on the conference report to its adoption without intervening motion except: (1) one hour of debate; and (2) one motion to recommit.

POINT OF ORDER

Mr. FLAKE. Mr. Speaker, I will raise a point of order against H. Res. 961 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution carries a waiver of all points of order against consideration of the conference report, which includes a waiver of section 425 of the Congressional Budget Act which causes a violation of section 426(a).

The SPEAKER pro tempore. The gentleman from Arizona makes a point of order that the resolution violates Section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden under the rule. The gentleman from Arizona and a Member opposed each will control 10 minutes of debate on the question of consideration. After that debate, the Chair will put the question of consideration.

The Chair recognizes the gentleman from Arizona.

Mr. FLAKE. Mr. Speaker, I raise this point of order not so much out of a concern for unfunded mandates, but again, it's about the only opportunity we have to stand up and talk about the process by which this conference report is being brought to the floor.

We all remember that earlier this year we had something unprecedented happen. We have never in the history of the Republic ever had every appropriation bill come to the floor under a closed rule where Members from both sides of the aisle were denied the ability to offer amendments.

Now, until a decade or two ago, appropriation bills typically came to the floor without even going through the Rules Committee at all. It would simply come under an open rule, and amendments would be disposed of on the floor and there would be open debate.

A couple of decades ago, we started to go to the Rules Committee, but only to set overall parameters. It was still an open rule, and any Member could offer any amendment to strike funding or move funding around within the bill as long as it was germane. But this year we were told by the majority that we had to rush this legislation through, these appropriation bills.

Remember, the main reason Congress is here is because of the power of the purse. It's article 1: to dispose of funding legislation, to fund the agencies of the Federal Government. So that is the important reason we're here.

But we were told we had to rush that through and had to do it under what amounts to a form of legislative martial law where every appropriation bill this year, every one, came to the floor under a closed rule. Members were denied the ability to offer the amendments they wanted to offer. They could only offer the amendments that the Rules Committee saw fit for them to offer.

Over 1,000 amendments were offered. Just 12 percent of those amendments were actually allowed onto the House floor. Now, I was fortunate to have a number of those amendments allowed. Some of my colleagues came to the floor or came to the Rules Committee over and over again with multiple amendment requests on every bill, and in the entire year, not allowed one, not one amendment. We had several members not allowed one amendment the entire year because we had to rush these bills through for some unknown reason. We were told that we had to do this because we wanted to avoid an omnibus.

Well, here we are with an omnibus. This is a bill that spends north of a

trillion dollars, one bill brought to the floor under one rule. And in it, let me tell you what's in it.

□ 1030

Let me just tell you what is in it. In it is more than 5,000 earmarks.

Mr. DREIER. Would the gentleman yield?

Mr. FLAKE. I would.

Mr. DREIER. I thank my friend for yielding.

Mr. Speaker, I congratulate him for his remarks. Basically it's what I'm going to say when we begin the process here. But one of the arguments that has been propounded and was utilized up in the Rules Committee last night was that when we completed our work here in the House of Representatives, that it was our friends on the other side of the Capitol who did not comply with the kind of schedule that we had. And the fact is, it's important to remember that there are 58 Democrats and two Independents who organize with the Democrats in the United States Senate, giving them a total of 60 votes, and they have complete control. And so the notion of somehow saying, ''Well, we had to get our work done. We had intended to avoid an omnibus if we had been able to complete our work, but it's those guys over on the other side of the Capitol who failed to meet their responsibilities'' is a very, very specious and weak argument to make in light of the fact that they have control of everything now.

And I thank my friend for yielding.

Mr. FLAKE. I thank the gentleman and reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have great respect for my colleague from Arizona, but technically, this point of order is about whether or not to consider this rule and ultimately the underlying conference report. In reality, it is about trying to block this report without any opportunity for debate and without any opportunity for an up-or-down vote on the legislation itself. I think that is wrong, and I hope my colleagues will vote ''yes'' so we can consider this important legislation on its merits and not stop it on a procedural motion. Those who oppose the conference report can vote against it on final passage. We must consider this rule, we must have a debate, and we must pass this legislation today.

I have the right to close, but in the end, I will urge my colleagues to vote ''yes'' to consider the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. FLAKE. Here again, I'm claiming my time on the unfunded mandates point of order because it's about the only opportunity we've had. And all throughout this appropriations season, I did something similar because it was the only opportunity I got. I was offered so few opportunities to offer amendments to earmarks during this appropriations season.

But let me just give you some of the examples of earmarks that are in this bill, just a couple of examples of the more than 5,000 earmarks that are stuffed into this legislation; again, earmarks that, for the most part, we were unable to challenge on the House floor because we weren't afforded the opportunity.

We made a law in the past couple of years, and I'm glad we have, about transparency, to make sure that Members' names are next to the earmarks they request. But as important as transparency is, accountability must also be present. And without the ability of Members to challenge those earmarks, then transparency doesn't mean a whole lot. And we haven't had the ability to have accountability here.

In this legislation, $125,000 goes for the defense procurement assistance program in southwestern Pennsylvania. Now, those who follow the appropriations process around here, particularly with Defense Appropriations, realize that southwestern Pennsylvania needs help with defense procurement like Arizona needs more cactus. This is a region that gets billions and billions of dollars in no-bid contracts to private companies, and yet we are appropriating here an earmark, a specifically designated earmark, for defense procurement assistance. Now, how ridiculous is that? Yet, it's in this legislation, and it was in the prior legislation that we dealt with under, as I said, the legislative equivalent of martial law earlier this year.

There's $500,000 for the Botanical Research Institute of Texas to enhance its collections; $292,000 to eliminate slum and blight in Scranton, Pennsylvania; $700,000 for an arts pavilion in Mississippi; $300,000 for Carnegie Hall music and education programs in New York.

Again, these may well be worthy programs. I'm not sure the Federal Government ought to be funding them. But, in any case, should any Member have the right to designate that portion of funding for his or her district without the ability of other Members to challenge it on the House floor? That is the question we have here.

We went through a process the entire year where we were told we can't have open debate, we can't allow Members to challenge these earmarks on the House floor because we have to rush these bills through to avoid an omnibus. Here we are in December with an omnibus. We all knew we would be here.

During the years 2006 to 2008 when the majority party was in the majority of Congress but the Republicans had the White House, we were told, ''Well, we could get these bills through in regular order were it not for the White House.'' Now, as the ranking member on the Rules Committee stated, the majority party is in control of the White House, has a huge majority here in the House and a 60-vote majority in the Senate, and still we are here with an omnibus. We knew we would be here. So you can only conclude that we rushed through this process during the entire year just to shield Members from uncomfortable votes to be forced to defend $250,000 for the Brooklyn Children's Museum or $600,000 for streetscape beautification in California and $250,000 for a farmer's market in Kentucky. If it weren't for that, why in the world did we have to shield Members from these uncomfortable votes?

So, Mr. Speaker, I simply wanted something different to come with this new majority in 2006. I wanted a transparent process with earmarks, wanted an accountable process with earmarks. But this year, I have to say, with the closed rules that have come on appropriations bills, we haven't had a more opaque year in a long, long time, and it doesn't speak well for this House. It doesn't speak well for our leadership to allow this kind of thing to happen, and particularly at a time when we have story after story after story in the newspapers about, particularly, problems with defense procurement, when you have no-bid contracts to private companies that are in legislation that we aren't allowed to challenge.

I realize the Defense bill is not part of this legislation. That will come next week. But it will come again with one rule, no ability to amend and no ability to challenge. When that Defense bill came to the floor earlier this year, there were more than 1,000 earmarks, more than 500 of which represented no-bid contracts to private companies. I offered more than 500 amendments to challenge some of those, and I was allowed just a tiny fraction of those. I think I was allowed 8 percent of the amendments that were offered, and so we are only allowed to challenge just a fraction of those no-bid contracts to private companies. And that, Mr. Speaker, is simply wrong.

We cannot continue to do that in this House. We need to be above reproach here. And we can't have a process when you have no-bid contracts to private companies without the ability of Members of Congress to come to this floor and challenge those earmarks. When you have a process that shields those projects and those Members from any vetting or criticism or debate or anything else, we shouldn't be doing that, yet we are still doing it.

With that, I urge to overturn this rule.

I yield back the balance of my time.

Mr. MCGOVERN. Mr. Speaker, again, I want to urge my colleagues to vote ''yes'' on this motion to consider so that we can debate and pass this important piece of legislation today.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

The question is, Shall the House now consider the resolution?

The question of consideration was decided in the affirmative.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MCGOVERN) is recognized for 1 hour.

Mr. MCGOVERN. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Mr. MCGOVERN. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 961.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

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

Mr. Speaker, House Resolution 961 provides for the consideration of the conference report to accompany H.R. 3288, the Consolidated Appropriations Act, 2010. The rule waives all points of order against the conference report and against consideration. It provides that the conference report shall be considered as read and, finally, it provides that the previous question shall be considered as ordered without intervention of any motion except 1 hour of debate and one motion to recommit.

Mr. Speaker, we're here finishing up the fiscal year 2010 appropriations bills. This consolidated appropriations bill is the product of many, many months of hard work. It contains six of the seven outstanding appropriations bills.

Mr. Speaker, in all candor, I must admit that I have a slightly different perspective on the appropriations process than I did 3 years ago. Then, in the minority, I questioned why the then-Republican majority wasn't able to finish their bills on time. I realize now that in many cases, finishing the bills in a timely fashion wasn't always the fault of the majority in the House but rather a result of the dysfunction in the Senate.

Now, 3 years later, the situation is similar. We, this House, this Democratic majority, did our job. We passed every single bill in a timely way and we did so responsibly, and in many cases joined by many of my colleagues on the other side of the aisle. For example, the Homeland Security bill passed with 389 votes, including the support of my good friend from California.

Now, despite our hard work to move this process forward, I am sure that the gentleman from San Dimas is going to protest about the process here, that this bill is made up of six bills, and I'm sure he will come up with some clever, colorful phrases to describe his feelings today, and we all look forward to that. But we are essentially reaffirming votes that have already been taken on issues that have already been previously debated and discussed.

The chairmen and ranking members of the appropriations subcommittees deserve credit for their bills. There is critical funding included for roads and bridges; for rail projects; for greenhouse gas emissions; for public housing and other housing vouchers; for critical international aid programs like the response to global HIV/AIDS, poverty, food security, education, and international disaster assistance; for programs that prevent and prosecute violence against women and other justice programs; critical health programs including NIH funding, public health programs, programs addressing health professions workforce shortages, LIHEAP, Head Start, and other education programs. These bills are about priorities. They are about values. They show who we are as a Congress, and I stand by the values articulated in these bills.

While some will complain that we are spending too much money, that these bills are too big, I look at it in a very different way. Mr. Speaker, I see these bills as an opportunity to reverse years of neglect: neglect to our roads and our bridges, neglect to our lower income neighbors and friends, neglect to our education system, and neglect to our veterans.

You see, Mr. Speaker, this Democratic majority inherited a troubled country. Our Republican friends squandered budget surpluses. Their reverse Midas touch turned surpluses into deficits. They spent money like they were drunken sailors and yet never felt the responsibility to pay for their spending. They turned a blind eye to transgressions of Wall Street, allowing Main Street to feel the pain of Wall Street running wild.

What did we start out with? We started out with, we inherited, a financial system on the brink of collapse, the worst recession since the Great Depression, two wars that weren't paid for, a broken health care system, and a 1950s energy policy. That was the gift from the Bush administration and a Republican majority in Congress. So there's been a lot to fix this year.

Just look at some of the numbers, Mr. Speaker. Job growth under the current administration is reversing a long downward spiral that started under the last President. The stimulus plan is working as planned. We are making sound investments in helping Americans find good jobs and getting this economy moving again. The unemployment rate dropped last month and the efforts of this Congress are helping people afford a home, helping to breathe life back into our real estate economy. Even the TARP program is working better than expected. Confidence has been restored to Wall Street, and more than $200 billion will be returned to the government.

So here we are, Mr. Speaker, digging out from the Bush economy, the Bush recession. It's time to get this done, but it's not going to happen overnight. It's time to fund our priorities and meet the needs of the American people. Simply, Mr. Speaker, this is a good bill we will consider today, and it deserves to be supported by every single Member of this body.

With that, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I thank my friend from Worcester for yielding me the customary 30 minutes, and I yield myself such time as I might consume.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I appreciate my friend's comments, and it appears to me that no matter how colorful or creative I am that I probably won't be as persuasive with him as I hope I am with others in pointing to how absolutely ridiculous it is that we are here doing what we are doing with this. And this is really a challenge.

I'm told that this weighs more than a baby, in fact. The child of the woman sitting right behind me says this weighs more than her baby. It is 2,500 pages that we have been given in this omnibus appropriations bill which we were promised would not be utilized as a process if we shut down all of the appropriations bills, which, if I could remind everyone, we did last summer.

□ 1045

Actually, Mr. Speaker, I would like to call my colleagues' attention to today's date. Today is December 10. For those keeping track, we are now 71 days past the end of the fiscal year, 71 days overdue in completing work on our constitutionally mandated power of the purse.

How far along in the process are we at this date, 71 days into the fiscal year? Well, five of the 12 appropriations bills have been enacted into law. With time quickly running out and over half of its work left undone, the Democratic majority has chosen to cram six of our remaining seven spending bills into this one massive half-trillion dollar bill.

The underlying measure before us today spends $500 billion of the taxpayers' money on disparate issues and agencies, from the Department of Housing and Urban Development to the FBI to infrastructure to veterans programs.

My friend is absolutely right. Of course, I supported the Homeland Security bill. It's one of the top priorities that we have. In fact, there's nothing more important than the security of the United States of America, so I supported that. But that doesn't mean that I'm supportive of taking it when it should have gone through the regular process, which is what the gentleman with whom you're speaking right now promised we were going to be able to do if we had this closed, structured process for considering appropriations bills, and yet here we are with this omnibus bill.

They were kind enough, kind enough now, by virtue of having this as a conference report, to grant us an entire hour of debate for this 2,500-page measure that's before us. Mr. Speaker, that works out to just about $7.5 billion for every minute of debate that we're going to be allowed on the bill, $7.5 billion.

And I'm sure the American people will feel completely confident that 1 hour to debate a $500 billion measure, half of the discretionary spending that we've got before us, is enough. Actually, an hour for oversight and accountability of their hard-earned taxpayer dollars at a time, Mr. Speaker, when virtually everyone I know is engaged in cutting back. They're engaged in cutting back spending. Why? Because of the economic downturn through which we're going.

And what is it that has happened? We've seen an 85 percent increase in nondefense discretionary spending. An 85 percent increase at a time when families across this country are working very hard to figure out how they can make ends meet.

Now, as I have said repeatedly throughout the appropriations process, legislating is not a pretty business. It's not unusual for our work on the Federal budget to extend beyond the close of the fiscal year. It's not unprecedented to consider several appropriations bills in one package. And it's happened under both political parties. The debate that takes place here on the House floor is often heated. That's the way it's supposed to be. The task, Mr. Speaker, of forging consensus and compromise in the face of competing views and priorities is all part of the legislative process.

Furthermore, spending the taxpayers' money is a very, very enormous responsibility that we have. Article I, section 9 of the Constitution places that responsibility in our hands. It demands, it demands, Mr. Speaker, a great deal of deliberation, which is not always compatible with setting timetables. Deliberation, Mr. Speaker, is not always compatible with setting timetables. Ultimately, Mr. Speaker, getting it right is more important than getting it done by September 30.

In light of this, the fact that we have arrived at December 10, 71 days after the end of the fiscal year, having completed only five of the 12 appropriations bills, is not surprising, based on what we've seen here, or even necessarily problematic.

But there is far more to this story, Mr. Speaker. At the very outset of this process 6 months ago, the Democratic majority announced that they would be foregoing the messiness of real debate. And I'm very pleased that my friend from Wisconsin, the distinguished Chair of the committee, is here on the House floor. In their calculation, concluding by September 30 was more important than getting things done right. Rather than a lengthy, deliberative, accountable process, they chose to pursue a neat and tidy one that shut out real debate, shut out real debate, but did conclude on time for our work here in the House. Democrats and Republicans alike were denied the opportunity to participate. True to their word, they made the unprecedented move of closing down the entire appropriations process.

Now, Mr. Speaker, everybody in this House who is a first-termer or they've been here as long as my friend Mr. OBEY has been here—he's been here almost 200 years, I think. He's been here a long, long period of time. And he knows that never before, never before in the history of this Republic have we seen the process shut down as it was shut down last summer. We have had rank-and-file Members, again Democrats and Republicans—Mr. Speaker, this is not simply my attempt to stand up for Republicans. We've been standing up for Democrats who have been denied the opportunity to offer amendments as well, and it's very, very unfortunate.

By endeavoring to take the messiness out of the legislative process, they took out the real debate, they took out the accountability, all in the name of a deadline, a deadline that came and went 71 days ago. Seventy-one days ago was when that deadline arrived, Mr. Speaker. And here we are scrambling to consider half of the entire discretionary budget in one single 2,500-page bill with one single hour of debate. As I said, that's $7.5 billion per minute of debate that's going to be allowed on this.

Our traditional deliberative process is messy and lengthy and ugly for the sake of good results. The Democratic majority set out to sacrifice good results for the sake of expediency. What we have gotten is the worst of both worlds: neither timely nor deliberative action. Neither timely nor deliberative. And as we've seen time and again, bad process begets bad substance.

It's no coincidence that the Democratic majority has been blocking all accountability of their spending practices. The deficit has skyrocketed to nearly $1.5 trillion. That's larger than the entire Federal budget was just a decade ago. And our national debt, as we all know, exceeded $12 trillion, and the unemployment rate is double digit at 10 percent.

The fact that this outcome is not surprising does not make it any less grim. We can't go on recklessly spending money that we simply don't have, piling mountains of debt upon future generations. Unless and until this Democratic majority returns to regular order and open debate, the taxpayers will continue to see their hard-earned money spent unwisely and our country saddled with an ever-growing level of crippling debt.

Mr. Speaker, I have to say that we constantly hear the finger of blame. I was managing last night the rule for general debate on this massive 1,279-page bill that re-regulates virtually everything when it comes to the delivery of financial services, and I constantly heard the finger of blame being pointed at the Republicans.

We need to remind ourselves that the Republicans have not been in control of the House of Representatives since 2006. Mr. Speaker, what that means is that we have gone through now 3 full years, 2007, 2008, and 2009, under a Democratic majority. So as we continue to hear this argument that somehow Republicans are to blame for all of these problems, it is a very, very specious one.

I'm going to urge my colleagues, Mr. Speaker, in the name of accountability, in the name of deliberation, and in the name of good results, to defeat this rule. We can do better.

Mr. Speaker I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, let me just say that this Congress has a very tough job. We are digging ourselves out of the mess that Mr. Bush and his Republican allies created. Years and years of neglect. Years of ignoring the most important pressing problems facing our country.

When President Obama got elected, he inherited a crumbling infrastructure in this country because of the years of neglect by the Republicans and by the Republican President. He inherited a country that had no solid plans for alternative or renewable or clean energy because of the neglect and the obstructionism on the other side. He inherited a country where the health and well-being of our citizens had been neglected for years and years and years. So what we are doing here and what these appropriations bills are responding to are the years of neglect.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MCGOVERN. I yield 30 seconds to the gentleman from California.

Mr. DREIER. I thank my friend for yielding.

Let me just say, Mr. Speaker, that the gentleman obviously didn't listen to the remarks that I just provided here reminding Members that while we continue to get the finger of blame pointed at us for the last 3 years, this institution where the power of the purse exists, the people's House, has been in the control of the Democratic Party, not the Republican Party.

Mr. MCGOVERN. For 2 of those years, we had a Republican President who obstructed every single progressive, positive idea that came out of this Chamber. So this is the response to the neglect of the years of Republican rule, and we have to clean up this mess.

Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. OBEY), the chairman of the Appropriations Committee.

Mr. OBEY. I thank the gentleman for the time.

Mr. Speaker, it is hard for me to respond to the gentleman's comments with a straight face. I really think we've had a big lesson in Alice in Wonderland reasoning here today.

Let's simply let the facts speak for themselves. We presently have had five appropriation bills already signed by the President of the United States. In addition, the bill which we will consider today and which will be sent to the President will mean that we have sent six additional appropriation bills

to the White House. That means that during this session, we will have passed every single regular appropriation bill except the defense bill, which we expect to deal with next week. And we did that on top of having to deal with the most calamitous collapse of the economy in 75 years, necessitating a whole round of legislative action to try to salvage the economy.

The gentleman and several of his friends on that side of the aisle have continued to complain that we haven't gotten all of these bills done by the end of the fiscal year. Engaging how seriously we should take that——

Mr. DREIER. Will the gentleman yield?

Mr. OBEY. No, I will not.

Mr. Speaker, I do not intend to yield until I have finished my entire statement. The gentleman habitually asks people to yield in the middle of their statement. I'm going to complete my thoughts, and then I will be happy to yield.

The fact is I think this House ought to compare our record this year with the record when the gentleman's party was in control. When we took control of this House 3 years ago, what did we find? We found that they had only been able to pass two appropriation bills.

□ 1100

They had not been able to pass a single appropriation bill that appropriated a dime for the domestic portion of the Federal budget. And they, in fact, left to the next Congress the necessity to pass all of those domestic appropriation bills. How, with that record, they can come forward on this floor and complain because we are 60 days late in their mind is a joke in my view.

Let me cite some of the other records. So far this year, without this bill, we have passed more individual appropriation bills than has been done in five of the last seven years, and most of those years were under Republican control. In fiscal year 2003, Republican control, only two bills were enacted as freestanding measures; the rest were part of an omnibus. In fiscal year 2004, Republican control, six bills were enacted as freestanding measures; the rest were in an omnibus. Fiscal year 2005, Republican control, four bills were enacted as freestanding measures; the rest were put in an omnibus. And the story goes on and on and on.

With respect to the amendment process, our friends on the other side of the aisle were able to offer 96 amendments in full committee, they offered 155 amendments on the floor, and in the conference, on this bill alone, they offered nine amendments. Significantly, their Republican counterparts in the Senate didn't offer any; they felt we had done a pretty good bipartisan job in producing these bills, and I do, too.

The fact is, we have been subjected to obstruction by delay as the minority has apparently tried to turn the House of Representatives into the Senate through filibuster by amendment. We don't have a filibuster in the House rules, but they can achieve the same thing by tossing up countless amendments, many of which are not serious amendments.

With respect to the cost of the bill, they make much of the fact that this bill costs significantly more than its counterparts last year.

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

Mr. MCGOVERN. I yield the gentleman 2 additional minutes.

Mr. OBEY. Let's walk through what those differences are. Would they suggest that we take out the $3.2 billion increase for veterans so that we can clean up the disability backlog? Would they suggest that there is something wrong with the fact that, in contrast to what happened when they were running the show, we chose to put $14.8 billion for war costs that were previously funded in a supplemental, we chose to put them in the regular bill so you didn't hide the cost in a regular bill?

On infrastructure, as the gentleman pointed out, we've had collapsing infrastructure in this country. Would they suggest we remove the $10.8 billion in additional infrastructure funding?

On health, we are about to pass the most momentous health care changes in the history of the country. We have $6.3 billion of additional funding over last year to expand the capacity of the health care system to deal with the fact that 31 million more people are going to be using that health care system. Would they suggest that we take that money out?

When you total up the cost for those items that I have just recited, the rest of the increase in the bill is $4.8 billion; that is equal to a 1 percent increase. I make no apology for that because, as the gentleman pointed out, we are trying to deal with years of neglect of our domestic economy. This is the bill that does that, and I make no apology for the fact that we bring it to the House today. And I make no apology for comparing our ability to deliver the goods before the end of this Congress in contrast to the inability of the other party to do that when they controlled the House.

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

Mr. DREIER. Mr. Speaker, I yield myself such time as I might consume, and I would be happy to engage in a colloquy with my very good friend.

Let me say that obviously the appropriations process is a challenging and difficult and messy one, but I think that it's important to note a few things as we look at last summer.

My friend will, I'm sure, acknowledge—and I would be happy to yield to him—that never before in the history of the Republic have we had the kind of structure put into place that prevented Members from offering amendments that we did through this appropriations process.

I am happy to yield to my friend.

Mr. OBEY. I would say never before have we had the kind of systematic obstruction on the part of the minority that we had either.

Mr. DREIER. If I could reclaim my time, Mr. Speaker, let me just say that the problem we had was this: The first appropriation bill came forward, it was a total of 20 minutes of debate. Twenty minutes of debate took place, Mr. Speaker, and then all of a sudden the process was shut down and Mr. MCGOVERN and I and our other Rules Committee colleagues were forced upstairs to take the first step towards shutting down the process. So let's say that this extraordinarily dilatory process lasted 20 minutes before we took the first step towards shutting this place down.

The second thing, Mr. Speaker, is that as we talk about the sacrosanct September 30 end-of-fiscal-year date, that's only part of it. The only reason that we point that out, recognizing that under both Democrats and Republicans through a difficult appropriations process in the past, we have clearly had to go beyond that September 30 deadline for the end of the fiscal year. And the problem was that when we were told that we would not exceed that because we were shutting down the process. So, unfortunately, we lost both the opportunity for deliberation and this sacrosanct deadline that was constantly held up as the raison d'etre here for this kind of action.

The third point is, as my friend, the distinguished Chair of the committee, went through the 95 amendments that were offered in committee, the 160 amendments that were made in order on the House floor for consideration, Mr. Speaker, with all due respect, the selection of those amendments in the hand of one individual Member of this institution—not those of us on the House Rules Committee. Yeah, we ultimately, with the majority vote in the House Rules Committee, saw our Democratic colleagues put the stamp of approval on it, but the decision of what amendments were made in order was made by one person, the distinguished Chair of the Committee on Appropriations. That's where the decisions were.

Now, Mr. Speaker, under the historic tradition, the tradition of consideration of appropriations bills, knowing how sacrosanct article I, section 9 of the Constitution is, Members of the House had the chance, as Mr. FLAKE said in his remarks, to stand up and offer amendments. One of the things that we believe strongly about, with the 85 percent increase that we have in nondefense discretionary spending; not those issues that the gentleman pointed to that we of course agree to in a bipartisan way—the national security of the United States of America—but in the multifarious other areas, there is a real desire for Members to stand up and have a chance to offer amendments that might be able to bring about, with a scalpel, some kind of spending reduction because we've gone through such huge increases. And so, Mr. Speaker, I have to say that it's very, very troubling to hear these kinds of arguments.

Mr. KIRK, to whom I'm going to yield in just a moment, has the 2,500 pages very, very gingerly propped up there on the lectern. At this time, I am happy to yield 2 minutes—which, based on the level of spending in this 2,500 page bill, will amount to $15 billion since we're spending $7.5 billion per minute—to my friend from Highland Park.

Mr. KIRK. I thank the gentleman.

This bill totals 2,500 pages. Initial estimates show that it has 5,000 earmarks, and these earmarks in this legislation stretch over several hundred pages. Now, any time Congress moves a 2,500-page appropriation bill on short notice, we should urge caution. This kind of spending may be in line with other spending of this Congress.

This morning, Congressman PRICE and I released a list of the 11 worst spending items approved by the 111th Congress. Items included $1.9 million for a water taxi to nowhere in Pleasure Beach, Connecticut, opposed by a local mayor there that said the reason why we never did this is there is no local support for this project. Or $578,000 to fight homelessness in Union, New York, a town that has reported no homeless citizens. HUD officials said, ''We hope and encourage these new grantees to develop creative strategies for this funding.''

Now, remember, the Bureau of Public Debt reports that we must borrow $160 billion per week for the United States to service our current debt and add new IOUs. Forty-six cents of every dollar spent by this Congress is borrowed, and most of it from abroad.

This bill has 5,000 earmarks over several hundred pages buried in this legislation. I do not think that it represents responsible management of Federal finances. The press reports indicate that the congressional leaders will soon approve adding $1.8 trillion to our national debt next year. They need to do this to fund 10,000 earmarks they've already approved—5,000 just in this legislation—that totals $446 billion in a 2,500-page bill, accelerating spending by $50 billion over last year alone. I think we should turn away from this kind of spending and enact a more frugal set of spending priorities.

Mr. MCGOVERN. Mr. Speaker, let me just make a couple of observations.

First of all, the gentleman talked about earmarks. Under the Democratic leadership, earmarks have been curtailed significantly from where they were when the Republicans were in control of the Congress.

Secondly, I guess it's good theatrics to hold up all the pages of the appropriations bills that are gathered there, but I should point out to my colleague that the Republican omnibus appropriations acts were longer in length than the one he has there. So what? I mean, has this debate become so shallow that it's all about the number of pages of the bill?

The gentleman talked about responsibility. The responsibility that the Democratic majority has is to clean up the mess that the Republicans left us. The responsibility of the Democratic majority is to deal with the years and years of neglect on important programs ranging from transportation to health care to veterans affairs. That is what we are doing here.

This is a debate about issues that matter to everyday people. These bills contain monies for roads and bridges, monies for our veterans, monies for our health care facilities. These are important matters, and that is what we should be debating.

Mr. Speaker, I would like to yield 2 minutes now to the gentleman from Mississippi, the chairman of the Homeland Security Committee, Mr. THOMPSON.

Mr. THOMPSON of Mississippi. Mr. Speaker, today I rise with significant concerns about section 159 of the Transportation division of this legislation. It requires Amtrak to allow passengers to check their guns when riding the rails.

It is no secret that rail systems are an attractive target for terrorists. In fact, in last year's attack in Mumbai, two terrorists executed a commando-style raid on a major railway station, gunning down 150 innocent commuters. To date, we have been fortunate that no such attacks have occurred on U.S. soil, but with passage of this legislation, securing the Nation's railway systems becomes far more difficult.

Section 159 requires Amtrak to allow passengers to travel with guns without checking them against a terrorist watch list. We all get checked against a terrorist watch list when we fly, regardless of whether we check firearms or not. How can we justify not using the terrorist watch list on people who travel the rail?

Amtrak policy of prohibiting passengers from traveling with guns was established in response to 9/11. With this bill, Congress, in a heavy-handed way, is interfering with Amtrak's security protocols without a single congressional hearing. This bill would abruptly undermine nearly a decade of conscientious efforts by Amtrak to enhance rail security and protect its passengers and employees. I am also concerned that it does not distinguish between checked baggage transported in a separate car and that which is loaded onto the same car as passengers.

Section 159 also lacks safeguards to ensure that State and local gun laws are respected. Specifically, it is silent on the question of preemption, thereby implying that individuals can carry firearms into jurisdictions where it is unlawful to do so.

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

Mr. MCGOVERN. I yield the gentleman an additional 30 seconds.

□ 1115

Mr. THOMPSON of Mississippi. I would like to also add that, last year, we spent more than twice as much money per passenger on aviation security as we did on rail security. Section 159 will undermine the security of Amtrak's passengers, employees, and infrastructure. I sincerely hope that we do not soon come to regret this hasty and unexamined passage.

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

Mr. Speaker, I would like to say to my good friend from Mississippi—and I know my friend from Florida is raising concerns about this as well—this underscores procedurally the challenge that we are facing when we have one individual making these kinds of decisions that should be made by Democrats and Republicans in the House of Representatives. When we listen to this argument put forward about spending and about the fact that this 2,500-page bill is theatrical, you bet. I mean, you bet, Mr. Speaker. It is theatrical to hold up a 2,500-page bill, but it's a way to graphically underscore what is taking place here.

Now, my friend said that he is interested and concerned about the fact that everyday people have priorities on transportation and on a wide range of issues. National security is again, to me, priority number one. Yet, Mr. Speaker, in this 2,500-page bill, we have a 63 percent increase in funding for the Intergovernmental Panel on Climate Change.

Mr. Speaker, I don't believe that everyday people who constantly, over the past year or two, have been focusing on trying to rein in their spending believe that a 63 percent increase on the Intergovernmental Panel on Climate Change is an appropriate utilization of this money. So that is the reason, Mr. Speaker, that we point to this.

Now I yield 3 minutes to the distinguished ranking member of the Subcommittee on Transportation and Housing, my good friend from Iowa (Mr. LATHAM).

Mr. LATHAM. I thank the gentleman from California for the time.

Mr. Speaker, I hear all of this talk about the past. If I remember a little bit of the past, recently, somebody ran on the idea of ''change you can believe in.''

Is this the kind of change that people were talking about, to continue the same type of efforts in the House here that are so bad as far as what was in the past?

I am very, very disturbed today that we bring a rule to the floor 5 months after this bill has passed the floor of the House and 3 months after it has passed the Senate. Now, today, almost 3 months into the new fiscal year, we finally bring the Transportation-HUD bill to the floor. Why? Why wait? This bill has been done for months and months.

The frustration, I think, that a lot of us have on both sides of the aisle is there is no reason that this bill should not have been completed other than for the fact that they wanted to use it as it is being used today, which is as a vehicle to carry other bills that maybe

could not stand on their own and because the work hasn't been done; but anyone who talks about some kind of delay tactic when you have an 80-vote margin in the House and a supermajority in the Senate is simply beyond having any kind of rational argument today.

Mr. Speaker, I will tell you, a couple of days ago, I had a motion to instruct conferees—and this is why I think everyone should oppose this rule. I had a motion which said that we would have, as conferees on this bill, 72 hours to look at what is in those 2,500 pages which are being dumped on us today. We were given 30 minutes. When the bill was completed and we were in conference, we had gotten the opportunity for 30 minutes, which is after the House had voted to give us 72 hours to study what is in that bill. Also, the House voted, and a sizable majority said, that we should take this bill by itself rather than have these other five bills added onto it. Again, totally ignored. So here we are today with almost a $500 billion bill which we had 30 minutes to look at.

Just as one example of why it is important to have a chance to look at something like this, there was a provision airdropped that no one knew about. I asked about it in conference. No one knew the answer to it. It is one which is a huge safety issue on transportation.

Airdropped into this conference report just before our conference convened was a special exemption for the State of Vermont to have 98,000-pound trucks travel on interstate highways.

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

Mr. DREIER. Mr. Speaker, I yield my friend an additional 30 seconds.

Mr. LATHAM. Now, maybe this is okay. Maybe it's fine. This is exactly why we should have time to look at it. I know there are a lot of States which would like to have their weights increased. Certainly, this is a safety issue in many parts of the country, so to have someone airdrop a provision of that importance into a bill like this is simply outrageous.

There was no debate. No one knew a thing about it. Even the people who were in charge of the bill could not explain the provision when I asked, What is this under that section? Why is this language in there as it is? It had absolutely no debate. No one knew what it was.

Please vote against this rule. Let's get a decent bill on the floor.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. CORRINE BROWN).

Ms. CORRINE BROWN of Florida. Mr. Speaker, I've been here 17 years, and I really believe that you have got to stand for something or fall for everything.

Today, as subcommittee Chair of Railroads, I am appalled that we are including language in this omnibus bill that allows people to carry guns on Amtrak. This is a failure of leadership on every single level. We are passing legislation that endangers the safety of 27 million passengers who ride Amtrak each year. This language was opposed by both the Transportation and Infrastructure Committee and the Homeland Security Committee as well as opposed by numerous other Members. Yet we are forcing this unnecessary provision on millions of passengers and are jeopardizing homeland security for absolutely no reason.

I have traveled the rail systems throughout the world. None of them allow guns on their systems. We are taking a dangerous step backwards and are stripping Amtrak of its ability to set security standards and to protect its customers and employees. There was a deadly terrorist attack in Russia just 2 weeks ago on a train. The same thing happened in Madrid, Spain, in Mumbai, India, and in London, England. Each attack has emphasized the importance of passenger rail security.

These incidents also clearly demonstrate the fact that security in rail environments presents unique opportunities for terrorists. Trains are not like airplanes. You don't have metal detectors, and you don't have the TSA officials there or law enforcement officers processing passengers through these stations. We haven't provided Amtrak the resources to fully fund this operation, let alone the additional costs and manpower that will be needed to comply with this legislation.

The traveling public deserves better. I am asking each Member to vote ''no'' on this rule so we can come back and get a fair rule pertaining to the traveling public.

Mr. DREIER. Mr. Speaker, as I prepare to yield to my good friend from Alpine, Utah (Mr. CHAFFETZ), I would simply say that I will give him 2 minutes, which would total $15 billion of this measure based on the $7.5 billion per minute that it is costing us to do this.

I yield 2 minutes to our hardworking new colleague from Utah.

Mr. CHAFFETZ. Thank you for yielding.

Mr. Speaker, this rule is really bad government at its worst. I really do believe that in my heart of hearts. It seems to be a vehicle to drop in things that would never pass by themselves, and we are hearing that criticism on both sides of the aisle.

It's 2,500 pages, and the gentleman from Massachusetts asks, Well, why is that important?

It is important because we have been given just hours to try to review this. It is a physical impossibility to actually read and comprehend what is in this bill. I, for one, was elected as a freshman because I was critical of the Republicans and the Democrats. It is a shame that this bill and this rule are being pushed upon us without an opportunity to properly review it:

2,500 pages. $446 billion in expenses. Nearly a 12 percent increase in spending year after year in the base spending. Over 5,000 earmarks that could never withstand the light of day if we had to vote on them and look at them one at a time, as my friend Mr. FLAKE has brought many times before this floor.

Next week, there is going to be legislation moved forward to raise the debt ceiling by $1.8 trillion. Let no person in this body try to kid themselves that they are concerned about the debt and the deficit when they have to continually raise the debt ceiling to try to clean things up. No. We continue to mortgage our future every time we are met with a challenge. The only thing I hear is we need billions and billions more.

It is time for this Congress to make tough, difficult decisions and to limit the spending. That will help grow the economy. That is the responsible thing to do. That is what the American people asked us to do, but that is not what this body is doing. It is time for some personal responsibility here in the United States Congress. We should defeat this rule, and we should get serious about limiting the amount of expenditures that happen in the United States Congress.

Mr. MCGOVERN. Mr. Speaker, I would just make a couple of observations.

First of all, I should remind everybody that, when Bill Clinton left office, he left George Bush with a record surplus which President Bush and his Republican Congress squandered. We ended up going from record surpluses to record deficits and debts. That's just a fact. I understand the frustrations of my friends on the other side as their goal is to obstruct and to make sure we get nothing done here. That is what they think is the winning strategy—to basically get nothing done.

They are failing in that because Congress is moving and is getting things done. We are beginning to turn this economy around, and we are responding to the needs and the desires of the American people. We are going to continue to do that in this bill. The inclusion of moneys for veterans, for our infrastructure, for health care, for job creation, and for worker training during this difficult economy is vital and important. We are going to get this done, and we are going to help the American people.

At this time, I yield 3 minutes to the gentleman from New York (Mr. SERRANO).

(Mr. SERRANO asked and was given permission to revise and extend his remarks.)

Mr. SERRANO. I thank the gentleman for his time.

Mr. Speaker, I rise in strong support of this rule, and I am pleased to be able to comment on the Financial Services and General Government section of this bill, which provides for a total of $24.1 billion in discretionary appropriations. The agencies that this bill funds touch all of our lives, and the spending

has been carefully allocated to those programs where the American people will benefit the most.

In an effort to rebuild the regulatory agencies that protect investors, consumers, and taxpayers, the Securities and Exchange Commission is given a 16 percent increase over fiscal year 2009 to $1.1 billion. In addition, because we are committed to implementing important consumer protection legislation which was enacted in 2008, the Consumer Product Safety Commission receives $118 million, which is the full amount authorized, and a $13 million increase over last year.

In this conference report, we also want to make sure that capital and other assistance gets to small businesses and disadvantaged communities, not just to large businesses and the wealthy. The Small Business Administration and the Community Development Financial Institutions Fund both received significant increases above fiscal year 2009.

The IRS is sufficiently funded to allow for the fair and effective collection of taxes, including resources to pursue wealthy individuals and businesses who avoid U.S. taxes by parking money in overseas tax havens. There is also more than the budget request for taxpayer services.

The Federal Judiciary receives the funding that it needs to keep up with increased costs and responsibilities. We also provide a 2 percent pay adjustment in 2010 to our hardworking Federal workers.

In this bill, we meet our obligations to the District of Columbia. I feel very strongly that Congress should not be overly involved in local affairs of the District of Columbia. Like any other citizens, D.C. residents should have the right to manage their local affairs on their own.

□ 1130

In this year's bill, with respect to both abortion funding and medical marijuana, we allowed the District of Columbia to make its own decisions, just like each of the 50 States. We also dropped some other outdated and unwarranted restrictions.

I would like to thank Chairman OBEY for his leadership, and my ranking member, Jo Ann Emerson, for her many contributions. I would also like to recognize our staff who have worked long hours to put together this conference report. In particular, I would like to mention David Reich, Bob Bonner, Lee Price, Ed O'Kane, Ariana Sarar and Alex Jabal from our majority staff, and Alice Hogans, Dena Baron and John Martens from our minority staff. On my personal staff I would like to thank Philip Schmidt, George Sullivan, Matt Alpert and Nadine Berg.

I hope that you would support this bill. Very briefly, on the size of the bill, it's great theater to show that bill, but that's composed of bills that passed this House, some as far back as 6 months ago.

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

Mr. MCGOVERN. I yield the gentleman an additional 30 seconds.

Mr. SERRANO. Those bills went through the committee process, the subcommittee process, the full committee process, the amendment process in committee, the amendment process on the floor. If anyone says that they haven't read that bill, it's because they didn't take time to read those five or six or seven bills that are included there which were passed about 6 months ago.

Mr. DREIER. Mr. Speaker, at this time, with the somewhat unprecedented procedure utilizing the 2,500-page bill as the lectern, I am happy to yield 2½ minutes to the distinguished chair of the Republican Conference, my friend from Columbus, Indiana, a self-described favorite Hoosier of mine, my friend, Mr. PENCE.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the conference report before us today and the rule that we debate at this moment.

It really is astonishing. At a time when American families are hurting, 10 percent unemployment, now comes before the Congress this massive piece of legislation. The numbers tell the tale—2,500 pages, nearly half a trillion dollars in spending, 5,000 earmarks on hundreds of pages. Now, I know my distinguished colleague on the other side says that the number of pages is a ''so what,'' and I defer to him. I don't think it's about the number of pages; I think it's about the size of the bill that will be offensive to millions of Americans.

When you get down to the details here, Military Construction and Veterans funding gets a 5.2 percent increase; Commerce, Justice, Science gets 11.6 percent; Foreign Operations gets a 33 percent increase this year; Transportation and Housing and Urban Development gets a 23.5 percent increase—I feel like I ought to call for a drum roll here, Mr. Speaker—for a 12.2 percent increase in spending in a single year.

As I told the President of the United States yesterday in the Cabinet Room, there is not a business in Muncie, Indiana, that's going to see a 12 percent increase in its budget this year.

Here in Washington D.C., proving just how out of touch this Nation's Capital is with the struggles that American families and small business and family farmers are facing, here it is, a 12 percent increase in Federal spending. And it's not just what is in this bill, it's what isn't in this bill.

Gone is the ban on Federal funding of abortions in the District of Columbia. Gone is the ban on legalizing marijuana in our Nation's Capital. Gone is the ban on Federal funding for domestic partnership benefits. And eventually gone is the support for the D.C. Opportunity Scholarship Program, doing away with opportunities for a largely minority population to go to the school of their choice. Also, I might add, gone is any restriction on the use of Federal funds to enforce or implement the Fairness Doctrine.

You know, the President said to us yesterday in the Cabinet Room that we needed to get back to fiscal discipline as a means of encouraging economic growth. I told him he could do one thing this week—veto this bill. Let's have level funding. Let's tell the American people that we get it in Washington D.C.

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

Again, I appreciate the theatrics on the other side. I will remind them again that these bills have all gone through committee and have all been voted on in the House.

I would also like to say to my colleagues, I am reminded of the old saying, ''Physician, heal thyself.'' My colleagues complain about earmarks. I don't have a count here, but my guess is that a good portion of those earmarks are Republican earmarks.

I would say one other thing, Mr. Speaker. Yes, there is increased spending in this bill for things like veterans, veterans' health. I mean, in this bill, there is money for military construction and family housing to support America's military forces and their families at home and overseas.

There is money for Guard and Reserve. There is money for overseas contingency operations; money for Veterans Health Administration; for rural health. There is money here to deal with mental health challenges that so many of our veterans have to deal with, women's veterans programs, long-term care, assistance for homeless vets, medical and prosthetic research, medical facilities, VA construction programs. They go on and on and on.

If my colleagues oppose that, fine. They can vote against the final passage of the bill. But I say that these are priorities for our country, and I am glad that the Appropriations Committee has put this in the bill. I am going to enthusiastically support final passage.

I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I am happy to yield 1½ minutes to my good friend from Mesa, Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding.

I have to say, the chairman of the Appropriations Committee said a while ago that they had to have what amounts to a legislative form of martial law during the consideration of these appropriation bills because many amendments were being brought forward. He said many were not serious amendments.

I can only assume that he was referring to some of mine, because I had a lot of them. But let me tell you, we had more than 500 no-bid contracts going to private companies in the Defense bill

alone, and I had many amendments to examine those because, heaven knows, they weren't being examined in the Appropriations Committee sufficiently.

We have had story after story and a cloud hanging over this body, investigations going on; the Ethics Committee has seen fit to investigate the relationship between earmarks and campaign contributions. Yet we say that many of these amendments are not serious amendments.

Who has to decide that? Why don't we let the body here decide and allow those to come to the floor.

Also, the gentleman from Massachusetts mentioned that we have to have this level of funding because of years and years of neglect. I would submit that we would do well to have a little more neglect on the taxpayers' behalf if what we are funding in this bill, and we are, is nearly $200,000 to renovate a building in Massachusetts to attract private capital investment; $700,000 for an arts pavilion in Mississippi. I think the taxpayers would be happy for a little more neglect by the Federal Government in this area.

Mr. MCGOVERN. I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, may I inquire of my friend how many speakers he has remaining?

Mr. MCGOVERN. I am the lone remaining speaker.

Mr. DREIER. At this point I am very happy to yield 1 minute to the lectern-in-front-of-him, bill-holding gentleman from Dallas, Texas (Mr. HENSARLING).

Mr. HENSARLING. I thank the gentleman for yielding.

Mr. Speaker, I guess at 5'6'' inches I am doing well simply to look over the 2,500-page bill that spends yet another half a trillion dollars of money we do not have. Since the Democrats have come to power, they have increased the deficit tenfold.

We have our first trillion-dollar deficit, a budget plan to triple—triple—the national debt in the next 10 years. Mr. Speaker, every page of this behemoth spending bill represents an IOU to the Chinese to be paid for by our children and grandchildren. Every single page of this 2,500-page, half-a-trillion-dollar bill crushes yet another job in America.

Nobody is going to launch new jobs in America when they have to pay for this, Mr. Speaker. Our highest levels of spending, our highest levels of unemployment. Mr. Speaker, the Democrats don't get it.

Mr. MCGOVERN. I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, may I inquire of the Chair how much time is remaining on each side?

The SPEAKER pro tempore. The gentleman from California has 30 seconds remaining, and the gentleman from Massachusetts has 4 minutes.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time, the 30 seconds, to simply say that in the name of fairness, there are both Democrats and Republicans who are opposing this rule. Why? Because Democrats and Republicans have been shut out of this process.

On the Republican side, Mr. Speaker, we believe that an 85 percent increase in nondefense discretionary spending is outrageous when the American people are struggling to make ends meet. Only the Federal Government, as my friend from Indiana said, would proceed with a dramatic increase in spending when businesses across this country are working to bring about reductions.

There are shared priorities that we have on national defense; on transportation. But the notion of a 63 percent increase for the Intergovernmental Panel on Climate Change, or $375 million for the Clean Technology Fund is not the route to go.

Defeat the previous question. Defeat this rule.

Over the last few months, the American people have written and called their Members of Congress or they've made their opinions known at town hall meetings to ask their Congressmen whether they will pledge to read bills before they vote on them. The reason is that the people are upset after finding out the majority leadership forced Congress to vote on a number of sweeping and very expensive bills without giving Members time to understand or really even to read the bills.

For example, we were forced to vote on the final so-called ''stimulus'' bill, on the omnibus appropriations bill, and on cap-and-trade with less than 24 hours to read the bills; in some instances, much less than 24 hours. And that's no way to run this House. Our constituents are rightly upset.

You would think, Mr. Speaker, this would not be an issue, as the distinguished Speaker is on record as saying in A New Direction for America, ''Members should have at least 24 hours to examine bills and conference reports before floor consideration.'' It's even on her Web site; yet, time and time again, the distinguished Speaker and majority leadership have refused to live up to their pledge.

That is why a bipartisan group of 182 Members have signed a discharge petition to consider a bill that would require that all legislation and conference reports be made available to Members of Congress and the general public for 72 hours before they be brought to the House floor for a vote.

That's why today I will be asking for a ''no'' vote on the previous question so that we can amend this rule and allow the House to consider that legislation, H. Res. 554, a bipartisan bill by my colleagues, Representatives BAIRD and CULBERSON.

By voting no on the previous question, Members will still have an opportunity to debate and consider this conference report, but if the previous question is defeated, it will also allow for separate consideration of the Baird-Culberson bill within 3 days. So we can vote on the conference report and then, once we are done, consider H. Res. 554.

Mr. Speaker, I would like to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

Mr. Speaker, I ask my colleagues to vote ''no'' on the previous question and on the rule.

Mr. MCGOVERN. Mr. Speaker, the American people, indeed, are struggling, and they are struggling because of years of neglect by President Bush and the Republicans here in this Congress who have neglected, I think, the most important pressing priorities that everyday people face. What we are trying to do is clean up their mess, and this bill represents an increase in spending on important priorities that have been underfunded in the past, everything from infrastructure, because our infrastructure all over our country is crumbling because of neglect, to an increase in funding for veterans health and for veterans housing.

I am proud of the priorities in these appropriations bills. We have appropriations bills that have a conscience, that actually respond to the needs of the American people. I understand, as I said before, the frustration of the other side, because what they would like is for us to get nothing done.

But the reality, Mr. Speaker, is that this Democratic Congress is doing the opposite. Politico said, ''A Democratic Congress that is enjoying its greatest political and legislative success since at least the beginning of the Clinton administration and arguably since its legislative heyday in the mid-1960s.''

We are moving forward on things like the American Recovery and Reinvestment Act to help keep people's jobs and create more jobs; the Cash for Clunkers bill which jump-started the U.S. auto industry and provided consumers with up to $4,500 to trade in an old vehicle for one with higher fuel efficiency. We have passed a bill to help families save their homes.

We passed the Edward M. Kennedy Serve America Act, tripling volunteerism opportunities to a quarter of a million people. We have passed health care for 11 million more children that without this bill would not have access to health care. The FDA regulation of tobacco, the Ryan White HIV/AIDS Treatment Extension Act, the Omnibus Public Lands Management Act, the Fraud Enforcement and Recovery Act, the military procurement reform bill, strengthening oversight of TARP, the Lilly Ledbetter Fair Pay Act.

I can go on and on and on, but this has been an activist Congress, responding to the needs of the American people, responding to those who are struggling or who are out of work, because they were neglected for so many years.

We are trying to deal with our debt as well, trying to go back to what President Clinton established, a time of record surpluses. But when the Republicans came in, the first thing they did was pass tax cuts for wealthy people without paying for it. The rich got richer while the middle class got poorer.

Mr. Speaker, this omnibus bill before us represents, I think, the right priorities, the priorities of the American people.

I would urge a ''yes'' vote on the previous question and on the rule.

Mr. THOMPSON of Mississippi. Mr. Speaker, as I mentioned during debate

on the rule, I have strong objections to section 159 of the Transportation division of this bill.

Over the last decade it has become abundantly clear that rail systems are key targets for terrorists.

And the consequences have been devastating for many of our friends around the globe.

In last year's attack in Mumbai, 2 terrorists executed a ''commando-style'' raid on a major railway station, gunning down 150 innocent commuters.

I am grateful that, thus far, Americans have been spared the horror of an attack on our domestic rail system.

But approving section 159 is to act as though the terrible events in Madrid, Mumbai, and Russia could never happen here.

Amtrak's ban on firearms was instituted in response to September 11th, and re-evaluated after each major terrorist attack since.

Section 159 interferes with Amtrak's carefully developed security protocols and exacerbates the vulnerability of railways without hearings or debate.

Still, I would like to recognize Chairman OLVER and Chairman OBEY for reaching out to discuss my security concerns and potential changes to proposed language.

Unfortunately, none of those concerns are addressed in the provision that is in the conference package.

The bottom line is that it still forces Amtrak to allow passengers to transport guns as checked baggage without even the most basic safeguards.

For example, section 159 does not distinguish between checked baggage transported in a separate car and that which is loaded onto passenger cars.

Moreover, there is not even language that requires checked baggage to be secure.

This means that guns and ammunition could be loaded onto the same cars as the passengers who are transporting them.

As my colleague from Florida, Chairwoman BROWN, stated earlier, it is absolutely critical for everyone to understand that checked baggage on a train is not the same as checked baggage on an airplane.

What is even more puzzling is that section 159 requires Amtrak to allow passengers to travel with guns without checking their names against the terrorist watchlist.

We all know that our names are checked against the watchlist when we fly, even if we don't check firearms.

I do not understand how anyone can justify using the watchlist to protect air passengers but refusing to provide the same protection to rail passengers.

This section also lacks safeguards to ensure that State and local gun laws are respected.

Specifically, it fails to address preemption, with the implication that individuals may carry firearms into jurisdictions where it is unlawful to do so.

Last year, we spent more than twice as much money per-passenger on aviation security as we did on passenger rail security.

Still, Congress saw fit to cut Amtrak's security funding by 20 percent for this year.

And since section 159 creates new problems without providing any additional funding, Amtrak will now face more security obstacles with even fewer resources.

Section 159 will reverse nearly a decade of conscientious efforts by Amtrak to protect its passengers, employees, and infrastructure—and I sincerely hope that we do not soon come to regret its hasty and unexamined passage.

Mr. SKELTON. Mr. Speaker, today, the House of Representatives is considering H.R. 3288, the Consolidated Appropriations Act for Fiscal Year 2010. This legislation contains six of the fiscal year 2010 appropriations bills that have not yet been signed into law by the President. I commend my colleagues for gluing together this very complex measure that invests in important American priorities.

I support a vast majority of this legislation, especially funds that have been directed toward veterans health care, military construction, public safety, health research, education, highways, and international diplomacy. But, I am terribly concerned about other aspects of the bill, namely its $1.1 trillion price tag as well as provisions that would allow federal funds to be used for needle exchange programs and for abortion services in the District of Columbia.

While I cannot lend my support to H.R. 3288, I remain committed to working with my Democratic and Republican colleagues as we finish the fiscal year 2010 appropriations process and begin work on the bills for next year.

Mr. BRALEY of Iowa. Mr. Speaker, I rise today in strong support of H.R. 3288, the Consolidated Appropriations Act. While there are many good provisions in this bill, I'm particularly pleased to see funding included in this legislation intended for a Biodegradable Lubricants Study which will reduce our dependency on foreign sources of oil.

In 2008, I successfully included language in the Passenger Rail Investment and Improvement Act which authorized a Biodegradable Lubricants Study to reduce our dependency on foreign sources of oil. This authorization language was included in the Railroad Safety Enhancement Act which was signed into law on October 16, 2008.

In 2009, I was pleased to secure an additional $3 million in funding for the Railroad Research and Development Account in the Transportation HUD Appropriations Act. This additional $3 million in funding is intended to fund the Biodegradable Lubricants study authorized in Division B: Section 405 of the Railroad Safety Enhancement Act of 2008, as well as other feasibility studies authorized in that bill.

I was pleased to see that additional $3 million for Railroad Research and Development included in the Consolidated Appropriations Act. I was also pleased to see language in the Joint Explanatory Statement which specifies that Railroad Research and Development funding will go towards studies and research authorized in the Railroad Safety Enhancement Act of 2008. The Biodegradable Lubricants Study authorized in this legislation will help reduce our dependence on foreign oil and reduce our national addiction to petroleum imports. If all industrial lubricants used annually in the U.S. could be replaced with biobased versions, over 2 billion gallons of petroleum per year would be replaced.

In performing this study, the National Ag-Based Lubricants Center (NABL) at the University of Northern Iowa would be a perfect partner for the Federal Railroad Administration. NABL's expertise and resources in biobased lubricants is unmatched, and it is the only entity whose primary mission is the research and testing of agricultural-based lubricants. I thank the Conferees for including the $3 million in additional funding for the FRA's Railroad Research and Development account and I look forward to seeing the Consolidated Appropriations Act signed into law.

Mr. DINGELL. Mr. Speaker, although I intend to vote in favor of H.R. 3288, the ''Consolidated Appropriations Act, 2010,'' I do so with regret. This legislation contains a provision that affords the right of binding third-party arbitration to terminated automobile dealership franchises with Chrysler and General Motors (GM). Moreover, this provision governs the very nature of that arbitration, in effect dictating the criteria arbiters must take into account when deciding whether to cause an auto manufacturer to reinstate a particular dealer franchise. While I lament the painful cuts to dealerships both Chrysler and GM had to make in order to protect their viability and moreover disagree with the manner in which both companies pursued dealership rationalization, particularly with regard to Chrysler, I continue to maintain that statutorily mandated arbitration is at best a mistake and, rather frankly, unconstitutional. Chrysler's and GM's respective dealership cuts were approved in bankruptcy court, and undoing them ex post facto is tantamount to violation of due process, the spending and commerce clauses, and the bankruptcy clause's uniformity requirement.

From an economic perspective, effectively causing Chrysler and GM to engage in thousands of arbitrations at significant legal cost will impede each company's ability to complete its restructuring plans. To add uncertainty to these companies' futures after taxpayers have invested $60 billion to finance their restructuring is quite simply irresponsible and, more broadly, potentially harmful to the country's overall economic recovery.

I recognize the sincere efforts of my friend, Majority Leader HOYER, to broker a compromise between dealers and automakers but cannot in good conscience remain silent on this matter, given the grave constitutional and economic defects of the arbitration provision in H.R. 3288. It remains my strong preference that disputes of this nature be resolved outside of statute.

Mr. SIMPSON. Mr. Speaker, as the House considers the conference report on H.R. 3288, the Omnibus Appropriations Act for FY2010, I wanted to clarify the sponsorship of one congressionally-directed projects included in the report that has been attributed to me. Division A of the Conference Report, the Transportation, Housing and Urban Development Appropriations Act, includes $400,000 in funding for FH–24, Banks to Lowman. The Report mistakenly names me as the sponsor of this project. While this project is located in Idaho, I did not submit a request for this project, which is located in the first district. I appreciate the Committee's work in providing funding for important projects in Idaho, but in the interest of transparency, I wanted to clarify this for the record.

The material previously referred to by Mr. DREIER is as follows:

AMENDMENT TO H. RES. 961 OFFERED BY MR. DREIER

At the end of the resolution, insert the following new section:

SEC. 2. On the third legislative day after the adoption of this resolution, immediately after the third daily order of business under clause 1 of rule XIV and without intervention of any point of order, the House shall proceed to the consideration of the resolution (H. Res. 554) amending the Rules of the House of Representatives to require that legislation and conference reports be available on the Internet for 72 hours before consideration by the House, and for other purposes. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution and any amendment thereto to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Rules; (2) an amendment, if offered by the Minority Leader or his designee and if printed in that portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII at least one legislative day prior to its consideration, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read and shall be separately debatable for twenty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit which shall not contain instructions. Clause 1(c) of rule XIX shall not apply to the consideration of House Resolution 554.

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Democratic majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever.'' But that is not what they have always said. Listen to the definition of the previous question used in the Floor Procedures Manual published by the Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information form Congressional Quarterly's ''American Congressional Dictionary'': ''If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. MCGOVERN. I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

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

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on ordering the previous question will be followed by 5-minute votes on adoption of House Resolution 961, if ordered; and the motion to suspend the rules on House Resolution 35.

The vote was taken by electronic device, and there were—yeas 227, nays 187, not voting 20, as follows:

[Roll No. 947]

YEAS—227

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

NAYS—187

Aderholt	Boren	Cassidy
Akin	Boustany	Castle
Alexander	Brady (TX)	Chaffetz
Austria	Bright	Childers
Bachmann	Broun (GA)	Coble
Bachus	Brown (SC)	Coffman (CO)
Baird	Brown, Corrine	Cole
Barton (TX)	Brown-Waite, Ginny	Conaway
Biggert		Crenshaw
Bilbray	Buchanan	Culberson
Bilirakis	Burgess	Davis (KY)
Bishop (UT)	Burton (IN)	Deal (GA)
Blackburn	Calvert	Dent
Blunt	Camp	Diaz-Balart, L.
Boehner	Campbell	Diaz-Balart, M.
Bonner	Cao	Donnelly (IN)
Bono Mack	Capito	Dreier
Boozman	Carter	Driehaus

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

NOT VOTING—20

Baldwin
Barrett (SC)
Bartlett
Braley (IA)
Buyer
Cantor
Costa
Engel
Heinrich
Jackson-Lee (TX)
McKeon
Meeks (NY)
Mica
Moran (VA)
Murtha
Radanovich
Sires
Tanner
Wasserman Schultz
Waters

The SPEAKER pro tempore. There are 2 minutes remaining in the vote.

□ 1210

Mrs. NAPOLITANO and Messrs. BOREN and McINTYRE changed their vote from ''yea'' to ''nay.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

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

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 221, nays 200, not voting 13, as follows:

[Roll No. 948]

YEAS—221

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

NAYS—200

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Baird
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Costello
Crenshaw
Culberson
Dahlkemper
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Driehaus
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Kratovil
Kucinich
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McMorris Rodgers
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Quigley
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stupak
Sullivan
Taylor
Terry
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Baldwin
Barrett (SC)
Bartlett
Buyer
Davis (TN)
Higgins
Mica
Moran (VA)
Murtha
Radanovich
Sutton
Watt
Wittman

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1219

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. SUTTON. Mr. Speaker, on rollcall No. 948, I inserted my voting card to vote ''aye'' and my vote failed to register. Had I been present, I would have voted ''yea.''

FUNDING FOR CONTINUED TYPE 1 DIABETES RESEARCH

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 35.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 35.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 4173, WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Mr. ARCURI, from the Committee on Rules, submitted a privileged report (Rept. No. 111–370) on the resolution (H. Res. 964) providing for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON H.R. 3288, CONSOLIDATED APPROPRIATIONS ACT, 2010

Mr. OLVER. Mr. Speaker, pursuant to House Resolution 961, I call up the conference report on the bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. WEINER). Pursuant to House Resolution 961, the conference report is considered read.

(For conference report and statement, see proceedings of the House of December 8, 2009, in Book II at page H13631.)

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. OLVER) and the gentleman from Iowa (Mr. LATHAM) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. OLVER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include tabular and extraneous material on the conference report to accompany H.R. 3288.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. OLVER. Mr. Speaker, I yield myself 3 minutes.

It is my privilege and pleasure to present the Consolidated Appropriations Act for fiscal year 2010 to the House.

This conference report is the product of many hours of hearings and briefings across six subcommittees, always with bipartisan input and excellent Member participation, and culminated by extensive negotiations with our Senate colleagues. I especially would like to recognize the important contributions of our ranking member, TOM LATHAM of Iowa, in putting together the Transportation and Housing portions of this bill. While we may not always agree, I always appreciate his partnership, and his input has made the bill better.

I am particularly proud of the Transportation and Housing portion of the report because it demonstrates our mutual commitment to investing in our Nation's housing and transportation infrastructure; our mutual commitment to maintaining critical services in urban and rural communities; our mutual commitment to vulnerable populations such as the elderly and disabled; our mutual commitment to building sustainable communities for our Nation's families; and our mutual commitment to maintaining an efficient and safe transportation system that contributes to America's place in a global economy.

Notably, the conference agreement provides funding to improve and repair roughly 1 million miles of Federal aid highways; to support and expand a public transit system that carried more than 10 billion riders last year; to meet demand for 21st century intercity passenger rail systems, demonstrated by Amtrak's 11 percent growth in annual ridership; and modernizing the air traffic control system that is outdated and manages over 10.5 million flights annually.

Within the Housing and Urban Development programs, the conference agreement fully funds the section 8 rental housing assistance program, thereby ensuring affordable housing for 3½ million families and individuals; the agreement provides 10,000 new vouchers to homeless veterans; the agreement keeps a roof over the heads of 1.2 million households living in public housing; and the agreement helps communities improve local economies and create jobs through the Community Development Block Grant program.

In conclusion, we worked hard to balance many competing demands to produce a bill that reflects the bipartisan needs for transportation and housing, and strengthens the foundation upon which our economic turnaround is being built. This is a good product, and I urge Members to support it.

I reserve the balance of my time.

Mr. LATHAM. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I first want to thank Chairman OLVER for his kind words and his leadership this year. The gentleman from Massachusetts truly is a gentleman. And I appreciate very much the work that he has done. He has very artfully negotiated a good conference report for the House. Those of you who know JOHN OLVER know that he puts a great deal of effort and thought into this bill and to the issues in the transportation and housing worlds. In fact, sometimes you feel like he has gone a little bit too far into the weeds, but his dedication is to be admired.

It is all the more unfortunate that we are here today under these circumstances. Instead of presenting a Transportation-HUD conference report, Chairman OLVER is forced to carry five other bills with him, bills that should be considered on their own as conference reports.

The Transportation-HUD bill, like all appropriations bills, was considered under a closed rule in the name of expediency. The Transportation-HUD bill passed the floor of the House in July. The Senate even passed the bill. That was on September 17. The Senate, apparently the body that can't get their work done on time, managed to do it at that time under an open amendment process. They even actually got to offer amendments on the bill, which is something we didn't get to do here in the House.

□ 1230

Realistically, we could have and should have been able to bring the Transportation-HUD conference report to the floor by the end of the fiscal year. Instead, here we are today 3 months into the fiscal year, 3 months after the Senate passed its bill in an omnibus today.

The Transportation-HUD is not alone in this situation. The MilCon-Veterans bill was also considered and passed by both bodies. MilCon-VA should be a stand-alone conference report. Commerce, Justice, Science actually had a conference meeting noticed up, but that got yanked. The CJS should be a stand-alone bill. Instead, it also got stuck in this omnibus. Three other bills—the Foreign Operations bill, the Financial Services bill, and even the Labor-HHS bill, Mr. OBEY's own bill—weren't considered in the Senate and are buried in this package.

Members of this House should be aware you voted against this type of a package on Tuesday. The House voted to adopt a motion to instruct that said no extraneous matters may be added to the Transportation-HUD conference report. Instead, against the wishes of the House, we've added five bills to this conference report.

I regret very much that I am unable to support this bill. It's my first year on this bill and I have enjoyed, obviously, working with the chairman. The issues are interesting and our subcommittee members are really engaged and bring a variety of experiences to the table. However, the price tag on this bill is simply too high.

Mr. LEWIS offered an amendment, very reasonable, to have the spending levels proposed by Congress at the 2010 level, everything but Defense and Veterans, at 2 percent over last year. We spent a lot of money last year, so a 2 percent increase over last year would really be quite generous.

However, when we finish the 2010 bills, the Democrats will have increased government spending by 85 percent, 85 percent over the last 2 years. You tell me one American family that has 85 percent more in 2009. I can tell you none of my constituents have an

additional 85 percent to spend this year. And they sure don't have the funds to pay for the tax increases that will be needed to pay for this or the debt that the other party is dumping on our taxpayers.

Another issue I think the Members need to be aware of in this package, despite our earlier efforts, the Justice Department has issued an opinion that the government will still give funds to ACORN. Let me say that again. We will still be funding ACORN under this bill and their existing contracts. Federal funds will still flow. I had an amendment in conference to substitute new language to get at this issue, as I think all of us were under the impression that ACORN was cut off for good. That's what we were told. However, the Justice Department has another view, and the agencies at least in the HUD area will still cut checks to ACORN.

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

Mr. LATHAM. I yield myself another 30 seconds.

I told the Rules Committee yesterday this is a bittersweet time. The THUD conference is completed, and that in itself is an accomplishment. There's a lot of good policy in the Transportation-HUD conference bill, but this package with all of the six bills piled together is about $390 billion and five appropriations bills too large.

Mr. Speaker, I reserve the balance of my time.

Mr. OLVER. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. LOWEY). NITA LOWEY is the chairwoman of the State and Foreign Operations Subcommittee of Appropriations, one of the bills which is included in this package.

Mrs. LOWEY. I thank the chairman for his important work on this bill.

I am very pleased to present Division F of the fiscal year 2010 omnibus, which includes $48.764 billion in appropriations for the Department of State, foreign operations, and related programs. At $1.235 billion, or 2 percent below fiscal year 2009 enacted levels including supplemental appropriations, and $3.28 billion below the President's fiscal year 2010 request, these funds support the U.S. diplomatic and development priorities, a cornerstone of U.S. national security.

To address security imperatives, it includes $4.5 billion to help stabilize, strengthen, and rebuild Afghanistan, Pakistan, and Iraq; in conjunction with funding in the 2009 supplemental, full funding for our commitments to allies and partners in the Middle East, including a total of $2.775 billion in FMF for Israel, $1.3 billion for Egypt, $300 billion for Jordan; a provision to prevent the Export-Import Bank from entering into any deals with foreign companies that significantly contribute to Iran's refined petroleum industry and gives the Secretary of State authority to exempt countries cooperating closely with the United States to stop Iran from acquiring nuclear weapons; $873.6 million for counternarcotics and alternate development programs in Latin America.

This bill continues the congressional commitment to increase diplomatic and development capacity with resources to hire, train, support, and protect 700 new Department of State personnel and 300 new USAID personnel.

The bill increases funding for key long-term development priorities, including $7.7 billion for global health activities including $5.7 billion for global HIV/AIDS; $1.1 billion to improve access to quality basic and higher education; $1.1 billion for food security and agricultural development; over $1.25 billion in bilateral and multilateral assistance for clean energy, biodiversity, and climate change initiatives; and $315 million to expand access to safe water and sanitation; and $2.57 billion for refugee and disaster assistance.

Finally, to improve accountability and oversight, the bill provides $149 million for the Inspectors General of the Department of State and USAID and the Special Inspectors General for Iraq and Afghanistan Reconstruction.

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

Mr. OLVER. Mr. Speaker, I yield 2 additional minutes to the gentlewoman.

Mrs. LOWEY. Mr. Speaker, the bipartisan foreign assistance package before you preserves our Nation's interests. I'm also pleased this appropriations package invests in worthy initiatives in our communities that will improve health, education, law enforcement, environment, and infrastructure in New York and around the Nation.

So I urge my colleagues to give this bill our bipartisan support.

Mr. LATHAM. Mr. Speaker, it's my pleasure to yield 5 minutes to the distinguished gentleman from California (Mr. LEWIS), ranking member of the full committee.

Mr. LEWIS of California. I appreciate very much my colleague's yielding.

As I open my remarks, I know I want to join my chairman to express our appreciation for the fine work of our staff. They worked long hours and should be very much appreciated by all of us. So as we break for the Christmas recess, I hope you all take some time to really enjoy yourselves. You deserve it.

Once again, interestingly enough, Mr. Speaker, we find ourselves approaching the holiday season with our appropriations work largely unfinished. Here we are 2 weeks before Christmas and 10 weeks after the end of the fiscal year demonstrating to the world that Congress remains incapable of getting its work done.

It's ironic that some in the House are quick to find fault in the lack of efficiency of governments such as Iraq and Afghanistan. Perhaps if we did a better job of meeting our own milestones, like finishing our spending bills by October 1 of each year, we would be in a better position to suggest milestones for others.

It's laughable to this Member that some in the Democrat majority are pointing fingers at the Republican minority for this failure of leadership. After all, it's the Democrat majority that controls both the House and the Senate and the White House. As much as it may pain my friends on the other side of the aisle, they can no longer blame George Bush or the Republican Party for their own failure to lead.

Still left unfinished is the Defense Appropriations bill, which many believe will be used by the majority leadership to pass unpopular legislation that has little chance of passing on its own. On this point let me be very clear: The House Republicans will not support passage of a Defense Appropriations measure if it is used as a vehicle to raise the debt limit and if it contains other controversial legislative items.

The reckless record of spending by the Congress has caused our national debt to more than triple over the last year. In this $450 billion package that's before us today, spending on domestic programs has increased by an astonishing 14 percent, while Military Construction and Veterans funding, for example, is held to only 5 percent.

Sadly, the misplaced priorities of this Congress have resulted in too much spending, fewer jobs, and bigger government that the public doesn't want and certainly cannot afford. Some in Washington refer to this unrestrained spending as a ''change we can believe in.'' Most people in our country call it ''business as usual.''

There is no question that the era of Big Government has returned to Washington. One need only look at the so-called Recovery Act or double-digit unemployment, a job-killing cap-and-trade bill, and an unpopular government takeover of health care as evidence. It's no wonder that the public confidence in the Congress is at an all-time low.

Mr. Speaker, I cannot and will not support this package of spending bills because it simply spends too much money and makes a mockery of our legislative process.

Mr. OLVER. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. OBEY). Mr. OBEY is the chairman of the full Appropriations Committee but also serves as the chairman of the Labor, Health, and Education Subcommittee.

Mr. OBEY. Mr. Speaker, I have a question. Is the gentleman from California (Mr. LEWIS) the same Mr. LEWIS who chaired the Appropriations Committee the last year that the Republicans were in control? It's my impression that he is. As I recall, in that year the Republicans passed exactly two appropriation bills through the Congress and had them signed into law. The other nine appropriation bills were not passed in October. They were not passed in November. They were not passed in December. They were never passed. And so the incoming Congress

under our control was forced to pass their bills at the beginning of the next session before we could even get to our own. Yet the gentleman with that record is now complaining because, with the passage of this bill, we will only have sent to the President 11 of the 12 appropriation bills needed for the year. And I would point out that by next week, we intend to send the last bill to him. If that happens, the only difference between our friends on that side of the aisle and us is that we will have gotten our work done. Despite the fact that we had to deal with the greatest economic collapse in 75 years, we will have finished every appropriation bill.

□ 1245

In contrast to our friends on the other side of the aisle who in the last year they controlled this place were not able to complete action on a single domestic appropriation bill, under those circumstances, for the gentleman on that side of the aisle to squawk about the fact that we are a few days late is truly a case of the pot calling the kettle black. It is very interesting logic.

With respect to the spending amount in this bill, I would simply point out, as the gentleman from Massachusetts did earlier, that we are in the process of trying to deal with years of neglect and we are in the process of trying to deal with an economic emergency and catastrophe.

The gentleman complains that this bill is 14 percent above last year for comparable bills. The fact is, let's look at what those differences are. We added $3 billion more than last year so we could clean up the disability backlog for veterans' claims. Anybody on that side of the aisle want to take that money out? We have an additional $4.2 billion for the census because we are required by law to conduct that census so we can redirect huge amounts of Federal money to all of the localities in this country in an accurate fashion. Anybody think we ought to forgo that for the next 10 years?

We've also put $14.8 billion above the previous year in this bill to cover war costs. We put it in the regular bill so it would show up rather than hiding it in the supplemental as previous Congresses did. Would you really rather go back to the old practice of hiding that $14.8 billion?

Infrastructure investments. We have a 28 percent unemployment rate in the construction industry in 14 States in this country, so we are trying to respond to that by putting an extra $11 billion into infrastructure construction programs. Anybody think we ought to take that money out?

Health care. We are about to pass the most momentous health care reform bill in the history of the country. That is going to put 31 million more people under our health care system. This bill provides $6 billion in order to expand the capacity of our health care system to deal with those people. Anybody think we shouldn't do that?

And then on education, I plead fully guilty. We've got $5.6 billion more than last year, so that people who are losing their jobs and need retraining or need some additional education in community colleges can get it.

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

Mr. OLVER. Mr. Speaker, I yield the gentleman 2 additional minutes.

Mr. OBEY. Does anybody really think we should abandon those students and those workers? We don't think we should.

So I would simply say, this country is struggling to overcome the longest and deepest economic downturn since the Great Depression. This bill before us today is a key measure to help address the problems and provide relief for millions of hardworking Americans caught in the struggle for economic survival. And for the minority to complain about the fact that we are 90 days or 70 days late in getting the job done when they never got the job done when they were in control of this place is, to me, strange, if not laughable.

With that, I thank the gentleman for the time.

Mr. LATHAM. Mr. Speaker, I would like to yield 3 minutes to the gentleman from Virginia (Mr. WOLF).

(Mr. WOLF asked and was given permission to revise and extend his remarks.)

Mr. WOLF. I want to thank Chairman MOLLOHAN and Senator SHELBY and Senator MIKULSKI for their efforts. I will not be supporting the bill for the reasons that are in my submitted statement.

But I want to raise another issue that somebody ought to focus on in this Congress. This bill will allow people like Khalid Sheik Mohammed to be sent from Guantanamo Bay to New York City and I believe personally it will endanger the citizens of New York City. And they're now going to come in and ask for up to $75 or $100 million to do that. That's money that you could put in food pantries or education.

Secondly, we have asked that this information be nonclassified so people can know where these people from Guantanamo Bay are going. Twenty-six of them—and it's classified and I can't say any more—are being sent to Yemen. Yemen. That's where the sheikh who had the impact on Major Hasan Nidal, who killed 13 people at Fort Hood, that's where he operates. And al Qaeda in the Arabian Peninsula is all over Yemen. So you are going to release people from Guantanamo Bay, who served with Khalid Sheik Mohammed, who was the mastermind of 9/11 that killed 3,000 people, 30 from my congressional district. Khalid Sheik Mohammed beheaded Daniel Pearl. Think of Daniel Pearl's family. Think of Debra Burlingame and the family of others; and they're going to send them to Yemen. And then they're also going to send two others to a place that no one would believe that they're really going to send them.

By not adopting the amendments that we offered in conference, one, I believe this bill will endanger people in New York City; two, it will put pressure on New York City. You will see stories in the paper. As you vote for this bill, know that you will see stories in the paper of snipers on the rooftops, and tanks moving.

Khalid Sheik Mohammed will be in New York City for 4 years, 4 years or more—Moussaoui was in northern Virginia for over 4 years—and Khalid Sheik Mohammed will say things and do things that will be unconscionable. So as you vote for this bill, you are, in essence, allowing that to take place. It's crazy, absolutely crazy, to think that you can try Khalid Sheik Mohammed in Guantanamo Bay with no cost and no danger to the American citizens, but then they're going to bring him and others into the U.S.

So Khalid Sheik Mohammed gets a civilian trial when a young 19-year-old person in the Army, man or woman, who does something wrong has to go through a military court system.

The bill spends too much. I believe that by bringing Khalid Sheik Mohammed and the others here, we may very well endanger people and bring about another attack. And secondly, to spend all that money to protect Khalid Sheik Mohammed when he could have been tried down at Guantanamo Bay just doesn't make any sense. No one believes that that makes sense. And lastly, to send people to Yemen and other places I think will endanger this country.

Mr. Speaker, I would like to speak briefly on the Commerce Justice Science division of this conference report, as I serve as the Ranking Member on that Subcommittee.

First, I want to thank Chairman MOLLOHAN, Chairman MIKULSKI and Senator SHELBY for their hard work on the CJS portion of the bill, and for their spirit of collaboration and cooperation on this conference agreement.

However, I believe the subcommittee was given an overly generous conference allocation. At $64.4 billion, the bill is almost a 12 percent increase above last year's level. In my view, this level of funding was well in excess of the amount necessary to produce a good bill.

The bill contains important funding to support NASA, fight terrorism and gangs, and to give our federal law enforcement critical resources.

The CJS division of this package places important limitations and reporting requirements related to the closure of Guantanamo and the movement of detainees.

However, I believe stronger language is necessary, and I regret that amendments I offered at conference to prohibit the transfer and release of detainees into the United States and to require unclassified reports were defeated on party line votes.

There were press reports just yesterday that a former Guantanamo detainee transferred to Saudi Arabia is now a kingpin for al Qaeda in the Arabian Peninsula and at large in Yemen. There are already 10 ex-Gitmo detainees on Saudi Arabia's list of most-wanted terrorists. The current transfer policies will likely result in many more similar stories.

Because my amendments were defeated, this bill will allow dangerous detainees to be transferred to the United States and to unstable countries abroad.

It will allow 26 Yemeni detainees to be returned to Yemen—the emerging al Qaeda stronghold in the Arabian Peninsula where radical cleric Anwar al Aulaqi—the advisor of Ft. Hood terrorist Maj. Hasan Nidal—operates freely. I submit for the RECORD an article on al Aulaqi that appeared in today's Washington Post.

It will allow 2 other detainees to be released to a country worse the Yemen. I cannot share

the location because my amendment to declassify this information for the American people was defeated on a party-line vote.

It will allow Khalid Sheik Mohammed to be transferred to New York City and provide him a platform to spread his hateful message—endangering our country.

I am disappointed that the CJS conference report was not brought to the floor as a stand-alone bill, as we were prepared to do weeks ago. Instead we are once again faced with a bloated, half a trillion dollar omnibus.

[From the Washington Post, Dec. 10, 2009]

CLERIC LINKED TO FORT HOOD ATTACK GREW MORE RADICALIZED IN YEMEN

(By Sudarsan Raghavan)

SANAA, YEMEN.—The Yemeni American cleric at the center of investigations into last month's massacre of 13 people at Fort Hood, Tex., became more openly radical in Yemen, following a path taken by other extremists in this failing Middle East nation with a growing al-Qaeda presence, according to relatives, friends and associates in Yemen.

In interviews, they said Anwar al-Aulaqi, 38, blamed the United States for 18 months he spent in a Yemeni jail, a little-known chapter in the cleric's life that some described as a key path in his radicalization.

Aulaqi, who was born in the United States and spent time in Yemen as a child, left for Britain in early 2002 after he drew scrutiny from U.S. authorities. The United States alleges that Aulaqi was a spiritual adviser to three of the Sept. 11, 2001, hijackers while he was a prayer leader at the Dar al-Hijrah mosque in Falls Church and at a mosque in San Diego.

An examination of some of Aulaqi's sermons and lectures, as well as interviews conducted here, shows that he increasingly began to publicly endorse violence as a religious duty after he returned to Yemen in early 2004, completing his transformation from an imam who condemned the Sept. 11 attacks to an Internet preacher who views Americans as legitimate targets.

Maj. Nidal M. Hasan, who has been charged in the Fort Hood shootings, first contacted Aulaqi by e-mail last December. U.S. authorities intercepted some of the e-mails, but no threat was perceived. The FBI has declined to comment on Aulaqi, citing an ongoing investigation.

After the Fort Hood attack, Aulaqi issued a statement calling Hasan a ''hero.'' In an interview later with a Yemeni journalist, Aulaqi denied that he had ordered or incited Hasan to carry out the attack but said Hasan considered him a confidant.

Aulaqi's path to radicalization, at first, appeared unlikely. The Aulaqis' descendants were sultans who once ruled what is now Yemen's southern province of Shabwa, home to the ancestral village where Aulaqi now lives with his wife and five children. Aulaqi's father, Nasser al-Aulaqi, is a former president of Sanaa University and agriculture minister.

While in Yemen during his childhood, Aulaqi studied in a secular high school in the capital, Sanaa, along with children from other elite families, before returning to Colorado in 1991 to attend college, said a close relative in an hour-long interview. The relative spoke on the condition of anonymity to avoid harming his family's efforts to persuade Aulaqi to become moderate.

He said Aulaqi was an avid swimmer who enjoyed deep-sea fishing. His ambition was to become college professor, focusing on finding ways to address water shortages in Yemen, the relative said. Like many Arabs, the relative said, Aulaqi was angered by the U.S. assault on Iraq in the first Persian Gulf War but didn't show signs of radicalization afterward.

''He was very moderate. He was always against al-Qaeda ideology,'' said the relative, adding that Aulaqi's contact with the hijackers was a ''coincidence.''

After Sept. 11, Aulaqi grew frustrated and felt targeted by U.S. authorities, the relative said.

''Sept. 11 changed a lot of Muslims,'' the relative said. ''And the invasion in Iraq in 2003 made him even stronger in his beliefs.''

U.S. authorities have alleged that Aulaqi had become radicalized while still in the United States, before the Sept. 11 attacks, but they never found evidence to detain him.

Beginning in 2002, when he left the United States for Britain, Aulaqi lauded Palestinian suicide bombers on a Web site and in lectures attended by ultraconservative Muslims. He spoke at fundraising events hosted by Cage Prisoners, a rights group in Britain, but did not incite violence or express support for al-Qaeda, said Moazzam Begg, a former Guantanamo Bay, Cuba, detainee who heads the group. ''He wouldn't have been so popular if his message was not moderate and across the board,'' Begg said in a phone interview from London.

In early 2004, Aulaqi returned to Yemen. At a lecture at Sanaa University, he spoke eloquently about Islam's role in the world. He railed against U.S. policies in Iraq. He denounced Israel, according to those present at the lecture. But he stopped short of calling for violent jihad.

''He was not inciting us to use arms,'' recalled Adil al-Howlari, who now works as a journalist for the United Nations. ''He was talking about how to use English to spread Islamic values.''

Aulaqi eventually took classes and lectured at Iman University in Sanaa. The university is led by Sheik Abdul Majeed al-Zindani, an influential religious figure whom U.S. officials have described as Osama bin Laden's spiritual leader and placed on a list of global terrorists.

The university has a reputation as an incubator of radicalism. John Walker Lindh, an American who fought with the Taliban, is a former student. Other students allegedly took part in numerous attacks.

Aulaqi's relative said the cleric had given four lectures at the university about Islam's role in medieval Spain.

By 2006, Aulaqi's influence had widened into the world of terrorism through his Web site and Facebook page, even though most Yemenis had never heard of him. Starting that year, investigators have found Aulaqi's sermons downloaded on the computers of suspects in nearly a dozen terrorism cases in Britain and Canada.

In mid-2006, Yemeni authorities arrested him. Aulaqi was accused of inciting attacks against a man over a tribal matter involving a woman. Aulaqi denied the allegations in an interview with Begg last year and accused the U.S. government of pressuring Yemen to keep him locked up.

In that interview, Aulaqi said he spent the first nine months in solitary confinement in an underground cell. Around September 2007, FBI agents interrogated him about the Sept. 11 attacks and other issues, Aulaqi told Begg. Although he wasn't physically abused, Aulaqi said, a U.S. Embassy legal attache swore at him. He was never charged and was released in December 2007.

Yemeni officials have declined to comment.

After his release, Aulaqi's stance on using violence for jihad grew more forceful. Last December, he penned a letter calling for fighters and financing for al-Shabab, the Somali Islamist movement with ties to al-Qaeda. And this January, he published an essay titled ''44 Ways to Support Jihad.'' It called, among other things, for Muslims to stay fit and train in weapons to fight on the battlefield.

Mr. OLVER. Mr. Speaker, at this time, I yield 3 minutes to the gentleman from Texas (Mr. EDWARDS), chairman of the Veterans Administration and Military Construction Subcommittee of the Appropriations Committee.

Mr. EDWARDS of Texas. Mr. Speaker, this bill supports America's veterans, our troops, and their families in a meaningful way by improving their health care, their benefits, and their quality of life. Those who defend our Nation have earned and deserve this support.

For the first time ever, we provide 2-year funding for VA medical programs. This is an historic achievement and has been one of the highest priorities of our Nation's most respected veterans organizations. The advance funding is a win for veterans and for taxpayers. It will allow the VA to plan its spending more efficiently, which will improve health care for veterans and save taxpayers dollars.

This bill funds President Obama's VA request, a $5.4 billion increase, the largest Presidential request for increased veterans' funding in over 30 years. Other major initiatives in this bill include new training barracks for military recruits, homeowners assistance for troops being re-stationed, additional funding for the modernization of National Guard and Reserve facilities, and a robust energy conservation program for Department of Defense facilities.

When the gentlewoman from California (Ms. PELOSI) became Speaker in 2007, she promised that supporting veterans would be one of Congress' highest priorities. Speaker PELOSI, with the strong leadership of Chairmen SPRATT and Obey and FILNER, has kept that promise. Here are some of the significant results in just 3 years: A 60 percent increase in VA funding; 145 new VA community-based outpatient clinics; 70 new vet centers, 3,384 new VA doctors, 14,426 new VA nurses, 8,300 new VA claims processors, an expansion of middle-income veterans' eligibility for VA health care, more than a doubling of mental health care funding for vets, and a historic new GI college education bill.

Ultimately, this is about more than even the importance of better health care and benefits for our troops and vets, it is about respect, respect for the service and sacrifice of those who defend our Nation and their families.

I especially want to thank our ranking member on our subcommittee, Mr. WAMP of Tennessee, who was a critical partner in our work on this portion of this bill, and who would once again demonstrate his deep commitment to our troops and our veterans.

Finally, but certainly not least, I want to thank and salute our subcommittee staff whose professionalism

and tireless work has made possible our unprecedented achievements for our veterans and troops: Carol Murphey, the committee clerk; Mary Arnold, Tim Peterson, Walter Hearne, Donna Shabaz, Martin Delgado, Kelly Shea, and Liz Dawson. In my book, they personify the best ideals of public service.

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

Mr. OLVER. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. EDWARDS of Texas. Mr. Speaker, with this bill, we keep our promises to those magnificent Americans who have kept their promise to serve our Nation and the American family.

The fiscal year 2010 Military Construction and Veterans Affairs and Related Agencies Appropriations bill provides $134.6 billion for projects and programs of critical importance to America's veterans and military troops and their families, including veterans benefits and healthcare, and military family housing, barracks and mission critical facilities.

The bill provides $53 billion in discretionary funding for the Department of Veterans Affairs (VA) and $56.6 billion for mandatory VA programs, $23.3 billion for military construction and family housing, and $1.4 billion for military construction projects in support of the war in Afghanistan.

In a major victory for America's veterans, the bill for the first time includes advance appropriations for the VA to ensure a stable and uninterrupted source of funding for medical care for veterans. For fiscal year 2011, the bill includes $48.2 billion for VA medical programs.

The bill provides funding to address several significant priorities, including:

Renovating surplus building on VA medical campuses to use as housing for homeless veterans;

Increasing the number of VA outpatient clinics in rural communities where veterans do not have ready access to VA hospitals;

Accelerating the Army's program to modernize troop housing for trainees;

Addressing critical unfunded construction requirements of the Guard and reserve;

Providing mortgage relief to military families required to relocate during the current mortgage crisis;

Expediting environmental cleanup on closed military bases; and

Investing in renewable and alternative energy initiatives on military installations.

For Military Construction and Family Housing, the bill includes $23.3 billion to support American's military forces and their families at home and overseas, $333.9 million above the request. The bill includes $11.8 billion for such items as barracks, child care centers, installation chapels, and mission critical operational facilities. Of this amount, $350 million is provided to accelerate the Army's program to modernize troop housing facilities for trainees. The Army has a need for $2.2 billion to bring all 115,413 trainee barracks spaces up to standard and the program currently is not scheduled to finish until 2017.

Also includes $174 million for the Energy Conservation Investment Program (ECIP), $84 million above the request, to increase the level of investment in renewable and alternative energy resources and to promote energy conservation, green building initiatives, and energy security programs on U.S. military installations.

For the Guard and Reserve component, the bill includes $1.6 billion, $601.7 million above the request, to provide readiness centers and operational facilities for the Army National Guard, Air Guard, and Army, Navy, Marine Corps, and Air Force reserve forces. Within this amount, the bill includes $200 million in additional construction funding to address critical unfunded requirements.

For military and family housing programs, the bill includes $2.59 billion for family housing, $300 million above the request, to further eliminate inadequate military housing, including $323 million for the Homeowners Assistance Program, $300 million above the request, to provide additional funding for the expanded mortgage relief program for military families who are required to relocate during the current mortgage crisis and must sell their home at a loss, as well as to wounded warriors who must relocate for medical reasons and to the spouses of fallen warriors similarly affected by the mortgage crisis.

The bill includes funding for base realignment and closure (BRAC) at the level of $496.8 million for the 1990 BRAC round, $100 million above the request, to address the large unfunded backlog of environmental cleanup for bases that were closed during the four previous BRAC rounds, and $7.5 billion for the 2005 BRAC program, the full authorized amount.

Finally, for overseas contingency operations the bill includes $1.4 billion, matching the request, to support additional military construction requirements to support operations and previously scheduled troop deployments to Afghanistan.

For the Department of Veterans Affairs, the bill includes $109.6 billion, $15.3 billion above 2009 and $747 million above the request. The funding includes $56.6 billion for mandatory veterans benefit programs and $53 billion for discretionary funding. Total discretionary funding is $5.4 billion above 2009, an increase of 11 percent. In addition, the bill provides $48.2 billion in advance appropriations for veterans medical care programs for fiscal year 2011.

For the Veterans Health Administration, the bill includes $45.1 billion, matching the request and $4.1 billion above 2009, for veterans' medical care. The Veterans Health Administration estimates that it will treat more than 6.1 million patients in 2010, including more than 419,000 veterans of Iraq and Afghanistan (56,000 more than 2009).

A major initiative in the VHA includes $250 million as requested to continue the Rural Health Initiative to which the Congress added $30 million to increase the number of Community Based Outpatient Clinics (CBOCs) in rural areas for veterans who do not have ready access to VA hospitals. More than 3.2 million (41%) of enrolled veterans live in rural or highly rural areas.

In the area of mental health funding, we have included $4.6 billion, matching the request and $300 million above 2009, to treat the psychological wounds of returning combat veterans, including post-traumatic stress disorder. Also included is an additional $1 million to provide education debt relief as a hiring incentive for mental health professionals.

Funding to treat Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) Veterans is at $2.1 billion, matching the request and $463 million above 2009, to meet the healthcare needs of veterans who have served in Iraq and Afghanistan. The VA estimates that the number of OEF/OIF veterans in the VA healthcare system in 2010 will have increased by 61 percent since 2008.

One of the areas of increasing concern is the assistance for homeless veterans, where we have provided $3.2 billion, matching the request and $421 million above 2009, for healthcare and support services for homeless veterans; including $26 million for a Presidential Initiative to combat homelessness, $150 million for the homeless grants and per diem program, $20 million for supportive services for low income veterans and families, and $21 million to hire additional personnel for the HUD-Veterans Affairs Supportive Housing Program.

The program for medical and prosthetic research is funded at $581 million, $71 million above 2009, for research in a number of areas including mental health, traumatic brain injury, spinal cord injury, burn injury, polytrauma injuries, and sensory loss; including a $48 million increase for research to address the critical needs of Operation Enduring Freedom and Operation Iraqi Freedom veterans.

The effort to improve the condition of medical facilities of the Department of Veteran Affairs continues with a construction program of $1.9 billion, $103 million above the request and $232 million above 2009, including major construction of $1.2 billion for major medical facilities, including hospitals and clinics, to enable the Department to implement the recommendations made by the Capitol Asset Realignment for Enhanced Services (CARES) Commission, which was established to look at facilities and determine their construction needs. In addition, the bill includes $703 million, $103 million above the President's budget request, including $50 million for the renovation of vacant buildings on VA campuses to be used as housing with supportive services for homeless veterans. The VA estimates that on any given night, 131,000 veterans are homeless. This program will strengthen the VA's goal of eliminating homelessness among veterans by providing housing and counseling services in settings that are in close proximity for VA hospitals.

Funding for grants to states for the construction of extended care facilities is set at $100 million, an increase of $15 million above the request. And $42 million in grant funding for state veterans' cemeteries is provided in this bill.

Finally, for the Department of Veterans Affairs, we have included $1.7 billion for benefits claims processors, $223 million above 2009, to enable the Department to hire roughly 1,200 additional claims processors to continue to address the backlog of benefits claims and to reduce the time to process new claims. The most recent VA quarterly status report estimates that nearly 397,000 claims are pending. When added to funding and hiring provided in prior years, this will result in a total of 8,300 new claims processors being hired since January of 2007.

With passage of this bill, Congress has provided a 60 percent increase in funding for veterans health care and benefits since January

2007. This funding has resulted in a total increase of 8,300 claims processors as mentioned, 145 community-based outpatient clinics, 70 Vet Centers, and more than 47,000 additional Veterans Health Administration employees. These additional resources will provide our veterans with their benefits more quickly and improve access to health care and other services.

Congress has also funded several initiatives to improve the quality of life for our military and their families to include: $3.2 billion for new military hospitals, $1 billion for new child care centers to serve 20,000 military children, and $920 million in additional funding for barracks.

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
TITLE I - DEPARTMENT OF DEFENSE							
Military construction, Army	4,692,648	3,660,779	3,630,422	3,477,673	3,719,419	-973,229	+58,640
Rescission	-51,320	---	-59,500	---	---	+51,320	---
Emergency appropriations (P.L. 111-5)	180,000	---	---	---	---	-180,000	---
Overseas contingency operations /1	---	923,884	924,484	---	---	---	-923,884
Overseas contingency operations (P.L. 111-32)	1,182,989	---	---	---	---	-1,182,989	---
Overseas contingency operations (P.L. 111-32) (emergency)	143,242	---	---	---	---	-143,242	---
Overseas contingency operations (P.L. 111-32) (rescission) (emergency)	-143,242	---	---	---	---	+143,242	---
Total	6,004,317	4,584,663	4,495,406	3,477,673	3,719,419	-2,284,898	-865,244
Military construction, Navy and Marine Corps	3,333,369	3,763,264	3,757,330	3,548,771	3,769,003	+435,634	+5,739
Emergency appropriations (P.L. 111-5)	280,000	---	---	---	---	-280,000	---
Overseas contingency operations (P.L. 111-32)	235,881	---	---	---	---	-235,881	---
Total	3,849,250	3,763,264	3,757,330	3,548,771	3,769,003	-80,247	+5,739
Military construction, Air Force	1,117,746	1,145,434	1,359,171	1,251,039	1,450,426	+332,680	+304,992
Rescission	-20,821	---	---	-38,500	-37,500	-16,679	-37,500
Emergency appropriations (P.L. 111-5)	180,000	---	---	---	---	-180,000	---
Overseas contingency operations /1	---	474,500	474,500	---	---	---	-474,500
Overseas contingency operations (P.L. 111-32)	281,620	---	---	---	---	-281,620	---
Total	1,558,545	1,619,934	1,833,671	1,212,539	1,412,926	-145,619	-207,008
Military construction, Defense-Wide	1,695,204	3,097,526	2,743,526	3,137,614	3,093,679	+1,398,475	-3,847
Rescission	-3,589	---	-25,800	-69,500	-151,160	-147,571	-151,160
Emergency appropriations (P.L. 111-5)	1,450,000	---	---	---	---	-1,450,000	---
Overseas contingency operations	---	6,600	---	---	---	---	-6,600
Overseas contingency operations (P.L. 111-32)	661,552	---	---	---	---	-661,552	---
Total	3,803,167	3,104,126	2,717,726	3,068,114	2,942,519	-860,648	-161,607
Total, Active components	15,215,279	13,071,987	12,804,133	11,307,097	11,843,867	-3,371,412	-1,228,120
Military construction, Army National Guard	736,317	426,491	529,129	497,210	582,056	-154,261	+155,565
Rescission	-1,400	---	---	---	---	+1,400	---
Emergency appropriations (P.L. 111-5)	50,000	---	---	---	---	-50,000	---
Total	784,917	426,491	529,129	497,210	582,056	-202,861	+155,565
Military construction, Air National Guard	242,924	128,261	226,126	297,661	371,226	+128,302	+242,965
Emergency appropriations (111-5)	50,000	---	---	---	---	-50,000	---
Total	292,924	128,261	226,126	297,661	371,226	+78,302	+242,965
Military construction, Army Reserve	282,607	374,862	432,516	379,012	431,566	+148,959	+56,704
Military construction, Navy Reserve	57,045	64,124	125,874	64,124	125,874	+68,829	+61,750
Military construction, Air Force Reserve	36,958	27,476	103,169	47,376	112,269	+75,311	+84,793
Total, Reserve components	1,454,451	1,021,214	1,416,814	1,285,383	1,622,991	+168,540	+601,777
Total, Military construction	16,669,730	14,093,201	14,220,947	12,592,480	13,466,858	-3,202,872	-626,343
Appropriations	(12,194,818)	(12,688,217)	(12,907,263)	(12,700,480)	(13,655,518)	(+1,460,700)	(+967,301)
Rescissions	(-77,130)	---	(-85,300)	(-108,000)	(-188,660)	(-111,530)	(-188,660)
Emergency appropriations	(2,190,000)	---	---	---	---	(-2,190,000)	---
Overseas contingency operations	(2,362,042)	(1,404,984)	(1,398,984)	---	---	(-2,362,042)	(-1,404,984)
1/ The Senate bill and conference agreement provide funding at the same level in title IV							
North Atlantic Treaty Organization Security Investment Program	230,867	276,314	234,914	276,314	197,414	-33,453	-78,900
Overseas contingency operations (P.L. 111-32)	100,000	---	---	---	---	-100,000	---
Total	330,867	276,314	234,914	276,314	197,414	-133,453	-78,900

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
Family housing construction, Army	646,580	273,236	273,236	273,236	273,236	-373,344	---
Emergency appropriations (111-5)	34,507	---	---	---	---	-34,507	---
Total	681,087	273,236	273,236	273,236	273,236	-407,851	---
Family housing operation and maintenance, Army	716,110	523,418	523,418	523,418	523,418	-192,692	---
Emergency appropriations (P.L. 111-5)	3,932	---	---	---	---	-3,932	---
Total	720,042	523,418	523,418	523,418	523,418	-196,624	---
Family housing construction, Navy and Marine Corps	380,123	146,569	146,569	146,569	146,569	-233,554	---
Family housing operation and maintenance, Navy and Marine Corps	376,062	368,540	368,540	368,540	368,540	-7,522	---
Family housing construction, Air Force	395,879	66,101	66,101	66,101	66,101	-329,778	---
Emergency appropriations (P.L. 111-5)	80,100	---	---	---	---	-80,100	---
Total	475,979	66,101	66,101	66,101	66,101	-409,878	---
Family housing operation and maintenance, Air Force	594,465	502,936	502,936	502,936	502,936	-91,529	---
Emergency appropriations (P.L. 111-5)	16,461	---	---	---	---	-16,461	---
Total	610,926	502,936	502,936	502,936	502,936	-107,990	---
Family housing construction, Defense-Wide	---	2,859	2,859	2,859	2,859	+2,859	---
Rescission	-6,040	---	---	---	---	+6,040	---
Total	-6,040	2,859	2,859	2,859	2,859	+8,899	---
Family housing operation and maintenance, Defense-Wide	49,231	49,214	49,214	49,214	49,214	-17	---
Department of Defense Family Housing Improvement Fund	850	2,600	2,600	2,600	2,600	+1,750	---
Homeowners assistance fund	4,500	23,225	23,225	323,225	323,225	+318,725	+300,000
Emergency appropriations (P.L. 111-5)	555,000	---	---	---	---	-555,000	---
Total	559,500	23,225	23,225	323,225	323,225	-236,275	+300,000
Total, Family housing	3,847,760	1,958,698	1,958,698	2,258,698	2,258,698	-1,589,062	+300,000
Appropriations	(3,163,800)	(1,958,698)	(1,958,698)	(2,258,698)	(2,258,698)	(-905,102)	(+300,000)
Rescissions	(-6,040)	---	---	---	---	(+6,040)	---
Emergency appropriations	(690,000)	---	---	---	---	(-690,000)	---
Chemical demilitarization construction, Defense-Wide	144,278	146,541	146,541	151,541	151,541	+7,263	+5,000
Base realignment and closure:							
Base realignment and closure account, 1990	458,377	396,768	536,768	421,768	496,768	+38,391	+100,000
Base realignment and closure account, 2005	8,765,613	7,479,498	7,479,498	7,479,498	7,455,498	-1,310,115	-24,000
Overseas contingency operations (P.L. 111-32)	263,300	---	---	---	---	-263,300	---
Total	9,028,913	7,479,498	7,479,498	7,479,498	7,455,498	-1,573,415	-24,000
Total, Base realignment and closure	9,487,290	7,876,266	8,016,266	7,901,266	7,952,266	-1,535,024	+76,000
General Reductions (Sec. 129)							
Military Construction, Army	---	---	---	---	-230,000	-230,000	-230,000
Military Construction, Navy and Marine Corps	---	---	---	---	-235,000	-235,000	-235,000
Military Construction, Air Force	---	---	---	---	-64,091	-64,091	-64,091
General Rescissions (Sec. 130)							
Military Construction, Army	---	---	---	---	-33,000	-33,000	-33,000
Military Construction, Navy and Marine Corps	---	---	---	---	-51,468	-51,468	-51,468
Military Construction, Defense-Wide	---	---	---	---	-93,268	-93,268	-93,268
Military Construction, Army National Guard	---	---	---	---	-33,000	-33,000	-33,000
Military Construction, Air National Guard	---	---	---	---	-7,000	-7,000	-7,000
Air National Guard Fire Stations (Sec. 131)	28,000	---	---	---	---	-28,000	---
Army National Guard Aviation and Training (Sec. 132)	147,000	---	---	---	---	-147,000	---
Total, title I	30,654,925	24,351,020	24,577,366	23,180,299	23,279,950	-7,374,975	-1,071,070
Appropriations	(25,132,753)	(22,946,036)	(23,263,682)	(23,288,299)	(23,686,346)	(-1,446,407)	(+740,310)
Rescissions	(-83,170)	---	(-85,300)	(-108,000)	(-406,396)	(-323,226)	(-406,396)
Emergency appropriations	(2,880,000)	---	---	---	---	(-2,880,000)	---
Overseas contingency operations	(2,725,342)	(1,404,984)	(1,398,984)	---	---	(-2,725,342)	(-1,404,984)

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
TITLE II - DEPARTMENT OF VETERANS AFFAIRS							
Veterans Benefits Administration							
Compensation and pensions	43,111,681	47,218,207	47,218,207	47,218,207	47,396,106	+4,284,425	+177,899
Readjustment benefits	3,832,944	8,663,624	8,663,624	8,663,624	9,232,369	+5,399,425	+568,745
Veterans insurance and indemnities	42,300	49,288	49,288	49,288	49,288	+6,988	---
Veterans housing benefit program fund (indefinite)	2,000	23,553	23,553	23,553	23,553	+21,553	---
(Limitation on direct loans)	(500)	(500)	(500)	(500)	(500)	---	---
Credit subsidy	-246,000	-133,000	-133,000	-133,000	-133,000	+113,000	---
Administrative expenses	157,210	165,082	165,082	165,082	165,082	+7,872	---
Guaranteed Transitional Housing Loans for Homeless Veterans	(750)	(750)	(750)	(750)	(750)	---	---
Vocational rehabilitation loans program account	61	29	29	29	29	-32	---
(Limitation on direct loans)	(3,180)	(2,298)	(2,298)	(2,298)	(2,298)	(-882)	---
Administrative expenses	320	328	328	328	328	+8	---
Native American veteran housing loan program account	646	664	664	664	664	+18	---
Total, Veterans Benefits Administration	46,901,162	55,987,775	55,987,775	55,987,775	56,734,419	+9,833,257	+746,644
Veterans Health Administration							
Medical services	30,969,903	34,704,500	34,705,500	34,705,250	34,707,500	+3,737,597	+3,000
Advance appropriation, FY 2011	---	---	37,136,000	37,136,000	37,136,000	+37,136,000	+37,136,000
Subtotal	30,969,903	34,704,500	71,841,500	71,841,250	71,843,500	+40,873,597	+37,139,000
Medical support and compliance	4,450,000	5,100,000	4,896,500	5,100,000	4,930,000	+480,000	-170,000
Advance appropriation, FY 2011	---	---	5,307,000	5,307,000	5,307,000	+5,307,000	+5,307,000
Subtotal	4,450,000	5,100,000	10,203,500	10,407,000	10,237,000	+5,787,000	+5,137,000
Medical facilities	5,029,000	4,693,000	4,893,000	4,849,883	4,859,000	-170,000	+166,000
Emergency appropriations (P.L. 111-5)	1,000,000	---	---	---	---	-1,000,000	---
Advance appropriation, FY 2011	---	---	5,740,000	5,740,000	5,740,000	+5,740,000	+5,740,000
Subtotal	6,029,000	4,693,000	10,633,000	10,589,883	10,599,000	+4,570,000	+5,906,000
Medical and prosthetic research	510,000	580,000	580,000	580,000	581,000	+71,000	+1,000
Medical care cost recovery collections:							
Offsetting collections	-2,544,000	-2,954,000	-2,954,000	-2,954,000	-2,954,000	-410,000	---
Appropriations (indefinite)	2,544,000	2,954,000	2,954,000	2,954,000	2,954,000	+410,000	---
Total, Veterans Health Administration	41,958,903	45,077,500	93,258,000	93,418,133	93,260,500	+51,301,597	+48,183,000
Appropriations	(40,958,903)	(45,077,500)	(45,075,000)	(45,235,133)	(45,077,500)	(+4,118,597)	---
Emergency appropriations	(1,000,000)	---	---	---	---	(-1,000,000)	---
Advance appropriations, FY 2011	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
National Cemetery Administration							
National Cemetery Administration	230,000	242,000	250,000	250,000	250,000	+20,000	+8,000
Emergency appropriations (P.L. 111-5)	50,000	---	---	---	---	-50,000	---
Total, National Cemetery Administration	280,000	242,000	250,000	250,000	250,000	-30,000	+8,000
Emergency appropriations	(50,000)	---	---	---	---	(-50,000)	---
Departmental Administration							
General operating expenses	1,801,867	2,218,500	2,086,200	2,081,501	2,086,707	+284,840	-131,793
Emergency appropriations (P.L. 111-5)	150,000	---	---	---	---	-150,000	---
Subtotal	1,951,867	2,218,500	2,086,200	2,081,501	2,086,707	+134,840	-131,793
Information technology systems	2,489,391	3,307,000	3,307,000	3,307,000	3,307,000	+817,609	---
Emergency appropriations (P.L. 111-5)	50,000	---	---	---	---	-50,000	---
Subtotal	2,539,391	3,307,000	3,307,000	3,307,000	3,307,000	+767,609	---
Office of Inspector General	87,818	107,000	106,000	109,000	109,000	+21,182	+2,000
Emergency appropriations (P.L. 111-5)	1,000	---	---	---	---	-1,000	---
Subtotal	88,818	107,000	106,000	109,000	109,000	+20,182	+2,000

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
Construction, major projects	923,382	1,194,000	1,194,000	1,194,000	1,194,000	+270,618	---
Construction, minor projects	741,534	600,000	722,800	735,000	703,000	-38,534	+103,000
Grants for construction of State extended care facilities	175,000	85,000	85,000	115,000	100,000	-75,000	+15,000
Emergency appropriations (P.L. 111-5)	150,000	---	---	---	---	-150,000	---
Subtotal	325,000	85,000	85,000	115,000	100,000	-225,000	+15,000
Grants for the construction of State veterans cemeteries	42,000	42,000	46,000	46,000	46,000	+4,000	+4,000
Total, Departmental Administration	6,611,992	7,553,500	7,547,000	7,587,501	7,545,707	+933,715	-7,793
Appropriations	(6,260,992)	(7,553,500)	(7,547,000)	(7,587,501)	(7,545,707)	(+1,284,715)	(-7,793)
Emergency appropriations	(351,000)	---	---	---	---	(-351,000)	---
Administrative Provisions							
IRS income verification	-2,000	---	---	---	---	+2,000	---
Sec. 160 Filipino Veterans Compensation Fund (P.L. 110-329) (emergency)	198,000	---	---	---	---	-198,000	---
Total, title II	95,948,057	108,860,775	157,042,775	157,243,409	157,790,626	+61,842,569	+48,929,851
Appropriations	(94,349,057)	(108,860,775)	(108,859,775)	(109,060,409)	(109,607,626)	(+15,258,569)	(+746,851)
Emergency appropriations	(1,599,000)	---	---	---	---	(-1,599,000)	---
Rescissions (emergency appropriations)	---	---	---	---	---	---	---
Advance appropriations, FY 2011	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
(Limitation on direct loans)	(3,680)	(2,798)	(2,798)	(2,798)	(2,798)	(-882)	---
Discretionary	(49,205,132)	(53,039,103)	(101,221,103)	(101,421,737)	(101,222,310)	(+52,017,178)	(+48,183,207)
Mandatory	(46,742,925)	(55,821,672)	(55,821,672)	(55,821,672)	(56,568,316)	(+9,825,391)	(+746,644)
TITLE III - RELATED AGENCIES							
American Battle Monuments Commission							
Salaries and expenses	59,470	60,300	61,800	63,549	62,675	+3,205	+2,375
(By transfer)	(500)	---	---	---	---	(-500)	---
Foreign currency fluctuations account	17,100	17,100	17,100	17,100	17,100	---	---
Total, American Battle Monuments Commission	76,570	77,400	78,900	80,649	79,775	+3,205	+2,375
U.S. Court of Appeals for Veterans Claims							
Salaries and expenses	30,975	27,115	28,115	27,115	27,115	-3,860	---
Department of Defense - Civil							
Cemeterial Expenses, Army							
Salaries and expenses	36,730	37,200	42,500	37,200	39,850	+3,120	+2,650

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
Armed Forces Retirement Home							
Operation and maintenance	54,985	62,000	62,000	62,000	62,000	+7,015	---
Capital program	8,025	72,000	72,000	72,000	72,000	+63,975	---
Total, Armed Forces Retirement Home	63,010	134,000	134,000	134,000	134,000	+70,990	---
Total, title III	207,285	275,715	283,515	278,964	280,740	+73,455	+5,025
(By transfer)	(500)	---	---	---	---	(-500)	---
TITLE IV - OVERSEAS CONTINGENCY OPERATIONS							
Military Construction, Army /1	---	---	---	924,484	924,484	+924,484	+924,484
Military Construction, Air Force /1	---	---	---	474,500	474,500	+474,500	+474,500
Total, title IV	---	---	---	1,398,984	1,398,984	+1,398,984	+1,398,984
Grand total	126,810,267	133,487,510	181,903,656	182,101,656	182,750,300	+55,940,033	+49,262,790
Appropriations	(119,689,095)	(132,082,526)	(132,406,972)	(132,627,672)	(133,574,712)	(+13,885,617)	(+1,492,186)
Rescissions	(-83,170)	---	(-85,300)	(-108,000)	(-406,396)	(-323,226)	(-406,396)
Emergency appropriations	(4,479,000)	---	---	---	---	(-4,479,000)	---
Advance appropriations, FY 2011	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
Overseas contingency operations	(2,725,342)	(1,404,984)	(1,398,984)	(1,398,984)	(1,398,984)	(-1,326,358)	(-6,000)
(By transfer)	(500)	---	---	---	---	(-500)	---
(Limitation on direct loans)	(3,680)	(2,798)	(2,798)	(2,798)	(2,798)	(-882)	---

1/ The House bill provides funding at the same level in title I

Mr. LATHAM. Mr. Speaker, may I inquire as to how much time is available on each side?

The SPEAKER pro tempore. The gentleman from Iowa has 18 minutes remaining. The gentleman from Massachusetts has 17½ minutes remaining.

Mr. LATHAM. At this point, I would be proud to give 3 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. I thank the gentleman from Iowa. I also want to thank Chairman OBEY for working with me on Labor, Health and Human Services. But Mr. Speaker, this bill is a classic example of a dysfunctional appropriation process.

My principal opposition to this bill is the excessive amount of spending. We are spending more and more money each year and we don't know where we are going to get it. The American people don't have it; in fact, this past fiscal year, fiscal year 2009, we overspent by $1.4 trillion. That's $5,000 per person, approximately that we didn't have. And for those of us that pay Federal taxes, that's about $14,000 per taxpayer overspent last year. This year, we have already overspent $259 billion and we're on course to overspend by $1.6 trillion. That will be an increase in the deficit of about $16,000 per taxpayer, money we don't have that we have to go out and borrow.

So where is the money going to come from? We're going to borrow it from the Chinese. Well, maybe the Chinese don't want to loan it to us. Then we'll just have to print it. Well, if we print it, that drives inflation. If the Chinese don't loan it to us, we're in trouble. We will be headed for a round of inflation based on the current projections.

The excuse that we get for borrowing and spending all this money is we've got to get the economy to recover. Borrowing money to fund big government doesn't grow our economy, it only grows big government. But we go out and hire all these people in big government. They've got to do something, so they write regulations. Regulations slow down our economy. If you want to speed up the economy, freeze the regulations; put them on a benefit-cost analysis. We forget that for every one of these government workers, it takes five private sector employees to pay for that one Federal Government job. So we have the idea of how we are going to create private sector jobs instead of growing the size of government.

This bill spends so much money they have had trouble finding out where to spend more money. They decided that they were going to fund free needles to dope addicts and junkies—I'm just glad that we're not buying kegs for Alcoholics Anonymous meetings. They pay for abortions in the District of Columbia and they can't prove that it's not Federal tax dollars by their Federal funds provision because it all gets commingled. And then we're borrowing about $350 million we think, from the Chinese to give to the World Bank so that we can give it to some third-world countries to fight global warming. So we have a questionable source of funds sent to questionable countries to fight a program based on questionable science.

Mr. Speaker, this bill is out of the question. I would ask all my colleagues to vote ''no.''

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Mr. OLVER. I yield 2 minutes to the gentlewoman from Michigan (Ms. KILPATRICK), who is a member of the Transportation, Housing and Urban Development Subcommittee.

Ms. KILPATRICK of Michigan. I thank the chairman for yielding.

Mr. Speaker, as a member of the House Appropriations Committee and as an honored member serving on the conferee committee, this is a good bill. As you know, in the House of Representatives, we passed all 12 of our appropriations bills. The Senate passed nine of their 12 bills. Unfortunately, they were not able to do them all. Yet we met many hours a night and passed what is considered, I believe, a good bill for all of the reasons that you have mentioned—health care, veterans, education, transportation, helping our military men and women who are on active duty and those who are not. This is a bill that wraps up our 2009 appropriations process, less one bill, and we will take that up next week.

I commend Chairman DAVID OBEY as well as our ranking member, JERRY LEWIS. I commend JOHN OLVER and all of the Chair people who have brought the bills together and who have worked many long hours to see that we get the work of the people done.

Our Appropriations Committee handles over $1 trillion for various programs of the Federal Government. We take our work very strongly. We work long hours. We spend many hours on it. All of the bills before us today have been reviewed. All 12 which have passed the House are pretty much the same bills we had in conference the other evening. I am proud of our work.

As an appropriator and in working with our colleagues on both sides of the aisle, but specifically with the Democrats and under the leadership of Chairman OBEY, I want the American citizens to rest assured you have a good product before you. We will continue to do what is necessary to fund our children's programs, our health programs, transportation, veterans—you name it. This completes, bar one bill, the 2009 appropriations process.

I am honored to be a part of that, and I look forward to the new year.

Mr. LATHAM. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. I thank the gentleman for yielding.

Mr. Speaker, I want to thank all of our chairmen and ranking members of the 12 Appropriations subcommittees for their work this year because it is important work. It is the only ''must do'' work that the Congress has every year, which is part of the power of the Appropriations Committee. I do think that just blaming each other for our shortcomings is not particularly helpful, but I want to point out a couple of things.

Chairman EDWARDS is our chairman of the Military Construction, Veterans Affairs Appropriations Subcommittee, and I am the ranking member. It is an incredible privilege for both of us to carry out those functions. Chairman EDWARDS is a true patriot and does an excellent job. We have got a great staff. Our bill is certainly not the controversial part of this omnibus bill at all. As a matter of fact, our bill passed the House 415–3, and it passed the Senate unanimously.

So there is huge consensus here, and we deserve bipartisan praise for doing right by our Nation's veterans and by the men and women and their families who are in uniform today. That is what we are supposed to do. But I have to say this:

We had hearings every week through the spring, and we always asked, What is the most important thing we can do for you? We heard virtually every week, The most important thing you can do for us is to get our bill passed and enacted into law on time—by October 1.

As a matter of fact, that is the battle cry for why we need advance funding, which is that they have to rely on the funding flow in veterans affairs and in military construction, and here we are more than 10 weeks later just now passing our bill. Last year, we got our bill done on time. That's not Mr. EDWARDS, and it's not me. It's somebody else on the scheduling of when these bills come up. This bill had such consensus, it could have just flown through in late September, and everyone under the $78 billion funding profile would have had their money on time.

That is a problem. I don't care whether you are Republican or Democrat. That is a problem especially when you come and say, Let's start funding them in the future, 2 years out, so that they have the knowledge that the money is going to be there. Yet you don't get the bill done on time, and you're 10 weeks late or more. That makes no sense. It's not only ironic; it's unfortunate.

Maybe they were holding this bill in case they needed a vehicle for all of the other bills that they couldn't pass. I hope not. I hope you're not doing that to our men and women in uniform and to their families and to our veterans. We can do better than that, I know.

I was a conferee. I was there on Monday night as we negotiated this bill. I tried to take the TARP money, of which now there is $200 billion left, and put it back against the debt. I would put it in the Treasury because now there is a plan to go spend that money on things that may or may not work. Why not pay our debt down? The Chinese are worried about whether we will

ever pay our debt. We are sinking as a Nation under a mountain of government debt, and we've got to do something about it. Neither party has got a lot to brag about, but you all are in charge. We can do better.

Mr. OLVER. I yield myself 2 minutes, Mr. Speaker.

I fully recognize the argument that is being made by the other side on this issue of the level of expenditure. There has been an increase in the discretionary expenditure that we are providing for the needs of this country.

The fact is that, through the 6 previous years before we came into the majority, there was constraint in discretionary expenditures for programs that do things for people in this country and which provided money for our education system, for our health care system, for our transportation systems, and for our infrastructure in general—not just the transportation infrastructure but whatever source of infrastructure—and for our housing, just to name a few, and even for our veterans affairs.

Even with regard to our veterans programs, which provided services while we had two different wars going on around the world—all of them over in Asia—our discretionary expenditures were under very severe constraint, and the level of discretionary expenditure during that 6-year period before fiscal year 2007 was under constraint.

So the budgets that we have passed in the last three sessions when we have been in the majority have had an increase in discretionary expenditure to provide a catch-up expenditure for things going on in this country. We hear among our constituents all the time, Why are we spending so much money in other places around the world when we should be spending it here?

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

Mr. OLVER. I yield myself 1 additional minute.

Why are we spending so much money there if we cannot find a way of expending for those things that I've mentioned—the housing, the transportation, the health services, and education? Why can't we spend some of that here?

So, yes, our expenditure has been up, but we make no apology for that kind of expenditure given the very reason for why it has occurred. So I will leave it at that. We make no apology for increasing discretionary expenditures on our own people and on the needs of our own people, and that should continue in fact.

I reserve the balance of my time.

Mr. LATHAM. Mr. Speaker, first of all, I want to thank the gentleman for recognizing the fact that we were fiscally responsible before and that to catch up in 2 years by spending 85 percent more, by increasing spending by 85 percent, is truly more than catching up, I would say.

I yield 3 minutes to the distinguished gentlewoman from Missouri (Mrs. EMERSON).

Mrs. EMERSON. Thank you.

Mr. Speaker, I would like to address the Financial Services and General Government division of the omnibus.

I first want to commend Chairman SERRANO for his efforts in crafting the bill. It has been a pleasure to work with him, and while we don't always agree, he has at least been open to listening to the minority's ideas.

While I appreciate Chairman SERRANO's efforts, I have got a lot of concern with the Financial Services division insofar as it is a 7 percent increase over fiscal year 2009, or $24.2 billion. This is very, very generous, and I believe that the resource requirements of the agencies funded in this bill can be met with a smaller allocation, particularly given the government's financial situation.

However, with the allocation provided to Mr. SERRANO, he has done a good job of allocating funding in the bill, and I am grateful for efforts to provide increases to critical programs such as the Financial Crimes Enforcement Network, Treasury Terrorism and Financial Intelligence programs, Drug Free Communities, and High Intensity Drug Trafficking Areas.

I am also pleased that the bill provides $75 million for D.C. education programs, including $42 million to D.C. public schools. I am happy, to some extent, that the bill doesn't totally eliminate the Opportunity Scholarships program, but I must say I am very disappointed that the program is limited to students currently enrolled in the program.

My own daughter teaches in the D.C. public schools, so I know firsthand how these schools are failing the city's children. I ask how we can possibly limit educational opportunities for low-income students when we know the public school system is underperforming?

Another area of the bill that deeply concerns me are the controversial changes to long-standing general provisions regarding abortion and medical marijuana in the District of Columbia. We heard Mr. TIAHRT address that a little while ago.

Let me then lastly discuss an issue that is not directly related to this bill but that is related to the Department of the Treasury, which is part of our bill, and it is the administration of TARP.

The TARP has greatly expanded the Federal Government's reach into the private sector, not by purchasing troubled assets, as was its original purpose, but by purchasing common shares of banks, by owning large auto companies, and by subsidizing home mortgages.

Today, many Democrats, including the President and the Secretary of the Treasury, are discussing using TARP funds to pay for yet another stimulus bill when the first stimulus bill has already been a failure. Unemployment is at 10 percent. Only 12 percent of the discretionary funding in the stimulus bill has been spent. Yet our friends on the other side of the aisle plan to shove through more government spending under the guise of job creation, which is going to do more harm than good, and we are going to offset it with surplus TARP funding.

Well, the TARP funding was never supposed to be used again and again and again. Our national debt is $12 trillion, and the fiscal year 2010 deficit is projected to be over $1 trillion. Members are going to be asked to increase the debt limit. We cannot sustain this level of spending. TARP savings must be used for debt reduction.

Mr. OLVER. How much time remains on both sides?

The SPEAKER pro tempore. The gentleman from Massachusetts has 13 minutes remaining. The gentleman from Iowa has 9 minutes remaining.

Mr. OLVER. I yield 3 minutes to the gentleman from North Carolina (Mr. PRICE), who is also a member of the Transportation, Housing and Urban Development Subcommittee.

Mr. PRICE of North Carolina. Mr. Speaker, our Republican colleagues this afternoon have once again raised the issue of Guantanamo Bay, so I would like to take just a moment to clarify the treatment of Guantanamo Bay detainees in this bill and in previous bills.

As our colleagues surely know, this is an issue that was debated and addressed by Congress in mid-October in the Homeland Security bill, the bill produced by the subcommittee that I Chair. This has already been signed into law. The language in our bill restricts the movement of detainees from Guantanamo Bay. It requires greater transparency on the part of the administration as it disposes of each detainee's case. It allows the transfer of detainees to the U.S. only for prosecution and with requirements that the administration provide a risk mitigation plan for each transfer and advance notice to Congress and to the destination State.

That same exact language was carried in the Interior appropriations bill, which was also signed into law. The conference report before us restates this language yet again, exactly the same language. There shouldn't be any confusion at all as to where Congress stands on this issue.

Now, in conference, our Republican friends attempted, once again, to play ''gotcha'' with this Gitmo issue. They attempted to overturn these provisions included in previous bills and to bar the administration from prosecuting detainees in U.S. criminal courts. We ought to strongly oppose any such effort to stand in the way of bringing terrorists to justice. That's exactly what this is all about. We must not tie the hands of the Departments of Justice and Defense as they seek to prosecute, where appropriate in U.S. courts, terrorism suspects housed at Guantanamo Bay.

Our Republican colleagues would rather keep Guantanamo open, apparently, and would exclusively use military tribunals for prosecutions. They

seem to think that three convictions by military tribunals in the entire period of their existence is an impressive record. One of those was by a guilty plea. This isn't an impressive record; it's a dismal record. By contrast, recent analysis of the 119 terrorism cases involving 289 defendants tried over the last 20 years in U.S. courts shows a 91 percent conviction rate for the cases that had been resolved as of June 2.

I can't tell you whether one option or the other is better for any given case, but that's not the call we have to make in an appropriations bill. With current law, we can leave that decision to the experts in the administration who can best decide on a case-by-case basis who should be prosecuted in the U.S. and what mitigation plans are necessary to address any risks that may result from these trials.

The purpose of the Republican amendment, which was rightly rejected in the conference committee, was to shut off access to U.S. courts for terrorism prosecution. That is a proposition that is patently absurd and that, I dare say, our Republican colleagues would not be putting forward if there were a Republican President.

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

Mr. OLVER. I yield the gentleman 1 additional minute.

Mr. PRICE of North Carolina. Is criminal prosecution an option we simply summarily want to close off? Of course, the answer is ''no.''

□ 1315

We should be using these carefully selected prosecutions to send a message to the world that we will not be intimidated by the prospect of bringing terrorists to justice or allow terrorism to undermine the rule of law in our country.

Mr. LATHAM. At this time, it is my privilege to yield 3 minutes to the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Speaker, I rise to speak briefly about the State/Foreign Operations division of this omnibus package.

As the ranking member of the subcommittee, I am pleased that I have been able to work closely with Chairwoman LOWEY this year. She and her staff have worked to address concerns by committee Republicans and by me, and I thank her for her commitment to bipartisanship.

I also thank our Senate colleagues and our staff for working together to achieve common ground in the conference agreement. In the end, many priorities were preserved: funding a new compact for the Millennium Challenge Corporation; fighting drug trafficking in Mexico, Central America, and Colombia; and continuing security assistance to key allies like Israel, Egypt, and Jordan.

Funds provided in this bill will allow State and USAID to hire more than 1,000 new staff, which will help balance the three D's of smart power, the approach to national security. The increase for development and diplomacy will, in turn, support our Nation's defense and allow our military men and women to refocus on their core mission.

As the Congress provides additional staff and increases foreign assistance funding, the level of commitment to reform must be equal to funding commitment made. Oversight must be a priority. For that reason, the bill provides $149 million for inspectors general, and many oversight provisions and reporting requirements are also included.

The conference agreement retains language that prevents U.S. tax dollars from going to organizations that support or participate in involuntary or coercive methods of family planning. There are legitimate plans about family planning funding that goes abroad, and legislative safeguards will remain in place the next fiscal year.

I regret that this package lumps six bills together in a package of close to half a trillion dollars and does not allow this body to address appropriations bills individually and fully vet them so that I could support them. I support the many programs in this bill. However, we must be aware of the tremendous debt held by this country and work competently, being aware of this issue.

Again, I thank Chairman LOWEY, our excellent committee staff, and our Senate colleagues for working together to address shared priorities.

Mr. OLVER. I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I would like to comment very briefly on the comments of the gentleman from Tennessee, who a few moments ago criticized us because we were some 70 days late in passing the Military Construction-VA appropriation bill.

Let me simply point out that we may be 70 days late, but we are getting the job done. In addition to passing the basic bill, we are, for the first time in history, providing advance funding for VA activities. That is something that the veterans community has wanted for years and years, and it has been this Congress that delivered.

That stands in contrast to the performance of the minority party when they chaired this institution with respect to what they produced on the Military Construction-VA bill. They complain about the fact that we were 70 days late. They never passed that bill at all. They didn't pass it in October. They didn't pass it in November, which would have been 30 days late. They didn't pass it in December, which would have been 60 days late. They never passed it. When a new Congress took over, we had to pass all of those domestic appropriation bills and the Military Construction bill. I think it is quaint, indeed, when they attack us on the question of performance on, of all bills, the Military Construction bill. I think they need to go back and take a look at the record when they chaired this place.

With respect to the funding overall levels in this overall bill, let me simply repeat what I said earlier. When you take into account the necessary increases for veterans disability, for the census, for the war costs which are not being hidden in a supplemental as they were under the stewardship of our friends on the other side of the aisle, when you take into account the infrastructure change in funding and the $6 billion that we needed to prepare the health care system for the legislation which is about to pass, the rest of the increases in the bill before us amount to 1 percent. I hardly think that that's excessive, given the economic crisis that we face.

Mr. LATHAM. Mr. Speaker, just one comment. I think it's interesting to note the gentleman talked about that we are finally getting the Military Construction bill done, VA funding. The last two bills that we are funding are Defense, which will be 80 days out from the start of the new fiscal year, the Military Construction-VA bill.

But if you remember back with the schedule, the very first bill that was passed and signed into law was to fund Congress itself. We took care of ourselves here first and the military was the very, very last. I think that is very unfortunate.

I am now pleased to yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE).

Mr. LATOURETTE. I thank the gentleman for yielding. I am going to break the mold here and say something nice about five pages of the bill, this bill in front of me—I think those pages are right here—and say something nice about Mr. OBEY as well, and Mr. SERRANO is waving in the back.

By way of history, people know that the auto industry in this country got into trouble, and this administration made a decision to use leftover TARP funds to bail out Chrysler and General Motors. Both car companies submitted reorganization plans in February of this year and both were rejected by the auto task force.

The auto task force was kind of a strange collection of people that didn't have any experience in the auto industry at all. Most of them didn't own cars. Those that did own cars owned foreign cars, but they determined that the car companies had to be more aggressive when it came to dealerships. As a result, about 800 Chrysler dealers were closed and about 2,000 GM dealers. The problem with that is, with rampant unemployment, about 60 people work at each car dealership across this country. Car dealerships don't cost the car companies any money, and it was a strange way to do business and potentially take 200,000 people and put them on the street.

A couple of young, fresh-faced Democrats, Mr. MAFFEI of New York and Mr. KRATOVIL of Maryland, launched a legislative effort. But as a grizzled veteran, having been here for the last 15

years, I know that the one piece of legislation or pieces of legislation that have to leave town are the appropriations bills. We drafted some language and put it in Mr. SERRANO's bill, and Mr. OBEY took it. They didn't have to—they probably got in trouble for taking it—but that became the 800-pound gorilla that had to be dealt with as General Motors and Chrysler have moved forward on how to deal with this dealer situation.

I also want to say something nice about the majority leader, Mr. HOYER. He took up the mantle and said we are going to solve this problem. As a result, the five pages that are here in the bill indicate that those aggrieved dealers now have the opportunity for binding arbitration, and the facts need to be brought forward, and hopefully fairness will prevail. But that wouldn't happen without something good and bipartisan happening in the United States Congress.

Mr. LATHAM. Mr. Speaker, it is my honor to yield 1 minute to the minority leader of the House, the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. We're broke. We're broke. America is broke. All year long our friends across the aisle have been on this massive spending spree that our Nation can't afford.

We had a trillion dollar stimulus bill that was supposed to create jobs immediately, and yet unemployment is now 10 percent in America. Three million people have lost their jobs since the bill was signed into law.

We passed a budget that's going to double the national debt in 5 years, triple it in 10 years. We have got a $12 trillion national debt.

We brought a national energy tax bill to the floor that's going to cost a trillion dollars, passed it. We had a health care bill here several weeks ago, another trillion dollars, passed it.

When are we going to say enough is enough? Here we are today. We are wrapping six appropriation bills together. We are going to spend a half a trillion dollars, and it has got over 5,000 earmarks in the bill, you know, things like $292,000 for the elimination of slum and blight in Scranton, Pennsylvania; $300,000 for music and education programs at New York City's Carnegie Hall, where they pay the employee who runs this program $530,000 a year in salary and benefits. There is plenty in here for Washington as well: $150,000 for the National Building Museum; $250,000 for the Wolf Trap Foundation for the Performing Arts, a concert venue.

Listen, I don't know how worthy any of these projects are, but I do have to ask the question, are they more important than our kids and our grandkids who have to pay the debt, because we don't have the money to spend on this. It's our kids and grandkids who are going to pay for it. Yet we can't find ways to cut spending.

Before the President took office, he said that he must go through the budget and these bills line by line and page by page. Well, after Congress passed the $410 billion omnibus spending bill earlier this year, with 9,000 earmarks, the President signed it and he said, well, that was last year's business. Now the President says reducing the deficit is next year's business and that we need to spend our way out of this economic recession that we are in.

Well, I think the President ought to go through this bill line by line and page by page, all 2,500 pages of it, then maybe he will figure out that we don't need to be spending this money that we don't have and piling more and more debt on the backs of our kids and grandkids. Instead, our bond rating, our AAA bond rating is in jeopardy and our Democrat friends want to raise the debt limit next week by $1.8 trillion.

Let's stop the madness and vote ''no.''

□ 1330

Mr. OLVER. Mr. Speaker, how much time does each side now have?

The SPEAKER pro tempore. The gentleman from Massachusetts has 7 minutes remaining, and the gentleman from Iowa has 3 minutes remaining.

Mr. OLVER. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I regret that this has become another typical ''Who Shot John'' debate, but since it has, let me respond to the distinguished minority leader. Let's compare what President Obama inherited with what President Bush inherited. When President Bush walked into the White House, he inherited $6 trillion in projected surpluses. He inherited 3 years in a row of budget surpluses under President Clinton. And he inherited an economy in which all income groups saw their income rise by roughly the same percentage.

In contrast, when Mr. Obama walked into the White House, he inherited a $1 trillion deficit, he inherited two wars that were paid for on the cuff, with borrowed money. He inherited $6 trillion in projected deficits. And he inherited an economy in which, for six straight years, 94 percent of the income growth went to the wealthiest 10 percent of people, and everybody else got table scraps. In addition, he inherited an economy that was projected to have a $2.5 trillion hole because of the biggest collapse of the economy in 75 years.

And so, indeed, Mr. Obama and the majority party in this Congress spent money to try to prime the pump, to keep the economy going, because we were losing 700,000 jobs a month the last 3 months of the Bush administration. We have now got that down to an 11,000 job loss last month. That's not good enough, but it's certainly a lot better than the situation was when we inherited it.

The gentleman squawks about the debt ceiling. The debt has already been rung up, and now the question is, when the bill comes in the mail, is it going to be paid or not. The fact is, out of that $1.8 trillion debt increase, $1.4 trillion of that is directly traceable to policy actions that were taken by the previous administration and the previous Republican Congress. And $400 billion of it are directly traceable to the actions we've had to take to try to bail the economy out of the mess that you folks got us into.

So if you want to start comparing records, I'd be happy to. I'd much prefer to talk about the contents of this bill and the individual programs of this bill. But since some the gentlemen on that side of the aisle prefer to politicize everything, I guess we're going to have to have the debate at that level. That's too bad, but I've come to expect very little but that from the other side, I regret to say.

I do want to thank the gentleman from Ohio for trying insert a bit of bipartisanship into the debate.

Mr. LATHAM. Mr. Speaker, I yield myself as much times as I may consume.

I don't know if the gentleman has more speakers, but I'm planning on closing. I just want to thank the staff, on both sides. Our subcommittee does an outstanding job working together, and I'm just very, very proud of the work that they've done and the kind of commitment they've shown, and just want to say thank you for the professionalism that they have exhibited throughout this whole process.

Mr. Speaker, I'm going to oppose this for various reasons. Number one, the fact that this $450 billion bill is a 14 percent increase in spending over last year. At a time when people are hurting, we cannot afford this kind of additional debt that's being put on the taxpayers, on the families at home. Realizing that in the last 2 years, discretionary spending in this House of Representatives has increased now, 85 percent; 85 percent more money, discretionary money, being spent today than just 2 years ago. Does anybody at home have 85 percent more money today than what they had 2 years ago? Is it responsible in any way, shape or form to have that kind of an increase?

The gentleman from Massachusetts—and I appreciate his professionalism—made the case, basically, for me before. We held down spending previously. And this explosion that we've seen just throughout the budget is simply wrong. We cannot sustain it, and it is about the next generations. I've got four grandchildren. They're going to pay this bill, and their children are going to pay this bill, and it simply is not fair. It's generational theft, and we've got to finally hold the line as far as spending in this Congress and find some kind of sanity around here.

With that, again, I would hope that everyone would vote ''no.'' We could get some reality. We could separate these bills, have them done correctly and in a responsible way. And just one other thing in closing. I want to, again,

thank Chairman OLVER for being a very good friend, his professionalism, and someone that I really admire.

Mr. Speaker, I yield back the balance of my time.

Mr. OLVER. I yield myself the remainder of the time.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized for 4 minutes.

Mr. OLVER. Mr. Speaker, my counterpart, the ranking member from Iowa, has graciously thanked the people on both sides who have done all of the work that our subcommittee dealt with. Actually, since there's six different bills here, I would like to extend that thanks to the people on the staffs of each of the six subcommittees on each side of the aisle who put countless hours into the work that has brought this bill to the floor at this time.

But particularly, let me just personalize it one more step. On our side, my clerk, Kate Hallahan, and on the Republican side, their clerk, Dena Baron, and the people who work under them, for them and with them, and for us and for the people of the country. They have done an exemplary job in the THUD committee, as I think each of the other groups have done for their own particular subcommittee. We should all be very grateful for that.

With the passage of this bill—and I'm going to urge passage as I close—we will on our side have completed the work on 11 of the 12 bills, and thereby we will be a very large step closer to the finish of the budgetary process necessary to provide for the year 2010. And so I am very optimistic today, in fact, a great load rises from the shoulders of all the chairs and ranking members of the subcommittees.

With that, let me just urge a ''yes'' vote on this budget bill in order to be able to reach that point very close to the completion of our work.

Mr. VAN HOLLEN. Mr. Speaker, I rise in support of the Consolidated Appropriations Act of 2010 and urge its swift consideration by our colleagues in the Senate.

This legislation includes final conference reports for the FY 2010 Transportation-HUD, Commerce-Justice-Science, Financial Services, Labor-HHS-Education, Military Construction-VA and State-Foreign Operations bills. Its total funding of $446.8 billion makes priority investments in infrastructure, health care, and education, while supporting our veterans, funding the upcoming census and honestly accounting for war costs previously left to supplementals. Remaining items in the bill are limited to a 1% funding increase.

The $50 billion in infrastructure spending in this bill—including $150 million for the Washington Metropolitan Area Transit Authority—will enable us to modernize our aging infrastructure, ease congestion, facilitate commerce and create good-paying, homegrown American jobs. To further bolster our economic recovery, HR 3288 provides $824 million to the Small Business Administration for its work helping our job-generating small businesses succeed. This investment will help facilitate an additional $28 billion in new lending to small businesses. I am delighted that the National Institutes of Health is funded at $31 billion so that it can continue driving scientific innovation and health system reform. Finally, I am especially pleased that the Financial Services division of this consolidated legislation sets up a fair and reasonable process by which profitable auto dealers can have an opportunity to get back into business so that they and their employees can play their part in supporting our ongoing economic recovery. In that regard, I ask that the full text of the attached statement be entered into the legislative RECORD.

Mr. Speaker, I rise today to express my appreciation that language has been included in the Financial Services Appropriations Conference Report that will give automobile dealers around the nation a fair and reasonable shot at getting back into business. For the past several months, I have been pleased to join with Majority Leader HOYER, Congressmen KRATOVIL and MAFFEI, and others to ensure that profitable car dealers have every opportunity to contribute to our economic recovery and put their employees back to work.

Profitable and viable dealers should have never been terminated in the first place, and I was proud to join the fight to have these short-sighted decisions reversed. Automobile manufacturers won't be able to get back on their feet without a strong dealer network, and Congress is committed to ensuring that such a network exists. I salute the tenacity and determination of these small business owners, many of whom have been selling cars and supporting the American auto industry for decades. Under the provision we are approving today, these terminated dealers will have an opportunity, once again, to do what they do best—sell and service cars. And that is good for our economy, for job creation and for the American car industry.

It would have been my preference that we would not need to legislate on this matter. We convened talks with the auto dealer groups and the manufacturers and while both sides offered significant concessions, efforts to achieve a non-legislative solution failed when auto manufacturers offered plans that fell short of what was needed to add dealers to their dealer networks and put their employees back to work.

As 2009 comes to a close, the federal government still maintains a substantial financial stake in Chrysler and General Motors and therefore in the United States automobile industry. Clearly, it is in the national interest to have the domestic automobile industry regain profitability and maintain sufficient dealerships to meet consumer demand.

Section 747 of the Financial Services Appropriations division of this bill recognizes the valuable role that dealers play in the auto industry and our local economies. Automobile dealers are essential to the success of automobile manufacturers because at no material cost to the manufacturers, they facilitate distribution, sales, and servicing of hundreds of millions of vehicles annually. This legislation is premised on the notion that it is in the best interest of automobile manufacturers, the automotive industry, dealers and the public to have an extensive and competitive automobile distribution network throughout the country, including in urban, suburban and rural areas.

Section 747 mandates that manufacturers promptly provide covered auto dealers in writing the specific criteria and supporting data relied upon by a manufacturer in its decision to end or wind down the dealership relationship. In the spirit of cooperation and to ensure an efficient process as this legislation is implemented, we expect that the manufacturers will provide the information in a format that is user friendly, clearly identifies facts, readily accessible, and understandable by the dealer and that the data may be transmitted either by mail or electronically. We intend that this process provide transparency and avoid the excessive costs and delays of litigation and discovery disputes. The manufacturers should provide their respective covered dealers with each and every detail and criterion related to the evaluations of the dealership and the decisions to terminate, not assign, not renew or discontinue. It is anticipated that the manufacturers will be cooperative and forthcoming and that all relevant information will be provided promptly.

It further provides such dealers with the opportunity to participate in a neutral arbitration process designed for the dealer to make the case for being added to the manufacturer's dealer network. Congress has included specific timeliness for this process and we expect both parties to the arbitration to act in good faith and expeditiously so that added dealers can return to full-fledged operations quickly.

Section 747 expressly permits the manufacturer and dealer to present any kind of relevant information during the arbitration and provides that the arbitrator shall decide whether the dealer should be added to the manufacturer's dealer network based on a balancing of the interests of the dealer, the manufacturer, and the general public. The public interest includes reasonably convenient access for consumers to a dealer who can service their vehicles, which is of particular concern in rural areas where many dealers were terminated in 2009. It has been well-reported that more and more individuals have to drive substantial distances to obtain service from an authorized dealer of a specific brand because of a dealer termination.

Congress has provided seven enumerated factors for the arbitrator to consider, but this list is not exhaustive because the legislation provides that the parties can introduce ''any relevant information.'' For example, we expect that arbitrators should consider relevant State laws, which provide a context for analyzing franchise agreements and the obligations of dealers and manufacturers.

A couple of these enumerated criteria merit additional explanation. For example, Congress has directed that the demographic and geographic characteristics of the market are taken into account. This reflects our intention that the arbitrator should pay special attention to the concerns expressed by some terminated dealers that there are factors in their market areas or States that affect their performance and render some measurements, such as State averages, less than accurate in portraying the true picture of a dealer's operations.

Another one of the factors involves the dealer's performance under the franchise agreement terminated in 2009. In considering this factor and related factors, it is important for arbitrators to recognize that state law is part and parcel of and modifies auto dealer franchise agreements. To look only at a franchise agreement, in other words, misses an important contextual element. Accordingly, it is anticipated that the arbitrators will consider State

law elements of good faith and fair dealing in this process and that, for example, the franchise agreement's performance standards and a dealer's performance under the original agreement will be evaluated in accordance with State law.

Another factor is the historic profitability of the dealership. During the legislative process, Congress learned that some dealers, for tax planning reasons or other reasons use a variety of legitimate, widely recognized accounting conventions, such as LIFO, that could, depending on the date a snapshot is taken, affect materially whether the dealership appears profitable. It is important that arbitrators recognize such accounting conventions when considering the profitability of a dealership so a fair and accurate picture is obtained.

With respect to being added back to a dealer network, it is the intent of Congress that notwithstanding the preference of a manufacturer to have several brands in the same dealership, in the case of a dealer seeking to be added to a dealer network but with fewer than all of the preferred brands, the dealer nonetheless will be eligible to be added.

It is worth noting that pursuant to subsection (f), manufacturers and dealers may, of their own volition, decide to enter into legally binding agreements with one another instead of going through the arbitration process. It is the intent of Congress that for this subsection to apply, the legally binding agreements shall be consensual, non-coercive resolutions of the issue between the dealer and the manufacturer entered into or ratified after the date of enactment. Coercive agreements should not be upheld.

In conclusion, I want to recognize the tireless efforts of dealers from around the Nation who worked to develop and implement a truly historic grassroots effort over the past seven months. Groups such as the Committee to Restore Dealer Rights, the Automobile Trade Association Executives, National Automobile Dealers Association and the National Association of Minority Auto Dealers, were instrumental in bringing about the legislation we are approving today.

Mrs. BACHMANN. Mr. Speaker, today, the House of Representatives once again sidestepped its constitutional obligation to fund our Nation's Federal priorities in a responsible manner and railroaded a massive spending bill through the House without allowing an open and honest debate that American taxpayers deserve. While I believe this legislation contains important funding for many programs administered by Federal agencies, spending bills and the projects they fund must be considered individually on their merits, and not obscured by being tucked into a giant ''omnibus'' spending package.

Right now, the national debt has already ballooned to a whopping $12.1 trillion and Democrats are ready to increase the debt limit by another $1.8 billion to accommodate their rabid spending habits. But at a time when American families are struggling to make ends meet and Federal deficits are skyrocketing at a record pace, it is absolutely necessary for Congress to fully commit to fiscal responsibility and scrutinize how every tax dollar is spent. While I understand the difficulty associated with such a large task, I, like so many of my colleagues, believed the Democrat majority when they pledged to ''create the most honest, most open, and most ethical Congress in history.'' I was hopeful that their stated commitment to open government would entail the individual consideration of each of the 12 annual appropriations bills, setting a path towards restoring the confidence and trust of the American people.

Unfortunately, the actions taken today indicate that our leadership is content with the status quo, and will avoid difficult decisions that should be made in order to prevent saddling future generations with debilitating debt. By combining half of the total appropriations bills into one measure, this majority has shown that it has no interest in real transparency and is more focused on growing government to accommodate their tax-and-spend agenda than being good stewards of the taxpayers' money.

Congress should show the American people that it is serious about making the same tough choices American families make every month. But this bill's 24 percent increase in government spending ignores the realities of our limited budget and assumes the taxpayers will just pick up the tab in future years. While the bill includes some of Minnesota's local priorities, it strays far from representing anything but a big government spending bill that lacks any consideration of our massive budget deficit.

Indeed, in the same manner as households across America set a budget, Washington needs to set a budget, and stick to it. However, the tax and spend approach to government being exhibited this year serves as a haunting indication that no amount of spending or government control is too much for the Democrats. That said, it is my sincere hope that as Congress moves forward with next year's budget and spending priorities, strict attention will be paid to protecting the American taxpayer and fostering an atmosphere of bipartisan cooperation and fiscal responsibility.

Mr. CONYERS. Mr. Speaker, I would like to thank the Conferees for including section 747, which regulates the relationship between automobile manufacturers and automobile dealerships. I, along with Majority Leader STENY HOYER, and Representatives CHRIS VAN HOLLEN, DANIEL MAFFEI, FRANK KRATOVIL, STEVEN LATOURETTE, JACKIE SPEIER, ROBERT BRADY, BETTY SUTTON, and BOB ETHERIDGE have worked together to create legislation that will best serve the interests of the automobile industry, including manufacturers and dealerships, and the citizens who have a significant portion of their tax dollars invested in the success of this critical industry. The following is a description of the legislation.

Section 747 of the Conference Agreement includes language establishing an arbitration process to determine whether previously terminated, non-assigned, non-renewed, or non-continued auto dealerships should be added to dealership networks of automobile manufacturers that received federal assistance under the TARP program, or that are partially owned by the Federal Government. This provision replaces Section 745 of the House bill, which also addressed concerns regarding terminated auto dealerships.

It is in the national interest to protect the substantial federal investment in automobile manufacturers by assuring the viability of such companies through the maintenance of sufficiently sized dealership networks to meet consumer demand for sales and servicing nationally. In addition to facilitating the maintenance and growth of industry market share among manufacturers that benefitted from TARP funds, and in which the taxpayers have a significant financial investment, it is in the national interest to ensure that dealerships and manufacturers are each treated fairly in their business relationships based on their respective economic interests.

Evidence obtained over the course of numerous Congressional hearings in 2009 demonstrates that the automobile industry is integral to the health of the United States economy as a whole. Automobile manufacturers have been among the largest and most successful corporations in the United States, providing significant numbers of jobs and producing valuable goods for consumers. Automobile dealerships are also essential businesses in most communities nationally, providing many jobs to local residents and facilitating the distribution, sales, and servicing of millions of vehicles annually. Our investigations have made clear that it is in the best interest of the automobile industry, automobile manufacturers, dealerships and the public to have a competitive and economically viable domestic automobile distribution network throughout the country, including urban, suburban, and rural areas.

This provision was included because we also believe that by providing a process for working out the relationship between automobile manufacturers and dealerships that ensures transparency and review by a neutral arbitrator according to an equitable and balanced standard, taking into account the interests of all affected parties, the property and due process rights of manufacturers and dealerships will be safeguarded.

Section 747 establishes a procedure by which an automobile dealership that had a franchise agreement for a vehicle brand that was not assigned to a covered manufacturer, or that was terminated in a manner not consistent with applicable state law, on or before April 29, 2009, may seek continuation or reinstatement of the franchise agreement, or seek to be added as a franchisee to a dealership network of the covered manufacturer who manufactures the vehicle brand of the covered dealership, with such franchisee being located in the geographic area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Absent such election by the covered dealership, no such binding arbitration would occur.

In order to provide a covered automobile dealership with the information useful to determine whether to elect to enter into binding arbitration, the dealership will receive in writing notice from the covered manufacturer detailing the specific criteria pursuant to which such dealership's franchise agreement was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer. This notice must be provided within the 30-day period beginning on the date of the enactment of this Section. This transparency is a vital step in giving dealerships the opportunity to understand why their franchise agreements were terminated, not renewed, or were not assumed and assigned to a covered manufacturer. It is our expectation that this transparency will obviate the need for unnecessary arbitration. It is also our expectation that this transparency will encourage informal agreements between covered dealerships and manufacturers without

recourse to the more formal procedures provided in this Section. We expect that the written transmittal letter will also provide appropriate contact information, including an e-mail address, to enable the dealership to contact the manufacturer should the dealership have specific questions about the dealership's information and individual criteria contained in such letter.

The Conference Agreement provides such dealerships with the opportunity to elect to participate in a neutral arbitration process designed to permit the dealership to present information in support of its addition to the manufacturer's dealership network, and for the manufacturer to present information against such addition based on its business plan and future economic viability. The arbitrator in each case shall balance the interests of the covered dealership, the covered manufacturer, and the public and will decide based on that balancing whether or not the covered dealership should be added to the dealership network of the covered manufacturer. These are the only remedies the arbitrator may provide. The Conference Agreement specifically prohibits the awarding of compensatory, punitive, or exemplary damages to any party.

The Conference Agreement sets out seven specific factors that the arbitrator should consider in ruling on each case. The list is not exclusive, and the arbitrator would have the discretion to consider all the relevant facts on a case-by-case basis. In considering whether adding the covered dealership to the covered manufacturer's dealership network is in the public interest, the arbitrator should consider, among other factors, the need for reasonable access for consumers to a dealership that can service their vehicles, which is of particular concern in rural areas. The arbitrator should also consider the impact on the viability of the manufacturer of adding the dealership to the manufacturer's network, the length of experience of the dealership, the dealership's historical profitability and current economic viability, and demographic and geographic characteristics of the market.

It is our understanding that the General Commercial Rules of the American Arbitration Association shall apply to the arbitration proceeding, except to the extent that a rule is inconsistent with any provision of this Section.

Subsection (f) addresses negotiations between a covered manufacturer and a covered dealership, whether acting individually, as a group, or through an organization acting on behalf of one or more covered dealerships. The provision is intended to ensure that any legally binding agreement, such as a memorandum of understanding, resulting from a voluntary negotiation between a covered manufacturer and a covered dealership, a group of covered dealerships, or an organization acting on behalf of one or more covered dealerships will not be disturbed by this section. It also makes clear that once a covered dealership is party to such an agreement, such covered dealership would not be eligible for the arbitration remedy in this section.

It is not the intent of Congress to bar a covered dealership from the provisions of this section if the covered dealership accepted a standard form contract prepared by the covered manufacturer and offered on a ''take-it-or-leave-it'' basis, even if the agreement was entered into voluntarily. As a consequence, a covered dealership that accepted a ''winddown'' agreement drafted by a covered manufacturer would be able to avail itself of the provisions of this section. An agreement between a covered manufacturer and a covered dealership, whether acting individually, as a group, or as part of a group of dealerships acting through an organization, will be considered voluntarily negotiated if the agreement between the parties reflects a compromise based on written or oral discussions, even if one party to the negotiation is the principal or primary drafter of the agreement.

We chose this approach because binding arbitration by a neutral arbitrator is the most appropriate means of resolving the differences between covered dealerships and manufacturers, and to protect the taxpayers, and the broader economy. For this reason, the Conference Agreement sets out a procedure for ensuring that a neutral arbitrator conducts the arbitration according to a clear standard with factors the arbitrator must weigh.

Due to the time sensitive nature of this situation, the Conference Agreement provides that a covered dealership must elect to pursue arbitration no later than 40 days of the date of enactment of this section, that such arbitration must commence as soon as practicable and must be submitted to the arbitrator for deliberation not later than 180 days of such date. The arbitrator is given the flexibility to extend that period for up to 30 days for good cause. The arbitrator then has seven business days after the arbitrator determines that the case has been fully submitted to issue a written opinion.

Section 747 expressly permits the manufacturer and dealership to present any kind of relevant information during the arbitration. As an additional means of ensuring efficiency and economy in the arbitration process, the provision prohibits depositions and limits discovery to documents specific to the covered dealership.

Section 747 also makes clear that a manufacturer may terminate a covered dealership in accordance with applicable state law.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Under the rule, the previous question is ordered.

The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, this 15-minute vote on adoption of the conference report will be followed by a 5-minute vote on suspending the rules and passing H.R. 4017.

The vote was taken by electronic device, and there were—yeas 221, nays 202, answered ''present'' 1, not voting 10, as follows:

[Roll No. 949]

YEAS—221

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

NAYS—202

Aderholt
Adler (NJ)
Akin
Alexander
Austria
Bachmann
Bachus
Baird
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Costello
Crenshaw
Culberson
Dahlkemper
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Driehaus
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Gordon (TN)
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)

Kratovil
Kucinich
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Melancon
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Owens
Paul
Paulsen
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stupak
Sullivan
Tanner
Taylor
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—1

Brown, Corrine

NOT VOTING—10

Baldwin
Barrett (SC)
Buyer
Cooper
Frank (MA)
Mica
Moran (VA)
Murtha
Polis (CO)
Speier

□ 1403

Messrs. CAMPBELL, CARTER and MELANCON changed their vote from ''yea'' to ''nay.''

Messrs. MILLER of North Carolina and SCHRADER changed their vote from ''nay'' to ''yea.''

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. OWENS. Madam Speaker, on Thursday, December 10, 2009, I recorded an incorrect vote on Passage of the Consolidated Appropriations Act of 2010.

I intended to vote "yea" on rollcall vote No. 949, in support of the overall bill which contained funding that would go towards an All Weather Marksmanship Facility for Fort Drum in my Congressional District.

Stated against:

Mr. COOPER. Mr. Speaker, earlier today I was in a meeting with a senior administration official and inadvertently missed rollcall vote 949 on Agreeing to the Conference Report for H.R. 3288, the Consolidated Appropriations Act for Fiscal Year 2010. Had I been present, I would have voted "nay."

ANN MARIE BLUTE POST OFFICE

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 4017.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 4017.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

RECORDED VOTE

Mr. HASTINGS of Florida. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This shall be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 419, noes 0, not voting 15, as follows:

[Roll No. 950]

AYES—419

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Barrow
Bartlett
Barton (TX)
Bean
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garamendi
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Melancon
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Myrick
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Olson
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stearns
Stupak
Sullivan
Sutton
Tanner
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Velázquez
Visclosky
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—15

Baldwin
Barrett (SC)
Becerra
Buyer
Davis (KY)
Edwards (TX)
Linder
Meeks (NY)
Mica
Moran (VA)
Murtha
Obey
Schrader
Stark
Van Hollen

□ 1411

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. HASTINGS of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 962 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 962

Resolved, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of December 10, 2009, providing for further consideration or disposition of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

The SPEAKER pro tempore (Mr. SERRANO). The gentleman from Florida is recognized for 1 hour.

Mr. HASTINGS of Florida. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to my good friend, the gentleman from Texas (Mr. SESSIONS). All time yielded during consideration of the rule is for debate only. I yield myself such time as I may consume, Mr. Speaker.

GENERAL LEAVE

Mr. HASTINGS of Florida. Mr. Speaker, I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 962.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. HASTINGS of Florida. Mr. Speaker, House Resolution 962 waives clause 6(a) of rule XIII which requires a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee. This waiver would apply to any rule reported through the legislative day of December 10, 2009, that provides for same-day consideration of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

□ 1415

I hope Members on both sides of the aisle will support this rule so that we can move quickly to enact this critically important legislation.

Over the past year, the financial crisis has shown that the deregulation or even the lack of regulation over financial firms is not an option anymore. For the first time ever, this legislation provides key provisions that will mandate oversight of certain parts of the United States financial system. It will ensure that mortgage lenders are subject to high national standards so they can no longer give an individual a loan that they cannot afford to pay back. Furthermore, it will provide for a new interagency oversight council that will allow Federal regulators to oversee the entire system and identify activities that pose a risk to our Nation's financial system. It will also require comprehensive regulation of the opaque over-the-counter derivatives marketplace.

In my home State of Florida, we are undoubtedly facing an insurance crisis. Homeowners are burdened by continuously increasing property insurance premiums, or some are losing their coverage altogether while companies are going under or simply leaving the State. This poses a problem not only to property owners who cannot afford increasing costs in this difficult economy but also to the State, which has taken on the responsibility of covering those who cannot get insurance elsewhere, and to the Federal Government, which may be left to deal with the damage when disaster strikes.

H.R. 4173 directs the Federal Insurance Office to conduct a study on the modernization and improvement of the insurance industry in the United States. I introduced an amendment to the underlying legislation asking that they also look at the geographic disparities in cost and access within this study.

Hurricanes, floods, fires, windstorms are factors driving the cost of insurance higher in Florida than in some other areas of the country. Numerous private insurers have recently sought rate hikes, with regulators approving increases as much as 15 percent.

Now, we certainly cannot change the fact that certain regions face higher risks than others. However, the amendment that I filed will help determine what changes to the industry and its regulation can help ensure that these necessary insurance protections are available, accessible, and reasonably affordable for all Americans.

H.R. 4173 will also provide American consumers with long overdue safeguards and reflects the Congress's commitment to putting the needs of the American people before those of Wall Street. I am pleased that Chairman FRANK has seen fit to include the amendment that I just spoke to in his manager's amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. I thank the gentleman from Florida (Mr. HASTINGS), my friend, for the time.

Mr. Speaker, I yield myself such time as I may consume.

''Mr. Speaker, I rise in strong opposition to this martial law rule and in opposition to the outrageous process that continues to plague this House. We have before us a martial law rule that allows the leadership to once again ignore the rules of the House and the precedents and traditions of this House. Martial law is no way to run a democracy, no matter what your ideology, no matter what your party affiliation.''

Mr. Speaker, I strongly agree with these words, but I cannot, in good faith, take credit for them, because I did not write them. My staff did not write them nor did the Republican staff of the Rules Committee. In fact, so far as I know, not one Republican had any hand in the composition of this eloquent defense of democracy in this House of Representatives, because their author is actually the gentleman from Massachusetts and a senior member of the Democrat-run Rules Committee, Mr. JIM MCGOVERN of Massachusetts.

He spoke these exact words on the floor over 2 years ago regarding what he eloquently and accurately called a ''martial law rule,'' which is what we're being asked to consider here today. We're being asked to consider this outrageous process on the House floor today, yet the Democratic Party knows it's not the right thing to do. It was not right then and it's not right now. My friends on the other side of the aisle know it's not right, and that's why they spoke up at the time, and I agree with them.

Last month, the Democrat majority barreled a 2,037-page health care bill through Congress forcing government-run health care on every single American. Today, in similar form, they are considering a 1,300-page Federal takeover of the financial services industry, 1,300 pages. This is simply another example of the government overstepping its boundary into the private market courtesy of the Democratic Party.

This monstrous financial reform package includes provisions to extend TARP, make Federal bailout authority permanent, and allow bureaucrats to determine the types of financial products that will be made available to consumers and set the salaries of private sector employees.

This bill does nothing to help create private sector jobs or to provide financial relief to Americans in these tough times, which should be Congress's number one priority. But not this majority.

Over the past 3 years, America has witnessed a reckless multitrillion dollar spending binge by this Democrat-controlled Congress with more borrowing, more taxing, and more spending. The Treasury Department has reported the total deficit for fiscal year 2009 reached a record $1.4 trillion. This is nine times the size of the deficit when the Democrats first took control of Congress.

Despite the Obama administration and congressional Democrats' promise that their trillion dollar ''stimulus'' plan would create jobs and unemployment would not rise above 8 percent, the Department of Labor once again reported an unemployment level of 10 percent. Since the Democrats took control of Congress, the number of unemployed persons has doubled to 15.4 million people, and this is only what is being reported.

It's time to stop the bailouts. It's time to get the government out of business industry takeovers, and it's time to stop killing jobs. Unfortunately, this bill we are considering today puts the American people on the hook once again for one of the greatest expansions of Federal Government in the history of United States while doing nothing to create jobs.

The first major provision of this bill was best summarized by a Democratic Congressman, BRAD SHERMAN from California, as ''TARP on steroids.'' It

creates a permanent bailout authority for the Federal Government by assessing $150 billion in new taxes on American businesses that will ultimately result in higher interest rates and higher fees for consumers.

Most disastrous, however, is that this tax, according to the minority on the Financial Services Committee will shrink available credit by as much as $55 billion and result in the loss of as many as 450,000 more American jobs in the financial services area.

Congress should be focusing on doing things to create jobs, not to tax investors, the financial services, and destroy jobs. This is the core difference between my Republican colleagues and our friends the Democrats in Congress.

Republicans believe it's time to allow business to pay back TARP funds, knock down TARP authority, and pay down the debt with returning the money to the taxpayer. Our friends the Democrats want to create a perpetual TARP-like fund, a bottomless treasure chest to continue their happy spending ways.

In an effort to thwart this trend and to protect American workers from job-killing provisions in this bill, I introduced an amendment in the Rules Committee last night which would eliminate this legislation if the Government Accounting Office finds that the provisions of this bill would kill 1 million or more jobs. If my colleagues on the other side of the aisle, my friends that are Democrats, were really serious about this, they would have made this amendment in order. Mr. Speaker, on a party-line basis, even when the facts of the case said if this bill is going to destroy a million or more jobs, every single Democrat said don't include that as a provision in this bill because politics are more important than policy in this House.

I think we can all agree that protecting consumers is an essential role for Congress. Ensuring consumer safety is absolutely necessary for a successful, prosperous economy. Yet one of the most far-reaching provisions of this bill is the creation of the Consumer Financial Protection Agency. This CFPA is a classic example of the government's overstepping its authority into the free enterprise system simply to make government bigger and to further control the free enterprise system and free market.

This massive new agency will be led by a credit czar, yet another czar, who will have unprecedented, unchecked authority to restrict product choices for consumers, impose fees on consumer products, and rule over financial transactions. The new bureaucracy would raise costs for consumers, reduce the number and type of products available to them, increase the micromanagement of financial services firms, greatly increase the confusion caused by conflicting consumer laws, and ensure the demise of American competitiveness around the world.

In addition to the CFPA, this bill provides for the greatest Federal expansion of the Federal Reserve since the central bank's creation almost a hundred years ago.

Mr. Speaker, Americans pride themselves on the free enterprise system, the free market, and choices. Yet Congress once again today will pass legislation that increases government control and interference in the financial markets, rations resources, limits consumer choice, and dictates wages and projects as well as prices involved.

□ 1430

In a time of economic recession, with record unemployment and record deficits, I think—and the Republican Party thinks—Congress should be enacting legislation to grow our economy and to help with the creation of jobs, not to destroy jobs.

Mr. Speaker, the motives are clear; our Democrat colleagues are using policy and regulation to force a government takeover of the free enterprise system once again.

I encourage my colleagues to vote ''no'' on the previous question, ''no'' on the rule, and ''no'' on the underlying legislation because Republicans K-N-O-W what our Democrat colleagues are trying to do.

I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am prepared to yield myself some time and then yield to the dean of the House. But I would like, previous to yielding to the dean, to address my colleague's immediate concerns regarding the procedure in this measure.

He decries the procedure. I served in the minority with my colleague, who is now in the minority. This is not an unusual procedure, particularly given the importance of this legislation.

I want to point out that in the 109th Congress, the Republican majority reported at least 21 rules that allowed same-day consideration. In fact, five of those rules waived this requirement against any rule reported from the committee; by contrast, this rule is only for this one specific bill and only for today.

Additionally, I would like to address my colleague's concerns regarding where we are. I've been hearing repeatedly on this floor that the Democrats have not done anything. I won't give the litany of everything that we have done, but I do want to clear up, when we are referred to as persons that are happily spending like we are drunk sailors, I want to know what we started out with.

My colleagues seem to forget that we inherited a financial mess, a system on the brink of collapse. I didn't hear the cry when Mr. Paulson came here and said that our financial system was on its knees. We reacted, both Democrat and Republican, and I might add even the TARP did better than most Democrats and Republicans expected.

We inherited the worst recession since the Great Depression, two wars that weren't paid for, a broken health care system, and a 1950s energy policy. That was the gift from the Bush administration and the Republican majority in Congress. So there has been a lot to fix this year, and we've been about that business.

So here we are digging out from the Bush economy. It's time to get this done, but it's not going to happen overnight. It's time to fund our priorities and meet the needs of the American people.

Simply, Mr. Speaker, this rule is a good basis for the bill we will consider today and deserves to be supported by every single Member in this body.

I am very pleased and privileged to yield 2 minutes to the distinguished gentleman from Michigan (Mr. DINGELL), the dean of the House of Representatives.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I begin by expressing great respect and affection to my dear friend from Texas. Unfortunately, he's wrong. Here, the Democrats came in and found that the Republicans had left them two wars, a depression, and $1.3 trillion deficit. And we found that when Mr. Bush came in, he converted a $2 trillion surplus in virtually no time to a $7 trillion deficit.

Now, I was a young boy when my dad was here and we passed Glass-Steagall. And I want to say that this legislation does not reinstitute Glass-Steagall. It does much that had to be done by the Democrats when they were dealing with the Hoover depression, which was very much like this one and was caused by the same good-hearted folks up in New York, gambling with depositors' money guaranteed by the Federal Government. And when they repealed the Glass-Steagall Act with the Graham-Leach-Bliley Act, the result was that all of a sudden we had to rush in and bail out corporations too big to fail—insurance companies and God knows what else—in order to save the American economy.

Yes, we are having to spend money, and we're having to spend money because of misgovernment, mismanagement, and because of outright rascality up in New York and conniving by a number of people to see to it that they had the powers that we took away from them to engage in that kind of rascality.

We here have a chance to begin again to protect the American people from the rascality that goes on when a bunch of sharpshooting MBAs are interested only in grubbing money and not caring about the free financial system which we have here.

The American economic system is too precious to trust unattended to New York and to the big banks and to the other wheelers and dealers up there. What we are doing today is seeing to it that that system is protected.

I urge my colleagues to support the rule and to support the legislation.

Mr. Speaker, I rise in strong support of H.R. 4173, the ''Wall Street Reform and Consumer

Protection Act of 2009." I applaud my friends, Chairman BARNEY FRANK of the Committee on Financial Services and Chairman HENRY WAXMAN of the Committee on Energy and Commerce, for their fine work on this legislation, particularly related to augmenting the powers of the Federal Trade Commission and preserving the ability of the Federal Energy Regulatory Commission to regulate utilities.

Nevertheless, I posit a decision by the Congress 10 years ago not to repeal the Glass-Steagall Act would have obviated the need for the legislation pending our consideration today. Glass-Steagall, enacted in 1933 as an appropriate response to the findings of the Pecora Commission concerning the causes of the Great Depression, successfully governed the financial services industry for over 60 years. My father wisely voted in favor of that legislation, and I fought to defend it until this body mistakenly decided to overturn it in 1999. I gave full-throated opposition to the Graham-Leach-Bliley Act, which repealed Glass-Steagall, based in no small part on my belief that it would permit the creation of financial institutions that would be too big to fail and free to gamble with depositor's money guaranteed by the Federal Government. My opposition had the merit of being correct ten years ago and, at the very least, prophetic today. Indeed, Graham-Leach-Bliley gave rise to the creation of financial juggernauts, whose underhanded actions, gone unregulated by design of that Act, have driven this great country over an economic precipice of proportions not last seen since the Great Depression, in which regulatory and statutory action of that time made those unfortunate events possible to happen.

With this in mind, it is incumbent upon the Congress to re-impose a regulatory environment upon the financial services industry that will ensure that the abuses that gave rise to the present and aptly-named ''Great Recession'' never again occur. I again insist H.R. 4173 would be strengthened immeasurably by including an amendment to re-instate the Glass-Steagall Act but, in its absence, can find some solace in the sage words of my dear friend, John Moss, who maintained the perfect good is the enemy of the good. In brief, I offer my support for H.R. 4173 and urge my colleagues to recognize and support it as a laudable effort by which to counter the deregulation of the financial services industry and the chaos that ensued from it.

Mr. SESSIONS. Mr. Speaker, I think it's very interesting that my Democrat colleagues are saying that Republicans handed them this big mess, which they couldn't wait to get, and they have made it worse. They're acting like they made it better. They have diminished the employment in this country, they have raised spending 85 percent in the last 2 years, and they are making this problem even worse. They begged for a chance to get their hands on this. They're doing it the way they wanted, and it's making matters worse for this country.

Mr. Speaker, at this time, I would like to yield 2 minutes to the gentlewoman from Topeka, Kansas (Ms. JENKINS).

Ms. JENKINS. I would like to thank the gentleman from Texas (Mr. SESSIONS) for yielding.

Mr. Speaker, it would be extremely shortsighted of us to disregard how the underlying bill will increase the debt, its impact on job creation, and how it greatly misses the mark of restoring financial stability.

When Congress passed the TARP bank bailout last year, it was intended to be a 1-year emergency program, not permanent, but this administration has continued the bailouts. Even more troubling, this legislation codifies the bailout authority used by the Treasury Department and the Federal Reserve, leaving taxpayers on the hook.

Who is looking out for the taxpayers? They didn't cause these problems. My constituents in Kansas and folks across the Nation have bailout fatigue. So at a time when folks are struggling to find work and make ends meet, this legislation restricts credit, increases the already record deficits, and kills jobs.

Creating jobs and restoring fiscal responsibility should be the priority in Washington; yet, all Kansans see coming out of Washington are expensive plans to grow government. That's the wrong direction. Instead, this body should end bailouts, protect consumers without restricting credit with smarter, leaner regulations, enact meaningful reform to prevent future collapse, and ensure that any repaid or remaining TARP funds be used to reduce the deficit.

I strongly urge my colleagues to oppose this underlying bill.

Mr. HASTINGS of Florida. Mr. Speaker, before yielding to the distinguished gentleman from California, I would like to yield to my friend from Texas and ask him a question.

It appears that my friend and I are like ships passing in the night. Both of us have been here during the period that Democrats have been in the majority, the minority, and the majority gain. When your party gained the majority, does my friend have a recollection of what the surplus was and the fact that there was a surplus?

Mr. SESSIONS. How much time is the gentleman willing to give me, 1 minute?

Mr. HASTINGS of Florida. I will yield the gentleman such time as to answer that question, and then I would like to ask the gentleman another question.

Mr. SESSIONS. I appreciate the opportunity.

The gentleman knows that the surplus was literally trillions of dollars, and that is always a guesstimate in the future of where we exist. The gentleman knows that on 9/11 of 2001 there was a surplus in this country. On 9/11 of 2001, this country was struck by a group of terrorists who intended to harm our financial economy.

Mr. HASTINGS of Florida. Absolutely. Reclaiming my time.

Mr. SESSIONS. Well, this is what I was talking about. The gentleman said he would give me enough——

Mr. HASTINGS of Florida. Reclaiming my time, I have yet another question.

When you lost the majority, what was the deficit? And I understand 9/11. I understand all of the things that took place. I also understand that had we never been in the Iraq war in the first place we wouldn't be here in this situation.

So tell me, if you can, my friend, what the deficit was when you lost the majority, and what in fact did President Obama inherit when we gained the majority again?

Mr. SESSIONS. I will answer the gentleman if he will allow me a full answer.

Mr. HASTINGS of Florida. Well, I will do it rhetorically and allow that you answer on your own time.

The simple fact of the matter is when this administration took office, they had a $1.2 trillion deficit. And to continue along the lines of saying that nothing was done, I want you to know that you don't just create a situation that gives rise to eliminating that with a magic wand. The American public understands this dynamic and will be patient as we go forward to try and remedy this matter.

The gentleman spoke earlier to my colleague, Mr. SHERMAN. But before turning to him I want to look at some of the numbers. Job growth under the current administration is reversing a long downward spiral that started under the last President. The stimulus plan is working as planned. We are making sound investments in helping Americans find good jobs and getting this economy moving again.

The unemployment rate dropped last month. And the efforts of this Congress are helping people afford a home. And we need to do a lot more to un-seize the frozen dollars in these banks that are not helping small businesses, and that is what some of this financial regulatory reform is referencing.

Even the TARP program is working better than expected, and confidence has been restored to Wall Street, evidenced by the market and everybody's 401(k)s, and more than $200 billion is going to be returned to the government.

I am very pleased at this time to yield 2 minutes to the distinguished gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. The gentleman from Texas seems quite aware of the statement I made about the first draft of this bill that was submitted by the Treasury Department. I referred to that draft as ''TARP on steroids.'' Unfortunately, the gentleman from Texas seems blissfully unaware of all the changes that were made to the bill in many days of markup.

On balance, today, this bill before this House reduces executive power to bail out Wall Street. Yes, the bill does include some additional authority to the executive branch under sections 1109 and 1604. But pursuant to amendments that I offered, these additional powers are limited in amount and are sunsetted in the year 2013. So additional power is limited and sunsetted.

What this bill does, however, is it deals with the existing enormous bailout powers that exist under present statute. It suspends 12 U.S.C. 1823, of present statute, which allows, or has been interpreted to allow, the FDIC to make unlimited loan guarantees of more than $300 billion. This bill reins in section 13–3 of the Federal Reserve Act, which allows the Fed to make loans of any amount to anybody they want to under virtually any circumstances. They have already used this to the tune of $3 trillion.

□ 1445

A vote against this bill is a vote for unchecked power in the Fed. It is a vote not only to preserve the provision that allows them to loan $3 trillion, but that same provision would allow them to loan $30 trillion. Only by voting for this bill can we rein in the Fed and their powers under section 13–3. Only by voting for this bill can we audit the Fed pursuant to the amendment drafted by Congressmen PAUL and GRAYSON.

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

Mr. HASTINGS of Florida. I yield the gentleman an additional 30 seconds.

Mr. SHERMAN. Voting against this bill is voting against the unchecked power of the Federal Reserve.

Mr. SESSIONS. Mr. Speaker, by the way, the gentleman will be able to vote for Mr. BACHUS' amendment, which says exactly the right thing to address this issue.

The SPEAKER pro tempore. The Chair will note that the gentleman from Texas has 17 minutes remaining, and the gentleman from Florida has 15 minutes remaining.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Chester Springs, Pennsylvania (Mr. GERLACH).

Mr. GERLACH. Mr. Speaker, I rise today in opposition to the Democrats' same-day rule on the underlying bill, H.R. 4173.

There is no doubt that the American people are hurting. Our Nation's unemployment rate is at 10 percent and, in some States, even higher. Our citizens are struggling to make ends meet.

The Democrats' permanent bailout bill, however, will not put Americans back to work. In fact, it will actually cost more Americans their jobs. This bill will make it harder for our families and for our small businesses to get credit in our local communities that they absolutely need to create more jobs. It is certainly going to expand the Federal Government even beyond its current size, and it will empower Washington bureaucrats through the creation of yet another Federal agency, the Consumer Financial Protection Agency.

This is despite the fact that there has already been a multitude of efforts this year to expand Federal power into the auto industry, the housing industry, the energy industry, the health care industry, and now the financial services industry. The effort of seeking more and more power by the Federal Government over more and more aspects of our daily lives is simply breathtaking.

Mr. Speaker, this is the wrong approach to take, and the American people deserve better. Republicans have a better plan to end taxpayer-funded bailouts. I urge my colleagues to oppose this rule and to support our substitute amendment.

Mr. HASTINGS of Florida. Mr. Speaker, I inquire from the gentleman from Texas if he has any remaining speakers.

Mr. SESSIONS. I appreciate the gentleman for asking. In fact, I do have two further speakers who are expected. Neither are here at this time, but I intend to consume that time.

Mr. HASTINGS of Florida. I am the last speaker for this side, so I am going to reserve my time until the gentleman has closed for his side and has yielded back his time.

Mr. SESSIONS. I appreciate the gentleman for providing such information, and I yield myself such time as I may consume.

On Monday, my colleagues and I sent a more recent letter to Treasury Secretary Geithner, which was a followup to a letter that had been sent by many, many Republican Members of Congress to adhere to the December 31 TARP expiration date and to dedicate all returning funds to reducing the public debt. We had sent Secretary Geithner a letter on December 7, 2009, which spoke about how the original concept of TARP—the Troubled Asset Relief Program, that which we know as TARP—should be implemented and used.

CONGRESS OF THE UNITED STATES,
Washington, DC, December 7, 2009.

Hon. TIMOTHY GEITHNER,
Secretary of the Treasury,
Washington, DC.

DEAR SECRETARY GEITHNER: As the December 31, 2009 deadline for the end of the Troubled Asset Relief Program (TARP) approaches, we urge you to adhere to this expiration date and decline to use your authority to extend TARP into 2010. As additional preferred shares are repurchased and dividends and interest are collected, we also urge you to dedicate all returned funds and other revenue to reducing the national debt.

During a recent Congressional hearing you stated that you were working to ''put the TARP out of its misery.'' We support your intention and believe putting the program ''out of its misery'' entails nothing less than ending the disbursement of any remaining TARP funds on December 31, 2009.

The purpose of TARP was to provide immediate support and emergency stabilization to the financial system. Regardless of whether we voted for or against TARP, we believe the financial system is now significantly stabilized compared with the situation from a year ago. While there will continue to be ups and downs as the economy recovers, the federal government does not need a dedicated support fund for the financial system. In order for the government to exit from the unprecedented interventions of the past year and a half, the government must first stop spending funds on more interventions.

When TARP was enacted, the public debt limit was increased to $11.3 trillion. Since January, the national debt has increased more than $1.4 trillion, and Congress is now set to consider a debt limit increase of up to $13.2 trillion, the fourth debt limit increase since July 2008. Not spending the remaining TARP funds, $246 billion according to the last SIGTARP quarterly report, will reduce the already staggering amount our nation is borrowing.

SIGTARP also reported repayments of $72.9 billion, $9.5 billion from dividends and interest and $2.9 billion in proceeds from sale of warrants, and we understand $45 billion more in repayment is pending. All of these TARP receipts and future receipts must be devoted to debt reduction rather than spent on further government interventions or other programs. While estimates vary on the final cost to the taxpayers from TARP, all estimates are that the taxpayers will lose billions of dollars and that there will be no profit from TARP. Ensuring every dime of income goes to debt reduction reduces the taxpayers' ultimate loss.

The first TARP program, the Capital Purchase Program, offered taxpayers the greatest opportunity to recover their investment. Additional programs added to TARP, such as assistance to the automakers and AIG, carry much less assurance for the taxpayers, and the mortgage modification program will result in no recoupment for the taxpayers. The longer the remaining unspent TARP funds and revenue remain on the table, the more money that will be spent and not recovered. The emergency has ended, and TARP must end as well.

The taxpayers understand the difference between ending TARP on December 31 and setting aside a portion of unspent funds as some type of reserve. They know the difference between devoting all repaid funds, dividends and other income to debt reduction and using just some of these funds for debt reduction and spending the rest. In the interest of our nation's fiscal health and the certainty for the financial system that comes with knowing the government is done with this intervention, we urge your consideration of our request and await your response.

Sincerely,

Randy Neugebauer, John Boehner, Eric Cantor, Spencer Bachus, Mike Pence, Adam Putnam, J. Gresham Barrett, John P. Carter, Tom Price, Kenny Marchant, Pete Sessions, Wally Herger, Ron Paul, Joe Wilson.

The bottom line is that the money which was debated on this floor, passed on this floor, passed by the United States Senate, and signed by the former President had a very clear understanding about the money that would be spent and about the money that would be returned. I believe that Secretary Geithner should respond to this letter to let this body know and to let these signers of this letter know how he intends to approach this TARP money that is being returned.

There was a report earlier in the week that virtually 90 percent of this money had been repaid. Yet what we see in this bill is some $200 billion more in a permanent fund which would be established. You and I both recognize that $200 billion more going in behalf of and spent would simply extend our deficit. Our deficit in 2007 was $161 billion. The deficit in 2009 is $1.4 trillion. This is a nine-times growth since our friends, the Democrats, have taken control of Congress.

Mr. Speaker, this country was not attacked like we were on 9/11. We have

not had another Katrina. We have not had the things which have been natural disasters, which were dealt with by the Republicans in the majority. This is pure and simple spending that has taken place and that has been raised 85 percent in the last 2 years. To say that someone has laid that at the doorstep and has raised the deficit spending from $161 billion in 2007 to $1.4 trillion in 2009, and yet has blamed that on anyone else other than the people who voted for it, which is the Democrat majority, would be a misnomer. That is mismanagement.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Fullerton, California, Congressman ROYCE.

Mr. ROYCE. Mr. Speaker, I rise in opposition to the rule and to this legislation because, for the first time in history, Washington will be at the center of our financial system. This is not the way our Founders intended this system to work. They didn't intend for the decisions and the political pull to come out of Washington. For the first time in history, we will institutionalize the ''too big to fail'' doctrine that has plagued our economy for too long. For the first time in history, Congress is authorizing perpetual bailout authority by those in Washington.

I have opposed these bailouts, and I have opposed the bailouts put forward over the last 14 months because of the concern I had with the precedent that would be set by using tax dollars to bail out failed institutions. Now we are going to do it far into the future. Unfortunately, it appears that that precedent that was set last fall could become official U.S. policy should this legislation become law.

Our Democratic colleagues have controlled the Congress for the last 3 years. I think, while some will try to portray this resolution fund as something other than taxpayers paying for the mistakes of failed financial firms, I would direct my colleagues to the very language in this bill, to page 406, line 22, Borrowing from Treasury: ''The Corporation may borrow from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required.''

This is saying the resolution fund in every institution that falls under its purview has the support of—who?—the U.S. taxpayer, and that you are going to be on the hook for these loans.

My colleague from California (Mr. SHERMAN) referred to this authority as ''TARP on steroids.'' Well, considering that the bill fails to even put a cap on potential taxpayer exposure, I think Mr. SHERMAN is spot on. It is, indeed, TARP on steroids. While some have compared this model to the FDIC insurance fund, folks, that's like comparing apples to oranges. The FDIC fund is backed by the full faith and credit of the Federal Government to protect insured deposits inside the fund. That's what the FDIC fund does.

While there is a level of moral hazard that comes with this support, insured deposits are only a small portion of our financial system. Here it extends far beyond that. This bill gives that type of government support to the vast majority of our capital markets. It is a fundamentally flawed approach. It is what economists call ''moral hazard'' for a reason. It is a hazard. We need to scale back that government safety net under our financial system, not expand it to every possible institution, and we need to signal to markets that the Federal Government is out of the business of bailing out failed firms. That is the only way to officially put an end to the ''too big to fail'' problem. This legislation fails to take that critical step.

I urge my colleagues to oppose this rule and to oppose the underlying legislation for a second reason as well, which is my concern with the Consumer Protection Agency, also known as the ''credit czar.'' It weakens our regulatory model.

Every one of our banking regulators has come in to testify before the Financial Services Committee on this issue of separating ''safety and soundness'' regulation from consumer protection regulation. Many have raised the comparison between this model and the regulatory model over Fannie Mae and Freddie Mac. With Fannie Mae and Freddie Mac, which failed and lost $1 trillion, you had the regulator focused on safety and soundness who was saying one thing, but you had HUD enforcing the affordable housing goals that Congress had given HUD. Those housing goals were to have one half of the portfolio in subprime lending, in Alt-A loans, and in zero downpayment loans. This was what Congress was muscling through HUD.

These things made the regulators very, very nervous. We had the Federal Reserve regulators come up and tell us that what is happening here is a systemic risk to the entire financial system. Now the over-leveraging through this arbitrage is over 100 to 1. You had to allow the regulators to deleverage this, but Congress would not.

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

Mr. SESSIONS. I yield the gentleman an additional 4 minutes.

Mr. ROYCE. So, to meet these affordable housing mandates, Fannie and Freddie strayed into the junk mortgage market. They piled up over $1 trillion worth of subprime and Alt-A loans. The affordable housing goals were at odds with the long-term viability of these firms, and they led to 85 percent of their losses.

As this past example has shown us, separating these two responsibilities can lead to unintended consequences—like systemic financial failure down the road. If the ultimate objective of our regulatory reform effort is to ensure a more resilient and stable financial system, creating another agency with broad, unchecked authority is not the right approach.

I brought an amendment to the Rules Committee which would have solved this problem by ensuring that safety and soundness regulators have a say on the rule-writing process at the CFPA. Guess what? It's unfortunate. My amendment was not made in order. It won't even be heard on this floor.

I urge my colleagues to listen to those regulators, every one of whom urges us to adopt that type of approach—the approach that was in my amendment which was not allowed to go forward on this floor today.

The safety and soundness of our financial institutions is critical. Instead, we have undercut that, and we are walking down that same path that Congress took, against the advice of the regulators, with respect to Fannie Mae and Freddie Mac. The result of that, as you all know, was the collapse of our housing market as a consequence of the collapse of those institutions.

Mr. HASTINGS of Florida. Mr. Speaker, I continue to reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I appreciate the gentleman from California, a senior member of the Financial Services Committee, coming down to provide us an update on the reality of this bill.

□ 1500

Mr. Speaker, we have been here arguing about deficits and who is responsible for what, and who is guilty of acting like a drunk sailor and who is spending money. The bottom line is that it is true, George Bush and Republicans during 8 years had some deficits. The largest was in 2008, some $415 billion. The first year of the Democrats' spending spree, over a $1.4 trillion deficit. Republicans seem to create jobs. Some 5.3 million jobs were created within this deficit that occurred.

Our friends, the Democrats, massive unemployment, massive spending, massive deficits. Those are the facts of the case. This shows where we are headed, the American people know it, and that's why there is an outcry all across this country to stop what is happening, even today, with a bill that will lose 400,000 more jobs.

Look, I get it. I know that the Speaker's political agenda, the three biggest items, health care, cap-and-trade and card check will not lose 10 million more American jobs. I get that, but so do the American people. The Republican Party is saying, let's not lose 400,000 more jobs with the passage of this massive takeover of the financial services industry. We don't have the votes to stop it, but there are a lot of skid marks in the concrete today to say we shouldn't be doing this. We don't have the votes to stop it, but we are saying let's be careful because we know, k-n-o-w, where you are headed.

Mr. Speaker, in closing, I think while it's important to provide consumer

safety and security in the marketplace, our constituents are more concerned with the economy and the jobs. They see this as a massive government takeover, and the industry knows exactly what it is also.

My friends on the other side of the aisle are simply looking for more problems so they can put their government takeover solutions in place. Week after week, we come to the House floor to debate bills, bills that kill our economy, diminish jobs and put us further into debt, whether it's cap-and-trade or health care. Now today the government takeover of the financial sector with the Barney Frank bill, we are talking about hundreds of thousands and soon to be millions of jobs at a time of record unemployment.

We ask the Democrat majority to please just put a caveat in here that if this bill were going to lose more than 1 million jobs, let's not do it. The Democrats on a party-line basis have said, Look, pal, our agenda is more important than any facts of the case about losing jobs.

The Republican Party is on the floor here today asking that we defeat this rule, defeat this bill, defeat the things which are going on which will encourage more borrowing, more taxing, more spending, record deficits, record unemployment, and, of course, making sure that the government wins every tie. We disagree with the Democrat majority. We disagree with the politics, the policies, and we disagree with the results.

The Republican Party will be voting ''no'' today, Mr. Speaker.

I yield back the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I appreciate very much the opportunity to speak on this measure, and I yield myself the balance of my time.

Would you tell me how much time I have, Mr. Speaker?

The SPEAKER pro tempore. The gentleman has 15 minutes remaining.

Mr. HASTINGS of Florida. I shall not use all of that time, Mr. Speaker, but I am very much tempted, because my good friend—and he is my good friend—seems to fail to understand some of the things that we do and have done.

One of the things that I think would help some context and perspective is the subject of jobs, which should be and I believe is the concern of the 435 voting Members of the U.S. House of Representatives and the six Delegates and Representatives from the Territories.

Let's not continue down the path of myth. When my mom was alive, she, like many of our mothers, became interested more in what we do in Congress by looking at it on television. At some point, I don't remember the day when I came home and she said, Y'all always talk about what happened before. She said, you know, Ford said Nixon did it, and Carter said Ford did it, and Reagan said Carter did it, and then Bush said Reagan did it. She said if you do that, then George Washington must have done it if you just keep going back all the time.

So let's start with some real numbers, not something that is created, and get one thing straight: When we talk about spending, whether it's Republicans or Democrats that spend on behalf of the American people, we rarely do anything other than talk about cost. We don't talk about benefits.

Toward that end, I would only use two, and I have a considerable list of areas that I could address that the Democrats have spent money on. I would ask any of our colleagues, do they feel that we should not have spent $31 billion in science, technology, innovation, math education, cutting-edge research and advanced manufacturing technologies and workforce training? That was passed by the House of Representatives.

I would ask my friend, is there anything about national security troops and veterans that they would not have spent? The fiscal year supplemental for the rest of 2009 provides our troops with everything they need to wind down the war that we shouldn't have been in in the first place, Iraq, and change the strategy in Afghanistan, requiring a progress report and making retroactive payment to 185,000 plus servicemembers whose enlistments were involuntarily extended since 9/11. That was signed into law. Would they not have spent that money?

Would they not have spent the money expanding the new GI Bill benefits to cover the full cost of college education for all children of fallen United States servicemembers? That was signed into law.

Would they not have spent the money on the 3.4 percent raise for our troops, strengthening military readiness, expanding support for military families such as health care and housing, focusing on our strategy in Afghanistan and Pakistan and redeployment from Iraq and military procurement reform? That was signed into law.

Would they not have spent the money on one of our top priorities of veterans groups, authorizing Congress to approve VA medical care appropriations 1 year in advance to ensure reliable and timely funding and prevent politics from ever delaying VA health care funding? That was signed into law.

Would they not have spent the money on strengthening quality health care for more than 5 million veterans by investing 15 percent more than 2009 for medical care, benefits claims processors and facility improvements? That was passed by the House.

I could go on the entire 15 minutes on that, but let me go to where I digressed from. Richard Nixon created during his administration and received credit for—and that's what these Presidents do—the creation of 9.4 million jobs. Under President Ford, under strenuous circumstances, his administration was credited with creating 1.8 million jobs.

Under President Reagan coming in with a near identical in many respects, absent 9/11. And a footnote right there. When my colleague mentioned Katrina, I am sure he knows that we haven't finished what's needed to be done with reference to the people on the gulf coast and specifically in the City of New Orleans. But to President Reagan's credit and during his administration and whatever tax decreases or however else it was achieved, I can assure you of the exact number of 16 million jobs. Under President George H.W. Bush, 2.5 million jobs. Under Bill Clinton, 23.1 million jobs. Under President Bush, and my friend from Texas' majority Congress, that at one point had the House, the Senate and the Presidency, under his administration, taking into consideration everything that he has talked about, 3 million jobs, the worst track record on record.

Now, what's needed here, Mr. Speaker, is some fair and straightforward accounting and not the off-budget stuff that I have heard here during the period of time that I am here and that I heard from my colleague.

What this bill will do and what this rule permits us to discuss is not off-budget kind of accounting. Is it sort of like the same kind of off-budget accounting that Wall Street does that my friends on the other side seem to think that we should do? No, fair and straightforward accounting.

My good friend from California that I served with on the Africa Subcommittee, when he was in the majority, we traveled together, an outstanding person and Congressperson. But when he came in here, he described that accountants say this is a moral hazard. I will tell you what a moral hazard is. A moral hazard is putting wars off-budget and not being prepared to pay for them and not asking the American people to make the necessary sacrifices in order that all of us, rich and poor, black and white, conservative and liberal, will pay our fair share to protect this great country of ours. Enough of all of this doom talking and finger-pointing. What is needed is a great consensus for all of us to be able to go forward to straighten out our Nation, and we can do this. I believe that we will.

One of the primary culprits of this current recession was a regulatory system that looked out for the wealth of Wall Street firms rather than the security of average American consumers. This legislation, however, recognizes that the strength of our financial system is not measured simply by the value of the Dow Jones, it's measured by the prosperity of the American people.

One of my friends, Phil Hare, who is here, says, it ain't the GDP, it's the j-o-b. I believe, Mr. SESSIONS k-n-o-w-s what I am talking about. Our constituents deserve to know that they are not going to be taken advantage of by the institutions to which they have entrusted their financial security. They deserve to know that our financial regulations will stop those institutions who engage in irresponsible practices

without placing an unnecessary burden on those who are acting in the best interests of their consumers.

They deserve to know that this Congress, Republican and Democrat, should not, and I believe the Democrats will not stand idly by, allowing monstrous financial institutions to put our entire economy at risk, rake in billions and shell out egregious bonuses while everyday Americans lose their life savings and struggle from paycheck to paycheck.

As to the Wall Street Reform and Consumer Protection Act, we should give BARNEY FRANK and the Financial Services Committee, Republican and Democrat, every credit for extraordinary work in these extremely difficult times for our country. This act makes reasonable and responsible changes to our financial regulatory system and enacts long-needed consumer protections. After months of debate, countless hearings and votes on this very floor, this rule will finally allow for its complete and timely consideration.

Mr. Speaker, I urge a ''yes'' vote on the previous question and on the rule.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

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

Mr. SESSIONS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 239, nays 183, not voting 12, as follows:

[Roll No. 951]

YEAS—239

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

NAYS—183

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McKeon
McMorris Rodgers
Miller (FL)
Miller (MI)
Miller, Gary
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—12

Baldwin
Barrett (SC)
Buyer
Deal (GA)
Hastings (FL)
Hoyer
McHenry
Mica
Moran (VA)
Murtha
Radanovich
Shea-Porter

□ 1540

Mr. BILBRAY changed his vote from ''yea'' to ''nay.''

Mr. RUSH changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 4173, WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Mr. PERLMUTTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 962 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 964

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes. No further general debate shall be in order.

SEC. 2.(a) The bill, as amended, shall be considered for amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived.

(b) Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except the amendments printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in section 3 of this resolution.

(c) Each amendment printed in the report of the Committee on Rules shall be considered only in the order printed in the report (except as specified in section 4 of this resolution), may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

(d) All points of order against amendments printed in the report of the Committee on Rules or amendments en bloc described in section 3 of this resolution are waived except those arising under clause 9 or 10 of rule XXI.

SEC. 3. It shall be in order at any time for the chair of the Committee on Financial Services or his designee to offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules accompanying this resolution not earlier disposed

of Amendments en bloc offered pursuant to this section shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

SEC. 4. The Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report of the Committee on Rules accompanying this resolution out of the order printed, but not sooner than 30 minutes after the chair of the Committee on Financial Services or his designee announces from the floor a request to that effect.

SEC. 5. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. In the case of sundry amendments reported from the Committee, the question of their adoption shall be put to the House en gros and without division of the question. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 6. The Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee. The Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII).

SEC. 7. During consideration of H.R. 4173, the Chair may reduce to two minutes the minimum time for electronic voting under clause 6 of rule XVIII and clauses 8 and 9 of rule XX.

SEC. 8. In the engrossment of H.R. 4173, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

□ 1545

The SPEAKER pro tempore. The gentleman from Colorado is recognized for 1 hour.

Mr. PERLMUTTER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. SESSIONS).

GENERAL LEAVE

Mr. PERLMUTTER. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 964.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

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

Mr. Speaker, House Resolution 964 provides for consideration of amendments to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. The rules provide for consideration of 36 amendments and authorizes the chairman of the Financial Services Committee to move amendments en bloc. In the case of amendments reported from the committee, the question of their adoption in the House shall be put en gros and without division of the question. The rule provides one motion to recommit with or without instructions and allows the Chair to reduce to 2 minutes the minimum time for electronic voting and also authorizes the Clerk to make technical and conforming changes to amendatory instructions.

Mr. Speaker, as we have seen over the past year, our financial system is broken, and we can no longer afford to maintain the status quo. We face a recession. I call it a Republican recession based on the Wild West practices of Wall Street and the Republican Congress and the Bush administration.

As a result of this Republican recession, we are talking about people losing their investments and retirement savings last year when the stock market reacted to the heart attack our banking system suffered and the countless jobs that were lost throughout the recession. This bill makes critical reforms to our financial system to address this Wild West era of lax regulation that the Bush administration encouraged.

When Wall Street operates like the Wild West, Main Street suffers, and that is precisely what we've seen for the last few years. The Wall Street Reform and Consumer Protection Act preserves our economic system, restores confidence and takes reasonable steps to prevent future meltdowns. It establishes a robust regulatory oversight regime creating transparency in areas previously hidden from the public.

In this bill, we address consumer protection, investor protection, regulation of hedge funds, credit rating agencies, insurance, derivatives, executive pay, mortgage reform, and we eliminate ''too big to fail.'' Loopholes are closed, consolidated regulation is improved, and transparency is increased so there is no place to hide.

But, Mr. Speaker, yesterday we heard repeatedly from the other side that this bill puts the taxpayers on the hook in addressing ''too big to fail.'' Well, taxpayers were put on the hook by the lax regulation of the Bush administration which cost this country and each and every citizen trillions and trillions of dollars and millions of jobs, 4 million jobs during the last year of the Bush administration.

In this bill, with those institutions that are so big that they would create a domino effect such as we saw last year, we liquidate or close those firms at no expense to the taxpayer. And I put in precisely a provision that any moneys get paid to the taxpayer first.

Unlike our colleagues on the other side of the aisle, we do not want these firms to reorganize. We want to put them out of their existence, for no one is too big to fail. There is no guarantee for these institutions, and precisely what we do is provide preventive measures before this comes about, divestiture, increasing capital, a whole variety of preventive measures before bringing about a liquidation. But, ultimately, if an institution that affects the financial system grows so large or is so complex, ultimately, it is the liquidation.

This bill is about more than just reforming our financial system, though. It is about people's lives and the jobs lost and restoring confidence to a broken system. None of us wants to ever face anything like we did last year, and this bill will help ensure that the Wild West mentality and lax regulation promoted by the Republican Party, which led to huge frauds and robberies, like those committed by Bernard Madoff, Petters, and Stanford and their various Ponzi schemes, doesn't happen again. It is not a coincidence that those kinds of frauds on a scale unlike anything we had ever seen before occurred under the Bush administration.

We are reforming our regulatory system so it is able to fix problems before they become a threat to our economic system. The changes this bill makes are essential to rebuilding Main Street and getting credit flowing to small businesses, creating jobs, and rebuilding our economy.

I urge my colleagues to vote in favor of the rule and the underlying bill.

With that, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I appreciate the gentleman from Colorado yielding me the time, and I will use such time as I may consume.

Mr. Speaker, I do admit, I know the gentleman was not here back in 2003, but on September 11, 2003, President Bush formally asked the Congress for legislation to regulate Freddie and Fannie, seeing a problem that was ahead. The ranking member of the Financial Services Committee, the gentleman, Mr. FRANK, had a quick response that said there is no problem. There is no problem. That's the last thing we should be doing. Their books are clean. They knew that everything was okay. In 2005, just the next session, legislation did pass and was filibustered in the Senate by Democrats, filibustered by Democrats.

To say that the Wild West exists would be a misnomer in financial services terms. There were people who broke the law. There have always been people who break the law. But the people who broke the law knew that they were breaking the law and did so at the expense of other people's money.

But if you want to talk about recession, let's talk about the recession that we are in right now after 3 years of Democratic control in this House of Representatives. Let's talk about 85 percent increase in spending that this body is going to take up a bill today to spend 85 percent more in the last 2 years by this Democrat-controlled Congress. So, I think that we should be very careful about trying to describe a problem when, in fact, someone else is adding to it and making it worse.

Today we are going to consider a 1,300-page bill which will be a Federal takeover of the financial services industry. That is a heck of an answer. An hour ago, I discussed the flaws of the underlying bill, and now you will hear about a number of amendments that

were shut out by our friends, the Democrats. They shut out Democrats. They shut out Republicans. They shut out bipartisan amendments. And here we have on the floor today this massive bill.

I offered a cautionary amendment that would make this bill ineffective if the Government Accountability Office were to find that this bill would kill more than 1 million free enterprise jobs. I stood before the Rules Committee and said that if this bill kills more than 1 million jobs, let's not do it. Forget it. On a party-line vote, my friends in the Rules Committee, the Democrats, voted ''no.'' That's because we are more concerned about politics than we are about the American people, jobs, and the economy.

Also, I offered two commonsense amendments that simply clarify that this bill would not create a bottomless fund for frivolous lawsuits by trial lawyers. The first amendment deals with giving shareholders a nonbinding vote on executive compensation packages. My amendment clarifies that this new vote creates no new private right of action. Without this amendment, trial lawyers will be able to exploit a brand new opportunity to shake down companies for huge payouts. This is a commonsense amendment, and it was rejected by the Rules Committee on a party-line vote. Once again, the Democrats said no, no.

The second amendment I introduced was to protect businesses from frivolous lawsuits and simply clarifies that none of the new registration requirements for investment advisers of private funds shall be construed as creating a private right of action. This is a noncontroversial measure, or it should be, seeking to protect investors from frivolous lawsuits, and this, too, was rejected.

Mr. Speaker, it is my belief that my colleagues on the other side of the aisle care more about creating a trial lawyer bonanza than protecting businesses, consumers, our financial systems and certainly the free enterprise system.

In an effort to clarify the intent of the executive compensation provisions, I introduced an amendment that would have provided sunshine and transparency for shareholders by requiring full SEC disclosure about who is financing that purchase to influence votes on this new, congressionally mandated, nonbinding shareholder resolution. Put simply, this amendment would provide shareholders with access to information about who is trying to influence a vote. Of course not. We would never want to do that. Trial lawyers would hate that. So the Democrat Party up in the Rules Committee, they got it. They complied. No.

As Federal candidates, we are obligated to disclose to the Federal Election Commission the name, occupation, and amount given by our donors. We require this because public interest is advanced by letting voters know who funds each candidate's campaign. This is important. My amendment asks for the same disclosure so that shareholders know who is trying to influence a vote, what people, what organizations, what groups, what consumer advocates, the amount of money, and who is influencing this. Surprisingly, this amendment was also voted down. So much for transparency and the light of day.

The goal of regulatory reform should be to help, not hinder, our economy and to sustain economic growth and job creation. This legislation does the opposite. It takes a one-size-fits-all approach to governing, undermining U.S. economic competitiveness and business growth. That's why so many business groups oppose this. This Democratic solution will only increase government intervention in the financial markets, ration resources, limit consumer choice, raise taxes, dictate wages, and kill jobs.

Mr. Speaker, the motives are clear. My Democrat colleagues are using policy and regulation to force a government takeover of the free enterprise system while paving the road for trial lawyers and killing American jobs. I guess this is nothing new. We should get used to this.

I encourage my colleagues to vote against this rule and the underlying legislation.

I reserve the balance of my time.

Mr. PERLMUTTER. I would like to yield 2 minutes to the gentleman from Texas (Mr. DOGGETT).

□ 1600

Mr. DOGGETT. Mr. Speaker, a year ago as home foreclosures shot up and retirement accounts fell to new lows, after years of permissiveness toward corporate misconduct, the Bush administration responded by handing Wall Street the biggest subprime loan in American history using American taxpayer money. I opposed that Bush bailout because it did not provide adequate protection for our taxpayers. I wanted those who caused the crisis to be responsible for a little more of the cleanup. Instead, Wall Street banks took taxpayer money and they continued their scams with teaser rates and hiding rate increases in the fine print.

Well, now today through this legislation, we respond with extensive reforms. Maybe not all the reforms that I personally would prefer, but reforms that can really empower the cops on the beat. One of the most important of these is the Consumer Finance Protection Agency envisioned by Professor Elizabeth Warren, who Democrats appointed to head the oversight committee over all of these bailout funds. Professor Warren is independent. She is a visionary and an expert in this area. Working with our colleagues Representatives MILLER, DELAHUNT, FRANK, and others of us, we have provided cops on the beat to address abusive lending practices that helped cause this crisis to see that they do not plague consumers once again.

There's a line in an old Hank Williams, Jr. song, ''The cops are against the robbers but the laws are against the cops.'' We need this law to create a new squad of financial cops whose sole job is to protect taxpayers from others' greed. It is working families that we cannot let fail, and it is time we enacted the meaningful protections for American consumers that are embodied in this legislation.

Mr. SESSIONS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from San Dimas, California (Mr. DREIER), the ranking member of the Rules Committee.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I rise in strong opposition to this rule.

It's been fascinating to listen to the debate here, and a lot of hyperbole has come forward. We have heard terms like the ''Republican recession,'' and ''Wild West mentality.'' And the fascinating thing that I have just been talking to a couple of my staff members about is much of the legislation which is being criticized so harshly was signed into law by not George W. Bush but the President before George W. Bush, President Bill Clinton. So I think that we should recognize that there has been a lot of bipartisanship in creating what we all admit have been excesses.

Unfortunately, Mr. Speaker, we found that the regulators were asleep at the switch. The name Bernie Madoff was thrown out earlier. The fact of the matter is we know that the regulators were asleep at the switch when it came to dealing with that. We can look at a wide range of other areas where inadequate oversight took place. The question that we have before us right now is do we want to create what many of us are concerned about, and that is unintended consequences?

One of the things that we have found over the past year plus has been a tremendous contraction in credit. Individuals who want to utilize their credit cards or start a business, buy a home, have been having real difficulty gaining access to credit. We've seen this contraction take place.

My concern, as we look at this legislation, is that we're going to take this contraction of credit and make it permanent. We will basically be making it permanent. Why? Because we are going to codify a regulatory structure which is going to undermine the ability of the American people to have access to the best quality product at the lowest possible price.

A lot of things have been said and done over the past year which I think lead us to be overreacting. This massive expansion of government. We can start with the stimulus bill, cap-and-trade, this 2,500-page bill that we just reported out with all these appropriation bills that had an 85 percent increase in nondefense discretionary spending. This is not a way to encourage and lay the groundwork for us to

get our economy moving again. So I am very concerned about that.

I want to talk about one particular amendment, Mr. Speaker, that I offered in the Rules Committee, and that amendment dealt with a huge inequity that unfortunately took place when the economic downturn began. We unfortunately have seen a lot of financial institutions go under. One of them that went under very early on was a California institution known as IndyMac Bank. At that time, which was July of last year, we found that we had the $100,000 guarantee and that was it. Shortly thereafter, as more institutions went down, we increased that level to $250,000.

My colleague Ms. HARMAN introduced an amendment which I offered in the Rules Committee earlier today which would simply have allowed us to have a chance to debate that. There are just under 9,000 depositors and a total of $233 million that would be making these individuals whole who have been depositors because the depositors in other financial institutions, Mr. Speaker, were able to have the $250,000 guarantee provided, and yet these depositors at IndyMac, victimized in the same way that these other depositors were with the failure of institutions, were unfortunately prevented from being able to do that. We simply wanted the House to debate that amendment so that we'd have the chance to make these hardworking men and women from not only California but across the country who happened to be depositors at this institution to be able to receive what every other depositor who dealt with a failed institution following its failure was able to face.

I offered Ms. HARMAN's amendment, I was happy to join with her in doing that, and on a party-line vote, we as Republicans said that this amendment should be made in order; the Democrats chose to vote en masse against allowing a debate to take place for these hardworking individuals who had deposits that were in excess of $100,000.

So, Mr. Speaker, in light of that and the unintended consequences which I right now am foreseeing, I hope very much that we can defeat this rule. Defeating the rule, because so many amendments that should have been made in order were not made in order, will allow us to come back and put into place a very, very decent work product that can end this contraction of credit and get our economy back on track.

Mr. PERLMUTTER. Madam Speaker, first to respond to my good friend from California, he talked about getting the best quality product at the best price. Part of the problem that we had, Madam Speaker, is the fact that you didn't know if you had the best quality product because the way things were done under the Bush administration and the lax regulation that occurred, you didn't know whether there was money in the Bernie Madoff account. The whole approach here is to make sure that these things are scrutinized and that people know what it is that they're getting into when they invest or when they buy a product.

Mr. DREIER. Will the gentleman yield?

Mr. PERLMUTTER. I yield to my good friend.

Mr. DREIER. I just want to say that the issue of transparency and disclosure is what we are focusing on with the alternative that we put forward. This bill does not do that at all.

I thank my friend for yielding.

Mr. PERLMUTTER. Reclaiming my time, I would say that my friend is mistaken because the bill proposed by my friends on the Republican side does nothing but protect Wall Street, not make it transparent and to avoid hidden bombs that might go off from time to time.

I would like to yield now 3 minutes to my colleague from Colorado (Mr. POLIS).

(Mr. POLIS asked and was given permission to revise and extend his remarks.)

Mr. POLIS. Madam Speaker, I rise in support of the rule to bring H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, to the floor of the House. I'd like to thank Chairman FRANK and my colleagues on the Financial Services Committee as well as their staffs for the hard work in crafting this legislation. I'd also like to thank the other committees who worked on this bill, including the Agriculture Committee; the Energy and Commerce Committee; the Judiciary Committee; the Budget Committee; the Committee on Oversight and Government Reform; the Committee on Ways and Means; and, of course, my Chair, Chairwoman SLAUGHTER, on the Committee on Rules, as well as my colleague Representative PERLMUTTER for managing the rule. The crafting of this legislation has truly been an all-hands-on effort.

The rule is a fair one. I would like to thank Chairman FRANK for including two amendments which I offered into his manager's amendment.

Our economy is driven by private investment. In order to encourage investment, we need to give investors peace of mind that at the end of a fraud, they have some recourse. Due to limited protections available, many investors realized significant losses as a result of investment fraud, the most infamous of which was the Madoff Ponzi scheme. In my district in Colorado, the dreams of a comfortable retirement from a lifetime of work or a college education for their kids were stolen from many of my constituents, most of whom had no idea that they were investing in Madoff. The Securities Investor Protection Corporation, or SIPC, is a wise insurance program that is simply outdated and insufficient. Investor protection must evolve. My first amendment is an important step in this evolution. My amendment directs the Comptroller General to study the feasibility of optional, premium-based additional coverage for investors. While there is private insurance available, SIPC plus will give investors at once choice and peace of mind to know that should they become a victim of a fraud, they're protected and will be able to realize a cash settlement in the event of a fraud to begin rebuilding.

My second amendment relates to student loans. As a representative of the district that's home to one of our Nation's premier public institutions of higher learning, the University of Colorado at Boulder, I'm keenly aware of the importance of college affordability. Families have had less income to pay for students' education, and State governments have had fewer dollars to fund higher education, resulting in higher tuition for students and families. We have a healthy Federal student loan program because we recognize that subsidizing investment in education yields positive economic results. Unfortunately, high interest private industry loans disguised as equal alternatives to Federal loans have condemned graduates to debts so outrageous as to destroy the very opportunity for prosperity that college offers. An alarming number of students are taking out high-cost debt, frequently with interest rates as high as 18 percent, and debt that doesn't offer the same favorable deferment or repayment options as Federal loans. Even more troubling, one out of four private loan borrowers took out no Federal Stafford loans and more than half of them didn't even apply for student aid.

My amendment addresses this by requiring that before a private loan is funded, financial aid advisers inform students about the Federal loan options that are available to them. In 2007, two out of three students with private loans hadn't exhausted their lower-cost Federal financial aid. Students and their families should apply for and exhaust all of their available less-expensive Federal financial aid options before turning to risky and expensive student loans.

I am also grateful to Chairman FRANK and the Rules Committee for eliminating troubling language regarding liability of Internet access providers and also for the study of how best to fund dissolution authority and hopefully find alternatives to the current language.

Mr. SESSIONS. Madam Speaker, I yield 2 minutes to the gentlewoman from the great State of Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Speaker, I rise in strong opposition to this restrictive rule.

I filed several amendments to protect taxpayers in the economy from regulatory mismanagement. Unfortunately, they were summarily rejected by the Rules Committee. On a bill of this magnitude and significance, I would hope the majority wouldn't be so eager to shut the door on bipartisan amendments or, for that matter, any good

ideas from Members of any party that would improve the bill.

Thanks to the rule, Madam Speaker, amendments I offered to prevent a shift of U.S. businesses overseas are barred from consideration. My amendments would have preserved language in the underlying bill, a result of amendments that I offered in the Financial Services Committee that unfortunately will be undone by the Peterson-Frank amendment.

The result, according to testimony provided by one of my constituents who is the head of the largest U.S. futures exchange in the world, will be a dramatic shift of transactions out of the U.S. exchanges and over to foreign competitors abroad.

The two amendments I offered at Rules would have safeguarded competition, flexibility, and innovation in the U.S. markets. At a time of record job losses, how can we afford to push businesses out of the country?

My third amendment would have prevented the misuse of housing counseling funds by ACORN and its affiliates. It would withdraw ACORN's Federal housing certification. Given the group's clear link to illegal and inappropriate activities, how can we divert precious resources from legitimate housing counselors working overtime to help struggling homeowners?

Unfortunately, this bill will not allow an up-or-down vote on any of these amendments. Madam Speaker, these issues deserve a full and fair debate and a vote on the House floor. I urge my colleagues to oppose this rule.

Mr. PERLMUTTER. Madam Speaker, I yield 3 minutes to the gentlewoman from Maine (Ms. PINGREE).

□ 1615

Ms. PINGREE of Maine. I thank the gentleman from Colorado, my good colleague on the Rules Committee, both for yielding me the time and for all of his hard work on the Financial Services Committee, and to the Chair, Barney Frank, as well. I know these committee members have worked long and hard on this particular bill that is soon to be before us.

For too long we have looked the other way as the big banks and the credit card companies ran roughshod over American consumers. By exploiting loopholes, they have acted recklessly and irresponsibly to line their pockets, leaving America's families and small businesses to pay the price.

Effective Wall Street reform is vital to creating jobs and growing our economy. This bill puts in place commonsense rules to ensure that these same irresponsible actors that caused the worst financial crisis since the Great Depression are not allowed to jeopardize the recovery we have worked so hard to begin. This bill, Madam Speaker, H.R. 4173, holds the big banks and the credit card companies accountable.

Today we can create a new Consumer Financial Protection Agency to make sure that credit card companies stop misleading consumers with hidden fees buried in the small print or teaser rates that lure people in and let the banks make huge profits. Americans look to the FDA and the Consumer Product Safety Commission to keep the food we eat, the medicine we take and the toys we buy for our children safe; now it's time to make sure that the financial products and services that we buy are secure, understandable, and transparent.

With this bill, we can ensure that hardworking families in Maine and across the country are never again on the hook for risky and irresponsible schemes by putting an end to taxpayer bailouts and ''too big to fail'' firms that threaten to bring down our entire economy. We can inject transparency and accountability into a financial system that has far too long been allowed to operate behind closed doors, trading complex financial instruments in secret without the necessary regulation and enforcement.

Madam Speaker, the big banks, irresponsible mortgage lenders, and predatory credit card companies have made a mess out of our economy, and they have expected the American taxpayer to clean up. We can't let that happen again. It is time to ensure that those who acted so irresponsibly are finally held accountable and made to play by rules that are fair.

I realize this bill is not perfect. It could go further, and I think many rightfully agree we should go further. But this bill before us today is a critical first step in restoring confidence in our financial markets. We must act now to create jobs and grow the economy. This is the fair and commonsense regulation that the American public expects and deserves.

Mr. SESSIONS. Madam Speaker, the Republican Party is made up of a group of Members here in Congress who have various backgrounds, and one of them who I am getting ready to yield to came as a small businessman from a manufacturing firm that employed people, cared about their community and the families that worked therein.

I am delighted to yield 2 minutes to the gentleman from Clarence, New York (Mr. LEE).

Mr. LEE of New York. Madam Speaker, I rise today to oppose the rule and to speak on behalf of two commonsense amendments I offered which were not accepted.

The first amendment, sponsored with my friend from Texas (Mr. HENSARLING), simply limits the power of the Consumer Financial Product Agency's credit czar if the national employment rate remains at these astronomical levels. Studies have shown that this bill will stifle job growth across our entire economic spectrum. We should be focusing on job creation, not job extinction. Handing off more control of the private sector to unelected bureaucrats is not going to solve our economic problems.

The second amendment I offered would restrict the CFPA, this new massive agency created by this bill, from mandating disclosures to be made in any language other than English. English is the principal language in which commerce is conducted in the United States. Imagine the nightmare if disclosures must be reported in any of the more than 300 languages that are spoken here in the United States; it would ultimately be sheer chaos. The cost of compliance for private businesses to print materials in multiple languages amounts to more or less an added tax and pushing people further into the unemployment ranks.

H.R. 4173 is going to eliminate jobs, raise taxes, create a new bailout authority, and create a massive new government bureaucracy. I urge my colleagues to vote against this rule.

Mr. PERLMUTTER. Madam Speaker, I would just say to my friend from the Financial Services Committee two things as to his amendments. It was in January of 2009, the last month that George Bush was in office, that we had the highest job loss throughout this whole period. Since that time, it has been shrinking. So under the Bush administration, tremendous job loss in 2008, up to 4 million jobs. And those job losses have been shrinking ever since.

I would also say to my friend from the Financial Services Committee, we had this debate in the committee on the language issue. As he knows, my grandparents are from Ukraine. My grandfather came over here, was a successful businessman, but even over a 40- or 50-year period, he had difficulty with the written language. And where we have seen so much fraud and so much con artistry is with people who have difficulty with the language being taken advantage of. And part of this bill, the consumer protection bill, is so that we avoid that kind of fraud and scheming because of people who can't speak the language.

With that, I would yield 1½ minutes to my friend from Illinois (Mr. QUIGLEY).

Mr. QUIGLEY. Madam Speaker, I rise today in support of this measure, which includes two important proposals that I wrote and worked with the Financial Services Committee to include.

The first one ensures that regulators can do their jobs and regulate effectively for systemic risk. Under current law, regulators are not best equipped to prevent systemically risky behavior because their focus is on individual firms, not on the system as a whole.

My second measure that is included in the manager's amendment came from a constituent request and is strongly supported by groups like the AFL–CIO, the NAACP, and the National Fair Housing Alliance. It simply says that if your loan modification is denied, you deserve to know why. It makes the loan modification program more transparent by giving homeowners the ability to verify their mortgage servicer's net present value analysis. If the servicer used an incorrect

credit score, or misstated income, or made any number of mistakes, then you might be improperly denied loan modification.

I urge my colleagues to support this measure which includes both of these proposals.

Mr. SESSIONS. Madam Speaker, the gentleman from Colorado keeps trying to search and search and search and find who to pin this on, this bad economy and the job loss. Well, I would direct the gentleman to something that we have known for a long, long time in this country. The answer is, pin the tail on the donkey.

Madam Speaker, at this time, I would like to yield 2 minutes to the gentleman from Clinton Township, New Jersey (Mr. LANCE).

Mr. LANCE. Thank you, Mr. SESSIONS.

I rise today in opposition to this restrictive rule and in opposition to the underlying legislation.

This bill will have severe negative consequences on our financial sector and economy as a whole. Specifically, I am strongly opposed to title I, which would create a permanent bailout fund at the FDIC, paid for in part by companies that will never see any real benefit. Furthermore, while every Member of this body supports increased consumer protection, title IV of the bill related to that important issue could do more harm than good by restricting choice and further tightening consumer credit markets.

The language of this title is far too broad and ill-defined. Its uncertainty will only hurt consumers while financial companies retreat from the market to avoid running afoul of a new Federal bureaucracy.

I am also concerned with the title's insistence on completely separating consumer protection regulation from prudential safety and soundness regulation. In my judgment, to accomplish either, regulators should be looking at both. This bill does not accomplish that.

Finally, I want to express my disappointment that this body will not be allowed to debate and vote on an issue of importance to all taxpayers, renewing the Troubled Asset Relief Program set to expire on December 31. I offered an amendment last evening in the Rules Committee to ensure that TARP ends as scheduled and any funds repaid or not yet spent are used for the statutorily mandated purpose of debt reduction and not for further spending. The amendment failed on a purely partisan basis.

The President's plan announced earlier this week to use TARP to fund more governmental spending violates the intent of the law, does very little to create jobs, and further adds to America's ever-growing debt burden. Colleagues on both sides of the aisle believe we need to end TARP. This body should have been allowed to have a substantive debate on this issue.

Mr. PERLMUTTER. Madam Speaker, to my good friend from Texas, I think it is easy to know who to blame, and that is the policies of the Republican Congress and the President, George Bush, because things fell apart, jobs were lost, trillions of dollars lost, and companies fleeing as a result of those policies, which we are trying to repair and correct.

Madam Speaker, I would like to inquire as to how much time each side has remaining.

The SPEAKER pro tempore (Ms. LORETTA SANCHEZ of California). The gentleman from Colorado has 13½ minutes. The gentleman from Texas has 11½ minutes.

Mr. PERLMUTTER. Madam Speaker, I would like to yield 3 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. I have had to sit here and listen as one Republican after another comes down and says that this bill facilitates bailouts. Most of those Republicans have quoted me. I did say that the Treasury draft of this bill submitted last summer was ''TARP on steroids,'' but apparently they didn't notice that the bill changed in committee. In fact, the gentleman from New Jersey came down and said he wants to end TARP—which I voted against twice—and that on a straight party-line vote, the Rules Committee turned down his amendment. I voted for such an amendment in the Financial Services Committee, and last I checked, I was a Democrat. But I want to focus on the issue of bailouts, comparing the bill to the Republican substitute.

Now, keep in mind that most of the bailouts we've done have not been through the TARP program, but rather were pursuant to sections of law that existed long ago, including, and especially, 13–3 of the Federal Reserve Act, which was adopted in 1932. It is that one code section alone that has allowed $3 trillion to be spent on what could be called bailouts.

So, since the biggest bailouts have come from the Fed, we ought to end secrecy at the Fed. The Democratic bill includes the Ron Paul-Alan Grayson amendment to audit the Fed; for reasons I do not understand, the Republican substitute does not. Their substitute allows the Fed to continue to be exempt from many GAO audits.

Now, as I said, the biggest bailouts are under section 13–3 of the Federal Reserve Act. That has been used for $3 trillion, but the Fed could legally use it for $30 trillion. The Republican bill does very little to limit the Fed's power under section 13–3. The Democratic bill includes my amendments to put a dollar limit on the amount that the Fed can obligate and my amendment to require that only the most secure loans are made. For some reason, the Republican bill limits the Fed barely at all.

12 U.S.C. 1823(c)(4)(G)(i) under the Federal Deposit Insurance Act has been used by the FDIC to make loan guarantees of more than $300 billion, and in fact there is no dollar limit on this section. What they've done with $300 billion they could have done with $800 billion. The Democratic bill suspends this broad authority. The Republican bill contains no limits on this authority.

So if you want to live in Bailout Nation, then you've got to make sure that the Fed doesn't lose its exemptions from audits.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. PERLMUTTER. I yield the gentleman another 30 seconds.

Mr. SHERMAN. You have to make sure that the Fed's powers under 13–3, which have already been used to the tune of $3 trillion, remain unlimited and could go to $30 trillion. And you have to keep the FDIC with unlimited powers under 12 U.S.C. 1823(c)(4)(G)(i). If you want to live in Bailout Nation, you have to vote for the Republican substitute.

If you want to rein in the bailout powers of the executive branch, and if you want to make sure that the Fed is subject to audit, you have to vote for the Democratic bill.

□ 1630

Mr. SESSIONS. I yield 2 minutes to the gentleman from Eden Prairie, Minnesota (Mr. PAULSEN).

Mr. PAULSEN. I thank the gentleman.

Madam Speaker, I rise to oppose this rule because there were numerous amendments which would have improved this bill, but they were not made in order in the Rules Committee.

Now, many of these amendments were actually ''good government'' amendments. They were amendments that would have assured the reforms we were making were smart and would not be harmful to the economy. One amendment I offered with Representative TIAHRT would have guaranteed the end of the TARP bailout program at the end of this year, and it would have applied the remaining $200 billion-plus worth of taxpayer money towards reducing the Federal budget deficit.

We all know that the TARP program has had a myriad of problems since day one. We have heard testimony in committee that has said the funds have not been properly monitored. This is the program that was used to fund executive bonuses by taxpayers. We have been told by the special inspector general that the program is ''almost certainly'' going to result in a loss to the taxpayers. Last month, it was just reported that now taxpayers could lose over $5 billion in investments in foreign banks.

Rather than ending this flawed program once and for all, the administration announced just yesterday that they will extend the bailout for TARP for another 10 months. This was after the Treasury Secretary just said last month that he wanted to work to put TARP out of its misery. So the Treasury Secretary has kind of flip-flopped now, and taxpayers are going to be

forced to stand idly by while this administration will have the ability with Congress to spend over $200 billion of taxpayer money as ''walking around'' money.

What is even more alarming, I think, Madam Speaker, is the fact that the legislation before us creates a TARP second bailout program and more bailout authority. With all of the problems we've had on this first bailout program, why on Earth is the Federal Government pursuing a sequel?

Without these amendments, the underlying legislation will make it harder to create jobs, harder to get credit for companies, and most importantly, it will make it more difficult for consumers to have freedom in their financial decisions.

I would urge Members to oppose this closed rule, which has effectively limited debate on many good amendments.

Mr. PERLMUTTER. I would just remind my friend from Minnesota that he has an amendment that was made in order, and he and I cosponsored an amendment in the Financial Services Committee, an amendment which has become part of the manager's amendment.

I would also remind him that we create in this a fund assessed against the banking institutions to deal with their liquidation. There is no bailout. As much as my friends on the other side of the aisle would like to be on message and continue to repeat that, there is no bailout.

I yield 3 minutes to the gentleman from Ohio (Mr. DRIEHAUS).

Mr. DRIEHAUS. Madam Speaker, when the American people listen to this debate, they hear a lot of rhetoric, but they don't get much in the way of facts as they were not able to sit through all of the committee hearings which so many of us went through. I want to go through some facts because I hear about amendments not being offered.

The fact of the matter is that we have spent weeks marking up this bill in committee. We had over 65 hours of debate alone in the markup. The hearings concerning these issues have been going on for the entire year. The number of Republican amendments heard in committee was 137. One hundred thirty-seven Republican amendments were heard in committee. There were over 50 rollcall votes on those Republican amendments. There were over 140 Democratic amendments and over 30 bipartisan amendments. There were days and days of markup in considering the legislation.

What the Republicans don't want you to pay any attention to is their inaction for years on these critical issues. We had predatory lending legislation in 2001. They don't want to let you know that it was ignored, that it was ignored again in 2002, in 2003, in 2004, in 2005, in 2006, and in 2007. They don't want you to know that, for all of the years that they were in power, they failed to take up this legislation.

Now we have legislation, and they bring out stacks of paper with fewer words than in a Harry Potter book. I don't know if we have to get as small as ''Good Night, Moon'' or as ''Harold and the Purple Crayon.'' I'm not quite sure what it takes. This is a big topic, and that's why we took so much time in committee to address the complexities of a derivatives market run astray. That's why we took the time to address the complexity of mortgage-backed securities, which wasn't addressed during those many years the Republicans were in power.

The results of that inaction are millions of foreclosures across the States, the worst recession since the Great Depression, over 700,000 jobs lost the month the President was sworn into office. This is because of the inaction of the Republican Party.

Now the American people demand that we step up and that we take action. What do they want to do? They want to do the same thing they did when they were in power year after year after year, which is nothing.

Mr. SESSIONS. Madam Speaker, I yield 3 minutes to the distinguished gentleman from Fullerton, California (Mr. ROYCE).

Mr. ROYCE. Madam Speaker, I would like to make a couple of points here.

One is that the Democrats have been in control of this institution—of the House and the Senate. If anybody remembers back in November of 2006, the Republicans lost control of the House and Senate. So, for 2007, 2008 and 2009, the Democrats have controlled this process. Every spending bill originates in this House, and under that Democratic leadership in this House, we have watched the unemployment rate more than double for the American public.

As far as those of us attempting to do something about the cockamamie schemes put forward years ago in 1992—and it was under Democratic leadership in this Congress that this was done—we gave Fannie Mae and Freddie Mac the ability to go out there and participate in arbitrage at a 100–1 leverage for affordable housing. That was the goal. Yet look at the consequences of it when you pushed that zero down payment loan on them, when you pushed the requirement that 50 percent of their mortgage portfolio be in subprime and in Alt-A. Well, we see those results today.

Let me speak to another issue, which is the opposition to this bill. I voted against the bailouts. Regardless of what you call it, this is an extension of bailouts. While the new language regarding the preemption of State consumer financial laws in the manager's amendment represents a step in the right direction, I believe it is far from sufficient and should be improved.

For example, there are aspects of the preemption standard and process for reaching preemption decisions which need to be clarified. In addition, the visitation provisions dealing with the authority of State officials over federally chartered banks and thrifts continue to contain serious problems. These provisions are an unnecessary extension of State jurisdiction over federally chartered institutions which are already subject to Federal oversight, which raise significant new potential liabilities and uncertainties and which go far beyond the standards recognized in the recent Supreme Court decision in the Cuomo case.

I raise this issue because, as it is currently written, the underlying legislation will move us in the wrong direction in terms of Federal preemption.

The architects of our Constitution threw out the Articles of Confederation and added the commerce clause precisely to prevent a fragmented economy. They envisioned one national market, not a market where local and State governments could strangle free trade among the States. We have seen the ill-effects of an inconsistent regulatory framework in our insurance market where we have 50 separate markets with 50 sets of rules. It is inefficient, anticompetitive, and it fails to provide adequate, consistent consumer protections.

If we are looking for the most effective regulatory model for our financial sector, we should not move toward a regulatory framework with varying standards from State to State for federally chartered institutions.

Mr. PERLMUTTER. Madam Speaker, may I inquire as to how much time both sides have remaining?

The SPEAKER pro tempore. The gentleman from Colorado has 6½ minutes remaining. The gentleman from Texas has the equivalent.

Mr. PERLMUTTER. I would like to first say to my friend from California—and this does cut both ways—the House of Representatives in 2005 did pass legislation to reform Fannie Mae and Freddie Mac. It was bipartisan. I am referring to an article from September 9, 2008, in the FinancialTimes.com, which interviewed Mr. Oxley, who was the chairman of the Financial Services Committee at the time. The bill was never acted on.

In that article he fumed about the criticism of his House colleagues. ''All the handwringing and bedwetting is going on without remembering how the House stepped up on this,'' he says. ''What did we get from the White House?''—remember, George Bush was in the White House—''We got a one-finger salute.''

That was from the Republican chairman of the House Financial Services Committee.

Mr. ROYCE. Will the gentleman yield?

Mr. PERLMUTTER. No, I am going to yield 3 minutes to my friend from North Carolina (Mr. WATT).

Mr. WATT. I thank the gentleman for yielding time.

Madam Speaker, obviously, I am a very strong supporter of this legislation, and I was here on into the

evening last night to express my support for it; but there is one aspect of it that I want to point out that I have some discomfort with and which I would like to speak about. There is really nothing we can do about it, and it is not going to cause me to vote against the bill, but I think we need to continue to work on it.

The Financial Services' version of the bill requires swap dealers and major participants to execute their standardized swaps on exchanges, or swap execution platforms. These provisions, we thought, were very important to the bill. The reason for that is, 15 years ago, the only way to search for a swap transaction was to use the telephone. It was time-consuming, expensive, and a company was never sure that it had found the best deal.

Today, new electronic technology creates pre-trade price transparency. The House Financial Services' version required the use of that platform for transparency purposes so that companies could get the best price in an open transparent market and so that regulators could have a high-resolution view of risk as they moved through the system.

It was our intent that the regulators would require these new technologies to be used for price discovery so that impartial, instantaneous information was available to all participants at the same time. So we kind of lost the totality of that in merging the Financial Services' version of the bill and the Agriculture Committee's version of the bill. I just want to rise to put it back on the radar screen as something that we need to continue to try to resolve. When you have got a $600 trillion over-the-counter derivatives business, there needs to be absolute transparency as there is in the stock market. That is the only way you can bring this out of the shadows and onto a transparent platform.

So I hope we will be able to continue to work with it. The chairman of Financial Services has been excellent on this issue. I hope we will continue, as the House and the Senate move these bills, to figure out a way to make sure that we have the maximum amount of transparency as we did in the Financial Services' version of the bill.

I thank the gentleman for yielding me time to raise this issue.

Mr. SESSIONS. Madam Speaker, without challenging the gentleman's words on the floor, I challenge anyone to think that there would be $600 trillion worth of derivatives business that has taken place in this country.

I yield 2 minutes to a member of the Financial Services Committee, the gentleman from Lubbock, Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. I thank the gentleman.

Madam Speaker, Treasury Secretary Geithner gave my colleagues, the Democrats on the other side of the aisle, a Christmas present yesterday in that he extended their revolving slush fund until October of next year—again, going down the road of rewarding bad behavior and punishing good behavior. The American people were deceived from the very beginning on this—this TARP money, this revolving slush fund as it has evolved into—because they were told it was just for emergency purposes.

□ 1645

Now we are told that, even by the Secretary and the President, that maybe the financial emergency is over. Well, if it's over, we ought to be giving that money back to the American people or, unfortunately, some of that money was borrowed, and we are borrowing the money from the Chinese. But, no, we are going to put that money back into a slush fund and now we are going to use it for whatever purposes our colleagues on the other side of the aisle decide to do with it. Let me tell you, they are very good at it. If you want somebody to teach you how to spend, they can teach you how to spend.

Unfortunately, Mr. President, and to my colleagues on the other side of the aisle, we are spending money that we don't have. We are borrowing all of this money. Here we are today talking about now making a permanent slush fund, a permanent TARP fund, over $150 billion.

The American people are tired of the bailouts. They are tired of making their own mortgage payment and then they are being asked to make their neighbor's house payment. You know what the American people are doing is they are getting their own financial household in order.

But the other part of this bill that bothers me, and it should bother the American people, is we are going to have this new czar or czarina that is going to be able to tell you what kinds of financial products that are appropriate for you. Maybe there is only a certain kind of mortgage that you should have or a certain kind of car loan you should have, certain kind of student loan that you should have when you are trying to send your kids to college.

But the big concern I have is it's going to hurt the credit, limit the credit for small businesses across this country, the people that create the most jobs in this country and have the ability to bring us out of this economic slump. Yet now we are going to be able to put this big regulatory umbrella over them.

Defeat this bill. It's a bad bill.

Mr. PERLMUTTER. Madam Speaker, I would ask my friend from Texas how many more speakers he might have, because we have no other speakers, and I will close.

Mr. SESSIONS. Good, I appreciate the gentleman. It sounds to me like you would like me to go ahead and take the time to close.

Mr. PERLMUTTER. Yes.

I reserve the balance of my time.

Mr. SESSIONS. I appreciate the gentleman advising me of such.

Madam Speaker, at this time I would like to yield 2 minutes to the gentleman from Rockledge, Florida (Mr. POSEY).

Mr. POSEY. Madam Speaker, I have been sitting here listening to the debate, and it's almost laughable that I have heard my friends across the aisle blame everything except Hurricane Katrina and the tsunami on President Bush and the Republicans. I think everyone with half a brain knows this meltdown created—or began a couple of administrations ago when they came up with the Community Redevelopment Act and Congress decided to get in and start telling Fannie Mae and Freddie Mac how to behave, when they said everybody in this country deserved to own a home, doesn't matter if you don't have a job, doesn't matter if it's overpriced, doesn't matter if you can't afford it, this is the better world we are looking for.

I think most of the people back home, at least where I am from, remember the days when no banker wanted to make a bad loan. If you wanted to borrow money from a bank, you had to convince the bank you needed the money before they were going to loan it to you, basically. That all changed after the Community Redevelopment Act, so it's no surprise that we have people buying houses they can't afford and that they can't pay for, and that's the tip of the iceberg.

Yes, we need to make some changes in the way that we deal with derivatives and some of the downstream spending. To blame it all on one side or the other is laughable. There is more than enough blame to go around to both sides of this Chamber, and I think it's unfair to the people that we represent that we spend so much time trying to place blame and not focus on a solution.

This bill is very well intended, but it's not going to solve the problem. If regulation and creating more bureaucracies would have solved the problem, we wouldn't be here today. We have gone through that cycle a couple of times. We know what happened with Bernard Madoff. We know the attorneys at the SEC only file one-half a case every other year. That's one case each lawyer files every other year.

Somebody is not watching out for the citizens of this country, the people that put us here. Our job, I think, is to put those people to work before we hire more bureaucrats and create more bureaucracies that will lead to more of the same.

Mr. SESSIONS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, as I said earlier, while it's important to provide consumer safety and security in the marketplace, our constituents are more concerned with the economy, the debt and the loss of jobs. When my friends on the other side of the aisle finally

focus on this, I think we are going to start making advances for the American people to reduce our debt and to get back to where we have a growing economy.

Week after week we come to the House floor to debate bills that kill and diminish jobs. It's not what I want to spend my time doing, but, by golly, the Republican Party is going fight the Democrat Party all the way on these job-killing bills, whether it's cap-and-trade, health care, or government takeover of the financial sector. And we are talking about millions of jobs at a time that are coming up for unemployment. The Republican Party will stand up for the American people.

I would like to encourage our friends and Democrats to start listening to the American people. Stop the borrowing, stop the taxing, stop the spending policies, including an 85 percent increase in spending in a 2-year cycle increase, that have led this country to record deficits and record unemployment.

Unfortunately, due to a tragic event that happened back in my home State, I will be unable to be here tomorrow to vote ''no'' on all these bills. I will be attending a funeral tomorrow in Dallas, Texas, of a dear friend. However, if I were here, I would vote ''no''—''no'' on taxing, ''no'' on spending, and ''no'' on bigger government.

So I will encourage my colleagues right now to do the same. Just say ''no.'' We have heard that before. Just say ''no'' to more taxes, more spending, and more unemployment in this country.

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

Mr. PERLMUTTER. Madam Speaker, I yield myself so much time as I might consume.

''Just say 'no.' '' That is the Republican mantra. ''Just say 'no'; we like the status quo.'' We are opposed to any movement to get this country back on track.

They oppose health care. They oppose the Recovery Act. They oppose everything, because they like the way it is. They like it so that their friends on Wall Street can continue to reap billions of dollars and record profits.

This is to look, their opposition is solely to look after their friends so their friends can continue to make money at the expense of average Americans, average Americans who lost jobs last year because of the credit crunch on Wall Street which resulted from the lax regulation and the gambling-type approach taken by the Bush administration and the Republican Congress before that.

The recession that we faced, which is as great as anything we have seen since the 1930s, has got to be pinned on my friends in the Republican Party in this Congress and on President Bush.

Really, in the last fall, we saw millions of jobs lost. We are not out of the woods, but that trend has reversed so that we are losing fewer and fewer jobs each month. But there is no recognition of that, because my friends don't want to take any credit for ruining the economy last year to the tune of trillions of dollars to this country, to its taxpayers, and millions of jobs to the people who work every day.

Now, my friends say that this is a job-killing bill. The only thing killed in this bill are failing financial institutions which would affect the economy, just like that domino effect last fall.

We protect consumers. We protect investors. We look at hedge funds. We deal with credit rating agencies. We look at the derivatives and try to rein them in so that they have to post and there aren't dramatic losses as a result of that. We look at insurance, executive pay, but, most importantly, we take a look at institutions that are so big that they, in a prior administration, couldn't fail. Under this bill, we either take them apart or put them out of their misery. There are no bailouts as we had under George Bush.

We are trying to end this recession, and you do it by restoring confidence in the financial system. I urge an ''aye'' vote, and I would urge passage of this bill.

Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

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

Mr. SESSIONS. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 238, nays 186, not voting 10, as follows:

[Roll No. 952]

YEAS—238

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

NAYS—186

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Cuellar
Culberson
Davis (KY)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harman
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kaptur
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Miller (FL)
Miller (MI)
Miller, Gary
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg

Shimkus	Sullivan	Walden
Shuler	Taylor	Wamp
Shuster	Terry	Westmoreland
Simpson	Thompson (PA)	Whitfield
Smith (NE)	Thornberry	Wilson (SC)
Smith (NJ)	Tiahrt	Wittman
Smith (TX)	Tiberi	Wolf
Souder	Turner	Young (AK)
Stearns	Upton	Young (FL)

NOT VOTING—10

Baldwin	Deal (GA)	Murtha
Barrett (SC)	Lofgren, Zoe	Radanovich
Buyer	Mica	
Cardoza	Moran (VA)	

□ 1723

Ms. KAPTUR changed her vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. MICA. Madam Speaker, I attended the funeral of former Florida U.S. Senator Paula Hawkins and was unable to vote on rollcalls 947, 948, 949, 950, 951, and 952. Had I been present, I would have voted ''yea'' on rollcall 950, and ''nay'' on rollcalls 947, 948, 949, 951, and 952.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 951

Mr. DAVIS of Illinois. Madam Speaker, I ask to have my name removed as cosponsor of H. Res. 951.

The SPEAKER pro tempore (Ms. RICHARDSON). Is there objection to the request of the gentleman from Illinois?

There was no objection.

NATIONAL PRADER-WILLI SYNDROME AWARENESS MONTH

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 55.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 55.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

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

□ 1625

IN THE COMMITTEE OF THE WHOLE

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

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Wednesday, December 9, 2009, all time for general debate had expired pursuant to House Resolution 956.

Pursuant to the House Resolution 964, no further general debate shall be in order. The bill, as amended, shall be considered for amendment under the 5-minute rule and shall be considered as read.

The text of the bill, as amended, is as follows:

H.R. 4173

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 ''The Wall Street Reform and Consumer Protection Act of 2009''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—FINANCIAL STABILITY IMPROVEMENT ACT

SEC. 1000. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the ''Financial Stability Improvement Act of 2009''.

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

(1) The term ''Board'' means the Board of Governors of the Federal Reserve System.

(2) The term ''Council'' means the Financial Services Oversight Council established under section 1001.

(3) The term ''Federal financial regulatory agency'' means any agency that has a voting member of the Council as set forth in section 1001(b)(1).

(4) The term ''financial company'' means a company or other entity—

(A) that is—

(i) incorporated or organized under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands; or

(ii) a company incorporated in or organized in a country other than the United States that has significant operations in the United States through—

(I) a Federal or State branch or agency of a foreign bank as such terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101 et seq.); or

(II) a United States affiliate or other United States operating entity of a company that is incorporated or organized in a country other than the United States;

(B) that is, in whole or in part, directly or indirectly, engaged in financial activities; and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

(5) FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—The term ''financial holding company subject to stricter standards'' means—

(A) a financial company that has been subjected to stricter prudential standards under subtitle B; or

(B) in the case of a financial company described in subparagraph (A) that is required to establish an intermediate holding company under section 6 of the Bank Holding Company Act, the section 6 holding company through which the financial company is required to conduct its financial activities.

(6) The term ''primary financial regulatory agency'' means the following:

(A) The Comptroller of the Currency, with respect to any national bank, any Federal branch or Federal agency of a foreign bank, and, after the date on which the functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision are transferred under subtitle C, a Federal savings association.

(B) The Board, with respect to—

(i) any State member bank;

(ii) any bank holding company and any subsidiary of such company (as such terms are defined in the Bank Holding Company Act), other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iii) any financial holding company subject to stricter standards and any subsidiary (as such term is defined in the Bank Holding Company Act) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iv) any organization organized and operated under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. or 611 et seq.); and

(v) any foreign bank or company that is treated as a bank holding company under subsection (a) of section 8 of the International Banking Act of 1978 and any subsidiary (other than a bank or other subsidiary that is described in any other subparagraph of this paragraph) of any such foreign bank or company.

(C) The Federal Deposit Insurance Corporation, with respect to a State nonmember bank, any insured State branch of a foreign bank (as such terms are defined in section 3 of the Federal Deposit Insurance Act), and, after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any State savings association.

(D) The National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.).

(E) The Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.);

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) with respect to the investment advisory activities of such company and activities incidental to such advisory activities;

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934;

(v) any exchange registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any credit rating agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(viii) any transfer agent registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(F) The Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant, any commodity trading adviser, any retail foreign exchange dealer and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the commodities activities of such entity and activities incidental to such commodities activities; and

(ii) any derivatives clearing organization, designated contract market, or swap execution facility (as defined in the Commodity Exchange Act).

(G) The Federal Housing Finance Agency with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks.

(H) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

(I) The Office of Thrift Supervision, with respect to any Federal savings association, State savings association, or savings and loan holding company, until the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C.

(7) TERMS DEFINED IN OTHER LAWS.—

(A) AFFILIATE.—The term ''affiliate'' has the meaning given such term in section 2(k) of the Bank Holding Company Act of 1956.

(B) STATE MEMBER BANK, STATE NONMEMBER BANK.—The terms ''State member bank'' and ''State nonmember bank'' have the same meanings as in subsections (d)(2) and (e)(2), respectively, of section 3 of the Federal Deposit Insurance Act.

SEC. 1000A. RESTRICTIONS ON THE FEDERAL RESERVE SYSTEM PENDING AUDIT REPORT.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall perform an audit of all actions taken by the Board of Governors of the Federal Reserve System and the Federal reserve banks during the current economic crisis pursuant to the authority granted under section 13(c) of the Federal Reserve Act. Such audit shall be completed as expeditiously as possible after the date of the enactment of the Financial Stability Improvement Act of 2009.

(b) REPORT.—

(1) REQUIRED.—Not later than the end of the 90-day period beginning on the date the audit referred to in subsection (a) is completed, the Comptroller General of the United States shall submit a report to the Congress, and make such report available to the public.

(2) CONTENTS.—The report under paragraph (1) 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, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

Subtitle A—The Financial Services Oversight Council

SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Immediately upon enactment of this title, there is established a Financial Services Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following:

(1) VOTING MEMBERS.—Voting members, who shall each have one vote on the Council, as follows:

(A) The Secretary of the Treasury, who shall serve as the Chairman of the Council.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Comptroller of the Currency.

(D) The Director of the Office of Thrift Supervision, until the functions of the Director of the Office of Thrift Supervision are transferred to pursuant to subtitle C.

(E) The Chairman of the Securities and Exchange Commission.

(F) The Chairman of the Commodity Futures Trading Commission.

(G) The Chairperson of the Federal Deposit Insurance Corporation.

(H) The Director of the Federal Housing Finance Agency.

(I) The Chairman of the National Credit Union Administration.

(2) NONVOTING MEMBERS.—Nonvoting members, who shall serve in an advisory capacity:

(A) A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners, provided that the term for which a State insurance commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

(B) A State banking supervisor, to be designated by a selection process determined by the State bank supervisors, provided that the term for which a State banking supervisor may serve shall last no more than the

2-year period beginning on the date that the supervisor is selected.

(c) DUTIES.—The Council shall have the following duties:

(1) To advise the Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, orderliness, competitiveness, and stability of the United States financial markets.

(2) To monitor the financial services marketplace to identify potential threats to the stability of the United States financial system.

(3) To identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace.

(4) To develop plans (and conduct exercises in furtherance of those plans) to prepare for potential threats identified under paragraphs (2) and (3).

(5) To subject financial companies and financial activities to stricter prudential standards in order to promote financial stability and mitigate systemic risk in accordance with subtitle B.

(6) To issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk in accordance with subtitle B of this title.

(7) To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage.

(8) To facilitate information sharing and coordination among the members of the Council regarding financial services policy development, rulemakings, examinations, reporting requirements, and enforcement actions.

(9) To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.

(10) At the request of an agency that is a Council member, to resolve a jurisdictional dispute between that agency and another agency that is a Council member in accordance with section 1002.

(11) To review and submit comments to the Securities and Exchange Commission and any standards setting body with respect to an existing or proposed accounting principle, standard, or procedure.

SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FINANCIAL REGULATORY AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more Federal financial regulatory agencies if—

(1) a Federal financial regulatory agency has a dispute with another Federal financial regulatory agency about the agencies' respective jurisdiction over a particular financial company or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute among themselves; and

(3) any of the Federal financial regulatory agencies involved in the dispute—

(A) provides all other disputants prior notice of its intent to request dispute resolution by the Council; and

(B) requests in writing, no earlier than 14 days after providing the notice described in paragraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall decide the dispute—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each 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 be in writing and include an explanation and shall be binding on all Federal financial regulatory agencies that are parties to the dispute.

SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.

The Council is authorized to appoint—

(1) subsidiary working groups composed of Council members and their staff, Council staff, or a combination; and

(2) such temporary special advisory, technical, or professional committees as may be useful in carrying out its functions, which may be composed of Council members and their staff, other persons, or a combination.

SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND COUNCIL GOVERNANCE.

(a) MEETINGS.—The Council shall meet as frequently as the Chairman deems necessary, but not less than quarterly.

(b) VOTING.—Unless otherwise provided, the Council shall make all decisions the Council is required or authorized to make by a majority of the total voting membership of the Council under section 1001(b)(1).

SEC. 1005. COUNCIL STAFF AND FUNDING.

(a) DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury shall—

(1) detail permanent staff from the Department of the Treasury to provide the Council (and any temporary special advisory, technical, or professional committees appointed by the Council) with professional and expert support; and

(2) provide such other services and facilities necessary for the performance of the Council's functions and fulfillment of the duties and mission of the Council.

(b) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subsection (a), departments and agencies of the United States may, with the approval of the Secretary of the Treasury—

(1) detail department or agency staff on a temporary basis to provide additional support to the Council (and any special advisory, technical, or professional committees appointed by the Council); and

(2) provide such services, and facilities as the other departments or agencies may determine advisable.

(c) STAFF STATUS; COUNCIL FUNDING.—

(1) STATUS.—Staff detailed to the Council by the Secretary of the Treasury and other United States departments or agencies shall—

(A) report to and be subject to oversight by the Council during their assignment to the Council; and

(B) be compensated by the department of agency from which the staff was detailed.

(2) FUNDING.—The administrative expense of the Council shall be paid by the departments and agencies represented by voting members of the Council on an equal basis.

SEC. 1006. REPORTS TO THE CONGRESS.

(a) IN GENERAL.—Semiannually the Council shall submit a report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representativesand the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Comptroller General of the United States that—

(1) describes significant financial and regulatory developments, including insurance and accounting regulations and standards, and assesses the impact of those developments on the stability of the financial system;

(2) recommends actions that will improve financial stability;

(3) details the size, scale, scope, concentration, activities, and interconnectedness of the 50 largest financial institutions, by total assets, in the United States;

(4) describes plans developed by the Council to respond to potential threats to the stability of the United States financial system and the outcome of exercises conducted in furtherance of those plans;

(5) describes the nature and scope of any company or activities identified under subtitle B and steps taken to address them; and

(6) describes any dispute resolutions undertaken under section 1002 and the result of such resolutions.

(b) EVALUATION OF ANNUAL REPORT BY GAO.—Not later than 120 days after receiving the report required by subsection (a), the Comptroller General of the United States shall submit an evaluation of such report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to prevent systemic risk that would negatively affect the economy, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(d) TESTIMONY BY THE CHAIRMAN.—The Chairman of the Council shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at a semi-annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees 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).

(b) The Council shall not be deemed an ''agency'' for purposes of any State or Federal law.

SEC. 1008. OVERSIGHT BY GAO.

(a) AUTHORITY TO AUDIT.—The Comptroller General of the United States may audit the activities and financial transactions of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent such activities and financial transactions relate to such person's or entity's work for the Council.

(b) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall have access, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, to—

(A) any records or other information under the control of the Council; and

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent such records or other information is relevant to an audit under subsection (a).

(2) CERTAIN INFORMATION SPECIFIED.—Access under paragraph (1) includes access to—

(A) information provided to the Council by its voting and nonvoting members under section 1101; and

(B) the identity of each financial holding company subject to stricter standards.

(c) PERIODIC EVALUATIONS.—The Comptroller General of the United States shall periodically evaluate the processes and activities of the Council and the extent to which the Council is fulfilling its duties under this title. The Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of each such evaluation.

(d) CONFIDENTIALITY.—Any committees or Members of Congress receiving reports or other information from the Comptroller General of the United States shall maintain the confidentiality of any such information relating to—

(1) dispute resolutions undertaken under section 1002, including the result of such dispute resolutions; and

(2) financial holding companies subject to stricter standards.

Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.

(a) IN GENERAL.—The Council and the Board are authorized to receive, and may request the production of, any data or information from members of the Council, as necessary—

(1) to monitor the financial services marketplace to identify potential threats to the stability of the United States financial system;

(2) to identify global trends and developments that could pose systemic risks to the stability of the economy of the United States or other economies; or

(3) to otherwise carry out any of the provisions of this title, including to ascertain a primary financial regulatory agency's implementation of recommended prudential standards under this subtitle.

(b) SUBMISSION BY COUNCIL MEMBERS.—Notwithstanding any provision of law, any voting or nonvoting member of the Council is authorized to provide information to the Council, and the members of the Council shall maintain the confidentiality of such information.

(c) FINANCIAL COMPANY DATA COLLECTION.—

(1) IN GENERAL.—The Council or the Board may require the submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the company itself, poses a threat to financial stability.

(2) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from financial companies that are regulated by the primary financial regulatory agencies, the Council or the Board shall coordinate with such agencies and shall, whenever possible, rely on information already being collected by such agencies.

(d) CONSULTATION WITH AGENCIES AND ENTITIES.—The Council or the Board, as appropriate, may consult with Federal and State agencies and other entities to carry out any of the provisions of this subtitle.

(e) ADDITIONAL PROVISIONS.—

(1) DATA AND INFORMATION SHARING.—The Chairman of the Council, in consultation with the other members of the Council may—

(A) establish procedures to share data and information collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information collected by the Council with the Chairman of the Board on a real-time basis; and

(C) issue any regulations necessary to carry out this subsection; and

(D) designate the format in which requested data and information must be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such data by the Council in its analysis.

(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 deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information 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) DISCLOSURE EXEMPTION.—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(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 Chairman 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 systemic risk to the international financial system.

(5) REPORT.—Not later than 6 months after the date of the enactment of this title, the Chairman of the Council shall report to the Financial Services Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate the opinion of the Council as to whether setting up an electronic database as described in paragraph (1)(B) would aid the Council in carrying out this section.

SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO FEDERAL FINANCIAL REGULATORY AGENCIES.

(a) IN GENERAL.—The Council is authorized to issue formal recommendations, publicly or privately, that a Federal financial regulatory agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk.

(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—A Federal financial regulatory agency specifically is authorized to impose, require reports regarding, examine for compliance with, and enforce stricter prudential standards and safeguards for the firms it regulates to mitigate systemic risk. This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective Federal financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(c) AGENCY NOTICE TO COUNCIL.—A Federal financial regulatory agency shall, within 60 days of receiving a Council recommendation under this section, notify the Council in writing regarding—

(1) the actions the Federal financial regulatory agency has taken in response to the Council's recommendation, additional actions contemplated, and timetables therefore; or

(2) the reason the Federal financial regulatory agency has failed to respond to the Council's request.

SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council shall, in consultation with the Board and any other primary financial regulatory agency that regulates the financial company or a subsidiary of such company, subject a financial company to stricter prudential standards under this subtitle if the Council determines that—

(1) material financial distress at the company could pose a threat to financial stability or the economy; or

(2) the nature, scope, size, scale, concentration, and interconnectedness, or mix of the company's activities could pose a threat to financial stability or the economy.

(b) CRITERIA.—In making a determination under subsection (a), the Council shall consider the following criteria:

(1) The amount and nature of the company's financial assets.

(2) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

(3) The extent of the company's leverage.

(4) The extent and nature of the company's off-balance sheet exposures.

(5) The extent and nature of the company's transactions and relationships with other financial companies.

(6) The company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system.

(7) The nature, scope, and mix of the company's activities.

(8) The degree to which the company is already regulated by one or more Federal financial regulatory agencies.

(9) Any other factors that the Council deems appropriate.

(c) NOTIFICATION OF DECISION.—The Board, in an executive capacity on behalf of the Council, shall immediately upon the Council's decision notify the financial company

by order, which shall be public, that the financial company is subject to stricter prudential standards, as prescribed by the Board in accordance with section 1104.

(d) PERIODIC REVIEW AND RESCISSION OF FINDINGS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each company subjected to stricter prudential standards should continue to be subject to such standards.

(2) REVIEW AND RESCISSION.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial holding company subject to stricter standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting a company to stricter prudential standards if the Council determines that the company no longer meets the conditions for being subjected to stricter prudential standards in subsections (a) and (b).

(e) EMERGENCY EXCEPTION TO MAJORITY VOTE OF COUNCIL REQUIREMENT.—If each of the Secretary of the Treasury, the Board, and the Federal Deposit Insurance Corporation determines that a financial company must be subjected to stricter prudential standards in accordance with this section immediately to prevent destabilization of the financial system or economy, the Secretary, the Board, and the Corporation may, upon approval by the President, subject such company to stricter prudential standards under this section.

(f) APPEAL.—

(1) ADMINISTRATIVE.—The Council and the Board, in an executive capacity on behalf of the Council, shall establish a procedure through which a financial company that has been subjected to stricter prudential standards in accordance with this section may appeal being subjected to stricter prudential standards.

(2) JUDICIAL REVIEW.—Any financial company which has been subjected to stricter prudential standards may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

(g) EFFECT OF COUNCIL DECISION.—

(1) APPLICATION OF THE BANK HOLDING COMPANY ACT.—A financial company that is not a bank holding company as defined in the Bank Holding Company Act at the time the financial company is subjected to stricter prudential standards in accordance with this section, shall—

(A) if such company conducts at the time such company is subjected to stricter prudential standards in accordance with this section only activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations governing bank holding companies and financial holding companies and be the financial holding company subject to stricter standards for purposes of this subtitle; or

(B) if such company conducts at the time that such company is subjected to stricter prudential standards in accordance with this section 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, be required to establish and conduct all its activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956 in an intermediate holding company established under section 6 of the Bank Holding Company Act of 1956, which intermediate holding company shall be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations governing bank holding companies and financial holding companies, and such section 6 holding company shall be a financial holding company subject to stricter standards for purposes of this title.

(2) EXEMPTIVE AUTHORITY.—Notwithstanding any provision of the Bank Holding Company Act of 1956, the Board may, if it determines such action is necessary to ensure appropriate stricter prudential supervision, issue such exemptions from that Act as may be necessary with regard to financial holding companies subject to stricter standards that do not control an insured depository institution.

(3) LEVERAGE LIMITATION.—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) STRICTER PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 1103, the Board shall impose stricter prudential standards on such company. Such standards shall be designed to maximize financial stability taking costs to long-term financial and economic growth into account, be heightened when compared to the standards that otherwise would apply to financial holding companies that are not subjected to stricter prudential standards pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the potential risk posed to financial stability by the financial holding company subject to stricter standards.

(2) STANDARDS.—

(A) REQUIRED STANDARDS.—The heightened standards imposed by the Board under this section shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) concentration requirements (as specified in subsection (c));

(v) prompt corrective action requirements (as specified in subsection (e));

(vi) resolution plan requirements (as specified in subsection (f));

(vii) overall risk management requirements; and

(viii) and may establish short-term debt limits in accordance with subsection (d).

(B) ADDITIONAL STANDARDS.—The heightened standards imposed by the Board under this section also may include any other prudential standards that the Board deems advisable, including taking actions to mitigate systemic risk.

(C) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Board, in developing stricter prudential standards under this subsection, shall consult with other Federal financial regulatory agencies with respect to any standard that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company that is subject to stricter prudential standards under this title.

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this subsection, the Board may differentiate among financial holding companies subject to stricter standards on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Board deems appropriate.

(4) WELL CAPITALIZED AND WELL MANAGED.—A financial holding company subject to stricter standards shall at all times after it is subject to such standards be well capitalized and well managed as defined by the Board.

(5) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board shall prescribe regulations regarding the application of stricter prudential standards to financial companies that are organized or incorporated in a country other than the United States, and that own or control a Federal or State branch, subsidiary, or operating entity that is a financial holding company subject to stricter standards, giving due regard to the principle of national treatment and equality of competitive opportunity and taking into account the extent to which such companies are subject to home country standards comparable to those applied to financial holding companies in the United States.

(6) INCLUSION OF OFF BALANCE SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(A) IN GENERAL.—In the case of any financial holding company subject to stricter standards, the computation of capital requirements shall take into account off balance sheet activities for such a company.

(B) EXEMPTION.—If the Board determines that an exemption from the requirements under subparagraph (A) is appropriate, the Board may exempt a financial holding company subject to stricter standards from the requirements under subparagraph (A) or any transaction or transactions engaged in by such a company.

(C) OFF BALANCE SHEET ACTIVITIES DEFINED.—For purposes of this paragraph, the term ''off balance sheet activities'' means a liability that is not currently a balance sheet liability but may become one upon the happening of some future event, including the following transactions, to the extent they may create a liability:

(i) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(ii) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(iii) Risk participation in bankers' acceptances.

(iv) Sale and repurchase agreements.

(v) Asset sales with recourse against the seller.

(vi) Interest rate swaps.

(vii) Credit swaps.

(viii) Commodity contracts.

(ix) Forward contracts.

(x) Securities contracts.

(xi) Such other activities or transactions as the Board may, by rule, define.

(b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSITORY INSTITUTIONS.—

(1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a functionally regulated subsidiary (as such term is defined in section 5 of the Bank Holding Company Act) or a subsidiary depository institution of a financial holding company subject to stricter

standards, the Board may recommend that the relevant Federal financial regulatory agency for such functionally regulated subsidiary or subsidiary depository institution prescribe stricter prudential standards on such functionally regulated subsidiary or subsidiary depository institution. Any standards recommended by the Board under this section shall be of the same type as those described in subsection (a)(2) that the Board is required or authorized to impose directly on the financial holding company subject to stricter standards.

(2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND SAFEGUARDS.—Each Federal financial regulatory agency that receives a Board recommendation under paragraph (1) is authorized to impose, require reports regarding, examine for compliance with, and enforce standards under this subsection with respect to the entities such agency regulates, as such entities are described in section 1006(b)(6). This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(3) IMPOSITION OF STANDARDS.—Standards imposed by a Federal financial regulatory agency under this subsection shall be the standards recommended by the Board in accordance with paragraph (1) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency.

(4) FEDERAL FINANCIAL REGULATORY AGENCY RESPONSE; NOTICE TO COUNCIL AND BOARD.—A Federal financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (3) within 60 days of the Board's recommendation under paragraph (1). A Federal financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

(c) CONCENTRATION LIMITS FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) STANDARDS.—In order to limit the risks that the failure of any company could pose to a financial holding company subject to stricter standards and to the stability of the United States financial system, the Board, by regulation, shall prescribe standards that limit the risks posed by the exposure of a financial holding company subject to stricter standards to any other company.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each financial holding company subject to stricter standards from having credit exposure to any unaffiliated company that exceeds 25 percent of capital stock and surplus of the financial holding company subject to stricter standards, or such lower amount as the Board may determine by regulation to be necessary to mitigate risks to financial stability.

(3) CREDIT EXPOSURE.—For purposes of this subsection and with respect to a financial holding company subject to stricter standards, the term ''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 agreement with the company;

(C) all securities borrowing and lending transactions with the company to the extent that such transactions create credit exposure of the financial holding company subject to stricter standards to the company;

(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 financial holding company subject to stricter standards and the company; and

(G) any other similar transactions that the Board 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 financial holding company subject to stricter standards with any person is deemed 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 may issue such regulations and orders, including definitions consistent with this subsection, as may be necessary to administer and carry out the purpose of this subsection.

(6) EXEMPTIONS.—

(A) IN GENERAL.—

(i) FEDERAL HOME LOAN BANKS.—This subsection shall not apply to any Federal home loan bank, but Federal home loan banks are not exempt from any other provision of this title.

(ii) APPLICABILITY TO OTHER ENTITIES.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not exempt from any provision of this title.

(B) REGULATIONS.—The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of credit exposure if it finds that the exemption is in the public interest and consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—This subsection and any regulations and orders of the Board under the authority of this subsection shall not take effect until the date that is 3 years from the date of the enactment of this subsection. The Board may extend the effective date for up to 2 additional years to promote financial stability.

(d) SHORT-TERM DEBT LIMITS FOR CERTAIN FINANCIAL HOLDING COMPANIES.—

(1) IN GENERAL.—In order to limit the risks that an overaccumulation of short-term debt could pose to financial holding companies and to the stability of the United States financial system, the Board shall by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any financial holding company subject to stricter standards for purposes of this title.

(2) BASIS OF LIMIT.—The limit prescribed under paragraph (1) shall be based on a financial holding company's short-term debt as a percentage of its capital stock and surplus or on such other measure as the Board considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term ''short-term debt'' means such liabilities with short-dated maturity that the Board identifies by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a financial holding company that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(6) TRANSITION PERIOD.—This subsection and any regulation or order of the Board under this subsection shall take effect 3 years after the date of the enactment of this title. The Board may postpone the date when this subsection takes effect by not more than 2 years in order to promote financial stability.

(e) PROMPT CORRECTIVE ACTION FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall take prompt corrective action to resolve the problems of financial holding companies subject to stricter standards. Except as specifically provided otherwise, this subsection shall apply only to financial holding companies that are incorporated or organized under United States laws.

(2) DEFINITIONS.—For purposes of this section—

(A) CAPITAL CATEGORIES.—

(i) WELL CAPITALIZED.—A financial holding company subject to stricter standards is ''well capitalized'' if it exceeds the required minimum level for each relevant capital measure.

(ii) UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure.

(iii) SIGNIFICANTLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure.

(iv) CRITICALLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ''critically undercapitalized'' if it fails to meet any level specified in paragraph (4)(C)(i).

(3) OTHER DEFINITIONS.—

(A) AVERAGE.—The ''average'' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(B) CAPITAL DISTRIBUTION.—The term ''capital distribution'' means—

(i) a distribution of cash or other property by a financial holding company subject to stricter standards to its owners made on account of that ownership, but not including any dividend consisting only of shares of the financial holding company subject to stricter standards or rights to purchase such shares;

(ii) a payment by a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance any person's acquisition of those shares or interests; and

(iii) a transaction that the Board determines, by order or regulation, to be in substance a distribution of capital to the owners of the financial holding company subject to stricter standards.

(C) CAPITAL RESTORATION PLAN.—The term ''capital restoration plan'' means a plan submitted under paragraph (6)(B).

(D) COMPENSATION.—The term ''compensation'' includes any payment of money or provision of any other thing of value in consideration of employment.

(E) RELEVANT CAPITAL MEASURE.—The term ''relevant capital measure'' means the measures described in paragraph (4).

(F) REQUIRED MINIMUM LEVEL.—The term ''required minimum level'' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the Board by regulation.

(G) SENIOR EXECUTIVE OFFICER.—The term ''senior executive officer'' has the same meaning as the term ''executive officer'' in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(4) CAPITAL STANDARDS.—

(A) RELEVANT CAPITAL MEASURES.—

(i) IN GENERAL.—Except as provided in clause (ii)(II), the capital standards prescribed by the Board under section 1104(a)(2) shall include—

(I) a leverage limit; and

(II) a risk-based capital requirement.

(ii) OTHER CAPITAL MEASURES.—The Board may by regulation—

(I) establish any additional relevant capital measures to carry out this section; or

(II) rescind any relevant capital measure required under clause (i) upon determining that the measure is no longer an appropriate means for carrying out this section.

(B) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation, specify for each relevant capital measure the levels at which a financial holding company subject to stricter standards is well capitalized, undercapitalized, and significantly undercapitalized.

(C) CRITICAL CAPITAL.—

(i) BOARD TO SPECIFY LEVEL.—

(I) LEVERAGE LIMIT.—The Board shall, by regulation, specify the ratio of tangible equity to total assets at which a financial holding company subject to stricter standards is critically undercapitalized.

(II) OTHER RELEVANT CAPITAL MEASURES.—The Board may, by regulation, specify for 1 or more other relevant capital measures, the level at which a financial holding company subject to stricter standards is critically undercapitalized.

(ii) LEVERAGE LIMIT RANGE.—The level specified under clause (i)(I) shall require tangible equity in an amount—

(I) not less than 2 percent of total assets; and

(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

(5) CAPITAL DISTRIBUTIONS RESTRICTED.—

(A) IN GENERAL.—A financial holding company subject to stricter standards shall make no capital distribution if, after making the distribution, the financial holding company subject to stricter standards would be undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Board may permit a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the financial holding company subject to stricter standards in at least an equivalent amount; and

(ii) will reduce the financial obligations of the financial holding company subject to stricter standards or otherwise improve the financial condition of the financial holding company subject to stricter standards.

(6) PROVISIONS APPLICABLE TO UNDERCAPITALIZED FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) MONITORING REQUIRED.—The Board shall—

(i) closely monitor the condition of any undercapitalized financial holding company subject to stricter standards;

(ii) closely monitor compliance by any undercapitalized financial holding company subject to stricter standards with capital restoration plans, restrictions, and requirements imposed under this section; and

(iii) periodically review the plan, restrictions, and requirements applicable to any undercapitalized financial holding company subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) CAPITAL RESTORATION PLAN REQUIRED.—

(i) IN GENERAL.—Any undercapitalized financial holding company subject to stricter standards shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under clause (iv).

(ii) CONTENTS OF PLAN.—The capital restoration plan shall—

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter standards will comply with the restrictions or requirements then in effect under this section; and

(dd) the types and levels of activities in which the financial holding company subject to stricter standards will engage; and

(II) contain such other information that the Board may require.

(iii) CRITERIA FOR ACCEPTING PLAN.—The Board shall not accept a capital restoration plan unless it determines that the plan—

(I) complies with clause (ii);

(II) is based on realistic assumptions, and is likely to succeed in restoring the capital of the financial holding company subject to stricter standards; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the financial holding company subject to stricter standards is exposed.

(iv) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The Board shall, by regulation, establish deadlines that—

(I) provide financial holding companies subject to stricter standards with reasonable time to submit capital restoration plans, and generally require a financial holding company subject to stricter standards to submit a plan not later than 45 days after it becomes undercapitalized; and

(II) require the Board to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted.

(C) ASSET GROWTH RESTRICTED.—An undercapitalized financial holding company subject to stricter standards shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards;

(ii) any increase in total assets is consistent with the plan; and

(iii) the ratio of tangible equity to total assets of the financial holding company subject to stricter standards increases during the calendar quarter at a rate sufficient to enable it to become well capitalized within a reasonable time.

(D) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.—An undercapitalized financial holding company subject to stricter standards shall not, directly or indirectly, acquire any interest in any company or insured depository institution, or engage in any new line of business, unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards, the financial holding company subject to stricter standards is implementing the plan, and the Board determines that the proposed action is consistent with and will further the achievement of the plan;

(ii) the Board determines that the specific proposed action is appropriate; or

(iii) the Board has exempted the financial holding company subject to stricter standards from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(E) DISCRETIONARY SAFEGUARDS.—The Board may, with respect to any undercapitalized financial holding company subject to stricter standards, take actions described in any clause of paragraph (7)(B) if the Board determines that those actions are necessary.

(7) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS AND UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(A) IN GENERAL.—This paragraph shall apply with respect to any financial holding company subject to stricter standards that—

(i) is significantly undercapitalized; or

(ii) is undercapitalized and—

(I) fails to submit an acceptable capital restoration plan within the time allowed by the Board under paragraph (6)(B)(iv); or

(II) fails in any material respect to implement a capital restoration plan accepted by the Board.

(B) SPECIFIC ACTIONS AUTHORIZED.—The Board shall carry out this paragraph by taking 1 or more of the following actions—

(i) REQUIRING RECAPITALIZATION.—Doing one or more of the following:

(I) Requiring the financial holding company subject to stricter standards to sell enough shares or obligations of the financial holding company subject to stricter standards so that the financial holding company subject to stricter standards will be well capitalized after the sale.

(II) Further requiring that instruments sold under subclause (I) be voting shares.

(III) Requiring the financial holding company subject to stricter standards to be acquired by or combine with another company.

(ii) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

(I) Requiring the financial holding company subject to stricter standards to comply with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it were a member bank.

(II) Further restricting the transactions of the financial holding company subject to stricter standards with affiliates and insiders.

(iii) RESTRICTING ASSET GROWTH.—Restricting the asset growth of the financial holding company subject to stricter standards more stringently than paragraph (6)(C), or requiring the financial holding company subject to stricter standards to reduce its total assets.

(iv) RESTRICTING ACTIVITIES.—Requiring the financial holding company subject to stricter standards or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive

risk to the financial holding company subject to stricter standards.

(v) IMPROVING MANAGEMENT.—Doing one or more of the following:

(I) NEW ELECTION OF DIRECTORS.—Ordering a new election for the board of directors of the financial holding company subject to stricter standards.

(II) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the financial holding company subject to stricter standards became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(III) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

(vi) REQUIRING DIVESTITURE.—Requiring the financial holding company subject to stricter standards to divest itself of or liquidate any subsidiary if the Board determines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the financial holding company subject to stricter standards, or is likely to cause a significant dissipation of the assets or earnings of the financial holding company subject to stricter standards.

(vii) REQUIRING OTHER ACTION.—Requiring the financial holding company subject to stricter standards to take any other action that the Board determines will better carry out the purpose of this section than any of the actions described in this subparagraph.

(C) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with subparagraph (B), the Board shall take the following actions, unless the Board determines that the actions would not be appropriate—

(i) The action described in subclause (I) or (III) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the financial holding company subject to stricter standards to be acquired by or combine with another company).

(ii) The action described in subparagraph (B)(ii) (relating to restricting transactions with affiliates).

(D) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

(i) IN GENERAL.—The financial holding company subject to stricter standards shall not do any of the following without the prior written approval of the Board:

(I) Pay any bonus to any senior executive officer.

(II) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the financial holding company subject to stricter standards became undercapitalized.

(ii) FAILING TO SUBMIT PLAN.—The Board shall not grant any approval under clause (i) with respect to a financial holding company subject to stricter standards that has failed to submit an acceptable capital restoration plan.

(E) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a determination under subparagraph (B)(vi) with respect to a subsidiary that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall consult with the Securities and Exchange Commission and, in the case of any other subsidiary which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such subsidiary with respect to the proposed determination of the Board and actions pursuant to such determination.

(8) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

(A) IN GENERAL.—If the Board determines (after notice and an opportunity for hearing) that a financial holding company subject to stricter standards is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the financial holding company subject to stricter standards to be engaging in an unsafe or unsound practice, the Board may—

(i) if the financial holding company subject to stricter standards is well capitalized, require the financial holding company subject to stricter standards to comply with one or more provisions of paragraphs (6) and (7), as if the institution were undercapitalized; or

(ii) if the financial holding company subject to stricter standards is undercapitalized, take any one or more actions authorized under paragraph (7)(B) as if the financial holding company subject to stricter standards were significantly undercapitalized.

(B) CONTENTS OF PLAN.—A plan that may be required pursuant to subparagraph (A)(i) shall specify the steps that the financial holding company subject to stricter standards will take to correct the unsafe or unsound condition or practice.

(9) IMPLEMENTATION.—The Board shall prescribe such regulations, issue such orders, and take such other actions the Board determines to be necessary to carry out this subsection.

(10) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Board, any other Federal regulatory agency, or a State to take action in addition to (but not in derogation of) that required under this section.

(11) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with their foreign counterparts and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies.

(12) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(A) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under paragraph (7)(B)(v)(II) may obtain review of that order by filing a written petition for reinstatement with the Board not later than 10 days after receiving notice of the dismissal.

(B) PROCEDURE.—

(i) HEARING REQUIRED.—The Board shall give the petitioner an opportunity to—

(I) submit written materials in support of the petition; and

(II) appear, personally or through counsel, before 1 or more members of the Board or designated employees of the Board.

(ii) DEADLINE FOR HEARING.—The Board shall—

(I) schedule the hearing referred to in clause (i)(II) promptly after the petition is filed; and

(II) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(iii) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing, the Board shall—

(I) by order, grant or deny the petition;

(II) if the order is adverse to the petitioner, set forth the basis for the order; and

(III) notify the petitioner of the order.

(C) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the ability of the financial holding company subject to stricter standards—

(i) to become well capitalized, to the extent that the order is based on the capital level of the financial holding company subject to stricter standards or such company's failure to submit or implement a capital restoration plan; and

(ii) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on paragraph (8)(A).

(13) ENFORCEMENT AUTHORITY FOR FOREIGN FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) TERMINATION AUTHORITY.—If the Board believes that a condition, practice, or activity of a foreign financial holding company subject to stricter standards does not comply with this title or the rules or orders prescribed by the Board under this title or otherwise poses a threat to financial stability, the Board may, after notice and opportunity for a hearing, take such actions as necessary to mitigate such risk, including ordering a foreign financial holding company subject to stricter standards in the United States to terminate the activities of such branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(f) REPORTS REGARDING RAPID AND ORDERLY RESOLUTION AND CREDIT EXPOSURE.—

(1) IN GENERAL.—The Board shall require each financial holding company subject to stricter standards incorporated or organized in the United States to report periodically to the Board on—

(A) its plan for rapid and orderly resolution in the event of severe financial distress;

(B) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies; and

(C) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards.

(2) NO LIMITING EFFECT.—A rapid resolution plan submitted in accordance with this subsection shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(3) REPORTING TRIGGERED BY STRESS TEST RESULTS.—

(A) FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a quarterly stress test under baseline or adverse conditions conducted by a financial holding company subject to stricter standards under section 1114(a) or the results of a stress test of that financial holding company subject to stricter standards conducted by the Board under subsection (g) indicate that the financial holding company subject to stricter standards is, in the determination of the Board, significantly or critically undercapitalized, that financial holding company subject to stricter standards shall submit a rapid resolution plan in accordance with this subsection that has been revised to address the causes of those results.

(B) FINANCIAL COMPANIES THAT ARE NOT FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a semiannual stress test under baseline or adverse conditions conducted by a financial

company under section 1114(b) indicate that the financial company is, in the determination of the Board, significantly or critically undercapitalized, that financial company shall be required to report under this subsection. The Board shall prescribe regulations establishing expedited procedures for such reporting.

(C) TRANSPARENCY.—Any rapid resolution plan submitted pursuant to this paragraph shall be subject to any restrictions regarding the disclosure of any other rapid resolution plan submitted pursuant to this subsection.

(g) STRESS TESTS.—

(1) The Board, in coordination with the appropriate primary financial regulatory agency, shall conduct annual stress tests of each financial holding company subject to stricter standards. The Board may, as the Board determines appropriate, conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board shall publish a summary of the results of such stress tests.

(2) The Board shall issue regulations to define the term ''stress test'' for purposes of this subsection. Such a definition shall provide for not less than 3 different sets of conditions under which a stress test should be conducted: baseline, adverse, and severely adverse scenarios.

(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems appropriate to avoid imposing duplicative requirements under this subtitle for financial holding companies subject to stricter standards that are also bank holding companies.

(i) RESOLUTION PLANS REQUIRED.—

(1) IN GENERAL.—The Corporation and the Board, after consultation with the Council, shall jointly issue regulations requiring financial holding companies subject to stricter standards to develop plans designed to assist in the rapid and orderly resolution of the company.

(2) STANDARDS FOR RESOLUTION PLANS.—The regulations required by paragraph (1) shall—

(A) define the scope of financial holding companies subject to stricter standards covered by these requirements and may exempt financial holding companies subject to stricter standards from the requirements of this subsection if the Corporation and the Board jointly determine that exemption is consistent with the purposes of this title;

(B) require each plan to demonstrate that any insured depository institution affiliated with a financial holding company subject to stricter standards is adequately insulated from the activities of any non-bank subsidiary of the institution or financial holding companies subject to stricter standards;

(C) require that each plan include information detailing—

(i) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies;

(ii) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards;

(iii) full descriptions of the financial holding company subject to stricter standards' ownership structure, assets, liabilities, and contractual obligations; and

(iv) the cross-guarantees tied to different securities, a list of major counterparties, and a process for determining where the financial holding company subject to stricter standards' collateral is pledged; and

(D) establish such other standards as the Corporation and the Board may jointly deem necessary to carry out this subsection.

(3) REVIEW OF PLANS.—

(A) SUBMISSION OF PLANS.—Each financial holding company subject to stricter standards that is subject to the requirement under paragraph (1) shall submit its plan to the Corporation and the Board.

(B) REVIEW.—Upon the submission of a plan pursuant to subparagraph (A), and not less often than annually thereafter, the Corporation and the Board, after consultation with any Federal financial regulatory agencies with jurisdiction over the financial holding company subject to stricter standards, shall jointly review such plan and may require a financial holding company subject to stricter standards to revise its plan consistent with the standards established pursuant to paragraph (2).

(4) ENFORCEMENT.—

(A) IN GENERAL.—The Corporation, after consultation with the Board, shall have the authority to take any enforcement action in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) against any financial holding company subject to stricter standards that fails to comply with the requirements of this section or any regulations issued pursuant to this section.

(B) NO LIMITATION ON BOARD AUTHORITY.—Nothing under this subsection shall be construed as limiting any enforcement authority available to the Board under any other provision of law.

(5) NO LIMITING EFFECT ON RECEIVER.—A rapid resolution plan submitted under this section shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(6) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted under this section.

SEC. 1105. MITIGATION OF SYSTEMIC RISK.

(a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS AND ACTIVITIES.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 1104(a)(2), the size of a financial holding company subject to stricter standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial holding company subject to stricter standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial company subjected to stricter prudential standards under this title, shall consult with the Federal financial regulatory agency for any such subsidiary.

(c) FACTORS FOR CONSIDERATION.—In reaching a determination described in subsection (a), the Council shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company's financial assets;

(2) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(3) the extent and nature of the company's off-balance sheet exposures;

(4) the company's reliance on leverage;

(5) the extent and nature of the company's transactions, relationships, and interconnectedness with other financial and nonfinancial companies;

(6) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company's activities;

(8) the extent to which prudential regulations mitigate the risk posed; and

(9) any other factors identified that the Council determines appropriate.

(d) MITIGATORY ACTIONS.—

(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the prudential standards imposed pursuant to section 1104(a);

(B) terminating 1 or more activities;

(C) imposing conditions on the manner in which a financial holding company subject to stricter standards conducts 1 or more activities;

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

(F) in the event the Council deems subparagraphs (A) through (E) inadequate as a means to address the identified risks, selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies.

(2) INTERNATIONAL COMPETITIVENESS CONSIDERATIONS.—In making any decision pursuant to paragraph (1), the Council shall consider—

(A) the need to maintain the international competitiveness of the United States financial services industry; and

(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial company subject to stricter prudential standards, and opportunity for hearing if requested, that the financial company is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial company subject to stricter prudential standards of the Council's determination, and, if the Council determines that mitigatory action is appropriate, require the company to submit a plan to the Council to implement the required mitigatory action.

(3) SUBMISSION OF PLAN.—The financial holding company subject to stricter standards shall submit its proposed plan to implement the required mitigatory action or actions to the Council within 60 days from the date it receives notice under paragraph (2) or such shorter timeframe as the Council may require, if the Council determines an emergency situation merits expeditious implementation.

(4) APPROVAL OR AMENDMENT OF THE PLAN.—The Council shall review the plan submitted pursuant to paragraph (3) and determine whether the plan achieves the goal of mitigating a grave threat to the financial stability or the economy of the United States. The Council may approve or disapprove the plan with or without amendment.

(5) EFFECT OF PLAN APPROVAL.—The Council shall—

(A) notify a financial holding company subject to stricter standards by order, which shall be public, that the Council has approved the plan with or without amendment; and

(B) direct the Board to require a financial holding company subject to stricter standards to comply with the plan to implement

mitigatory action or actions within a reasonable timeframe after the Council's approval and in accordance with such deadlines established in the plan.

(f) TREASURY SECRETARY CONCURRENCE.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than $10,000,000,000 in total assets by a financial holding company subject to stricter standards shall require the Secretary of the Treasury's concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial holding company subject to stricter standards exceeds $100,000,000,000, the Secretary of the Treasury shall consult with the President before concurrence.

(g) FAILURE TO IMPLEMENT THE PLAN.—If a financial holding company subject to stricter standards fails to implement a plan for mitigatory action imposed pursuant to subsection (e)(5) within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) JUDICIAL REVIEW.—For any plan required under this section, a financial holding company subject to stricter standards may, not later than 30 days after receipt of the Council's notice under subsection (e)(5), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of Columbia, for an order requiring that the requirement for a mitigatory action be rescinded. Judicial review under this section shall be limited to the imposition of a mitigatory action. In reviewing the Council's imposition of a mitigatory action, the court shall rescind or dismiss only those mitigatory actions it finds to be imposed in an arbitrary and capricious manner.

SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may subject a financial activity or practice to stricter prudential standards under this subtitle if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial institutions or markets and local, minority, or underserved communities, and thereby threaten the stability of the financial system or economy.

(b) PERIODIC REVIEW OF ACTIVITY IDENTIFICATIONS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each activity or practice subjected to stricter prudential standards should continue to be subject to such standards.

(2) REVIEW AND RECISION.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial activity subjected to stricter prudential standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting an activity to heightened prudential supervision if the Council determines that the activity no longer meets the criteria in subsection (a).

(c) PROCEDURE FOR SUBJECTING OR CEASING TO SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRUDENTIAL STANDARDS.—

(1) COUNCIL AND BOARD COORDINATION.—The Council shall inform the Board if the Council is considering whether to subject or cease to subject an activity to stricter prudential standards in accordance with this section.

(2) NOTICE AND OPPORTUNITY FOR CONSIDERATION OF WRITTEN MATERIALS.—

(A) IN GENERAL.—The Board shall, in an executive capacity on behalf of the Council, provide notice to financial companies that the Council is considering whether to subject an activity or practice to heightened prudential regulation, and shall provide a financial company engaged in such activity or practice 30 days to submit written materials to inform the Council's decision. The Council shall decide, and the Board shall provide notice of the Council's decision, within 60 days of the due date for such written materials.

(B) EMERGENCY EXCEPTION.—The Council may waive or modify the requirements of subparagraph (A) if the Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by an activity to financial stability. The Board shall, in an executive capacity on behalf of the Council, provide notice of such waiver or modification to financial companies as soon as practicable, which shall be no later than 24 hours after the waiver or modification.

(3) FORM OF DECISION.—The Board shall provide all notices required under this subsection by posting a notice on the Board's web site and publishing a notice in the Federal Register.

SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) PRUDENTIAL STANDARDS.—

(1) BOARD AUTHORITY TO RECOMMEND.—

(A) IN GENERAL.—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council identifies for stricter prudential standards under section 1106 the Board shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(B) CONSULTATION WITH PRIMARY FINANCIAL REGULATORY AGENCIES.—The Board, in developing recommendations under this subsection, shall consult with the relevant primary financial regulatory agencies with respect to any standard that is likely to have a significant effect on entities described in section 1000(b)(6).

(2) CRITERIA.—The actions recommended under paragraph (1)—

(A) shall be designed to maximize financial stability, taking costs to long-term financial and 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, nature, size, scale, concentration, or interconnectedness, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice altogether.

(b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—Each primary financial regulatory agency is authorized to impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities described in section 1000(b)(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. 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 primary financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—Standards imposed under this subsection shall be the standards recommended by the Board in accordance with subsection (a) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency.

(3) PRIMARY FINANCIAL REGULATORY AGENCY RESPONSE.—A primary financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (2) within 60 days of the Board's recommendation. A primary financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.

(a) NOTICE.—When the Council determines that a company or activity or practice no longer is subject to heightened prudential scrutiny, the Board shall inform the relevant primary financial regulatory agency or agencies (if different from the Board) of that finding.

(b) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—A primary financial regulatory agency that has imposed stricter prudential standards for financial stability purposes under this subtitle shall determine whether standards that it has imposed under this subtitle should remain in effect.

SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or other solvent companies that are predominantly engaged in activities that are financial in nature or are incidental thereto pursuant to section 4(k) of the Bank Holding Company Act, if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council.

(c) FUNDING.—

(1) ADMINISTRATIVE EXPENSES AND COST OF GUARANTEES.—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) FEES AND OTHER CHARGES.—The Corporation shall charge fees or other charges to all participants in such program established pursuant to this section. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) EXCESS FUNDS.—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Resolution Fund established pursuant to section 1609(n).

(4) AUTHORITY OF CORPORATION.—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraph (2), and, to the extent such additional amounts are necessary, assessments on large financial companies under paragraph (5), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Resolution Fund established pursuant to section 1609(n).

(5) BACK-UP SPECIAL ASSESSMENT.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment on—

(A) large financial companies subject to assessments under section 1609(n) (whether or not such company participated in such program) in the manner provided in such section 1609(n); and

(B) participants in the program that are not large financial companies paying assessments pursuant to section 1609(n).

(d) PLAN FOR MAINTENANCE OR INCREASE OF LENDING.—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent company seeking to participate in such program shall be required to submit to the Corporation a plan detailing how the use of such guaranteed funds will facilitate the increase or maintenance of such solvent company's level of lending to consumers or small businesses.

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

(1) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The term ''activities that are financial in nature'' means activities that are determined to be financial in nature, or incidental to such activities, under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and activities that are identified for stricter prudential standards under section 1106.

(2) COMPANY.—The term ''company'' means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

(3) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(4) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(5) SOLVENT.—The term ''solvent'' means assets are more than the obligations to creditors.

(f) SUNSET OF CORPORATION'S AUTHORITY.—The Corporation's authority under subsections (a) and (c) and the authority to borrow or obligate funds under section 1609(n) shall expire on December 31, 2013.

SEC. 1110. CORPORATION MUST RECEIVE WARRANTS WHEN PAYING OR RISKING TAXPAYER FUNDS.

(a) IN GENERAL.—The Federal Deposit Insurance Corporation (hereinafter in this section referred to as the ''Corporation'') may not provide any payment, credit extension, or guarantee, or make any such commitment under the authority of section 1109 or 1604, unless the Corporation receives from the financial company for which the credit extension or guarantee is intended, as fair market value consideration for such payment, credit extension or guarantee—

(1) in the case of a financial company, the securities of which are traded on a national securities exchange, a warrant giving the right to the Corporation to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which, the Corporation agrees not to exercise voting power, as the Corporation determines appropriate; or

(2) in the case of any financial company other than one described in paragraph (1), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in subsection (b)(3).

(b) TERMS AND CONDITIONS.—The terms and conditions of any warrant or senior debt instrument required under subsection (a) shall meet the following requirements:

(1) PURPOSES.—Such terms and conditions shall, at a minimum, be designed—

(A) to provide for reasonable participation by the Corporation, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(B) to provide additional protection for the taxpayer against losses from such payment, extension of credit, or guarantee by the Corporation under this title.

(2) AUTHORITY TO SELL, EXERCISE, OR SURRENDER.—The Corporation may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under paragraph (1).

(3) CONVERSION.—The warrant shall provide that if, after the warrant is received by the Corporation under this subsection, the financial company that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in subsection (a)(1), such warrants shall convert to senior debt, or contain appropriate protections for the Corporation to ensure that the Corporation is appropriately compensated for the value of the warrant, in an amount determined by the Corporation.

(4) PROTECTIONS.—Any warrant representing securities to be received by the Corporation under this subsection shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Corporation. Such provisions shall protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and other distributions, mergers, and other forms of reorganization or recapitalization.

(5) EXERCISE PRICE.—The exercise price for any warrant issued pursuant to this subsection shall be set by the Corporation, in the interest of the taxpayers.

(6) SUFFICIENCY.—The financial company shall guarantee to the Corporation that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial company not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Corporation may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Corporation with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(c) EXCEPTIONS.—

(1) The Corporation shall establish an exception to the requirements of this section and appropriate alternative requirements for any participating financial company that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(2) If the Corporation is providing a payment, extension of credit, or guarantee with regard to its authority under section 1604 and the Corporate determines that it is certain that at the conclusion of the Resolution Process the shareholders of all classes shall lose their entire investment and receive nothing therefor, then the requirements of this section shall not apply.

SEC. 1111. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTIONS 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 of Directors determines'' and all that follows through the period and inserting ''or financial holding company subject to stricter standards (as defined in section 1000(b)(5) of the Financial Stability Improvement Act of 2009) whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such financial holding company subject to stricter standards for resolution purposes.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (2)—

(A) at the end of subparagraph (B), by striking ''or'';

(B) at the end of subparagraph (C), by striking the period and inserting ''; or''; and

(C) by inserting at the end the following new subparagraph:

''(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.''; and

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

''(6) For purposes of this subsection:

''(A) The Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

''(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.''.

SEC. 1112. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.

(a) STUDY REQUIRED.—The Chairman of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the effect on the efficiency of capital markets, costs imposed on the financial sector, and on national economic growth, of—

(1) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(2) limits on the organizational complexity and diversification of large financial institutions;

(3) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(4) limits on risk transfer between business units of large financial institutions;

(5) requirements to carry contingent capital or similar mechanisms;

(6) limits on commingling of commercial and financial activities by large financial institutions;

(7) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(8) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

The study shall include recommendations for the optimal structure of any limits considered in paragraphs (1) through (5) in order to maximize their effectiveness and minimize their economic impact.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

SEC. 1113. EXERCISE OF FEDERAL RESERVE AUTHORITY.

(a) NO DECISIONS BY FEDERAL RESERVE BANK PRESIDENTS.—No provision of this title relating to the authority of the Board shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(b) VOTING DECISIONS BY BOARD.—The Board of Governors of the Federal Reserve System shall not delegate the authority to make any voting decision that the Board is authorized or required to make under this title in contravention of section 11(k) of the Federal Reserve Act.

SEC. 1114. STRESS TESTS.

(a) A financial holding company subject to stricter standards shall—

(1) conduct quarterly stress tests; and

(2) submit a report on its quarterly stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(b) A financial company that has more than $10,000,000,000 in total assets and is not a financial holding company subject to stricter standards shall—

(1) conduct semiannual stress tests; and

(2) submit a report on its semiannual stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(c) A stress test under this section shall provide for testing under each of the following sets of conditions:

(1) Baseline.

(2) Adverse.

(3) Severely adverse.

(d) The head of each primary financial regulatory agency, in coordination with the Board, shall issue regulations to define the term ''stress test'' for purposes of this section.

SEC. 1115. CONTINGENT CAPITAL.

(a) IN GENERAL.—The Board, in coordination with the appropriate primary financial regulatory agency, may promulgate regulations that require a financial holding company subject to stricter standards to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—

(1) a specified financial company fails to meet prudential standards established by the agency; and

(2) the agency has determined that threats to United States financial system stability make such a conversion necessary.

(b) FACTORS TO CONSIDER.—In establishing regulations under this section, the Board shall consider—

(1) an appropriate transition period for implementation of a conversion under this section;

(2) capital requirements applicable to the specified financial company and its subsidiaries; and

(3) any other factor that the Board deems appropriate.

(c) STUDY REQUIRED.—The Chairman of the Council shall carry out a study to determine an optimal implementation of contingent capital requirements to maximize financial stability, minimize the probability of drawing on the Systemic Resolution Fund established under section 1609(n) in a financial crisis, and minimize costs for financial holding companies subject to stricter standards. To the extent practicable, the study shall take place with input from industry participants and international financial regulators. Such study shall include—

(1) an evaluation of the characteristics and amounts of convertible debt that should be required, including possible tranche structure;

(2) an analysis of possible trigger mechanisms for debt conversion, including violation of regulatory capital requirements, failure of stress tests, declaration of systemic emergency by regulators, market-based triggers and other trigger mechanisms;

(3) an estimate of the costs of carrying contingent capital;

(4) an estimate of the effectiveness of contingent capital requirements in reducing losses to the systemic resolution fund in cases of single-firm or systemic failure; and

(5) recommendations for implementing legislation.

(d) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (c).

SEC. 1116. RESTRICTION ON PROPRIETARY TRADING BY DESIGNATED FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—If the Board determines that propriety trading by a financial holding company subject to stricter standards poses an existing or foreseeable threat to the safety and soundness of such company or to the financial stability of the United States, the Board may prohibit such company from engaging in propriety trading.

(b) EXCEPTIONS PERMITTED.—The Board may exempt from the prohibition of subsection (a) proprietary trading that the Board determines to be ancillary to other operations of such company and not to pose a threat to the safety and soundness of such company or to the financial stability of the United States, including—

(1) making a market in securities issued by such company;

(2) hedging or managing risk;

(3) determining the market value of assets of such company; and

(4) propriety trading for such other purposes allowed by the Board by rule.

(c) RULEMAKING AUTHORITY.—The primary financial regulatory agencies of banks and bank holding companies shall jointly issue regulations to carry out this section.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect after the end of the 180-day period beginning on the date of the enactment of this title.

(e) PROPRIETARY TRADING DEFINED.—For purposes of this section and with respect to a company, the term ''proprietary trading'' means the trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company's own money and for the company's own account.

SEC. 1117. RULE OF CONSTRUCTION.

The authorities granted to agencies under this subtitle are in addition to any rule-making, report-related, examination, enforcement, or other authority that such agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed for financial stability purposes under this subtitle shall supersede any conflicting less stringent requirements of the primary financial regulatory agency but only the extent of the conflict.

SEC. 1118. ANTITRUST SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to modify, impair, or supercede the operation of any of the antitrust laws. For purposes of the preceding sentence, 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 related to unfair methods of competition.

Subtitle C—Improvements to Supervision and Regulation of Federal Depository Institutions

SEC. 1201. DEFINITIONS.

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

(1) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(2) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—The term ''Office of the Comptroller of the Currency'' means the office established by section 324 of the Revised Statutes (12 U.S.C. 1).

(4) OFFICE OF THRIFT SUPERVISION.—The term ''Office of Thrift Supervision'' means the office established by section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(6) TRANSFER DATE.—The term ''transfer date'' has the meaning provided in section 1205.

(7) CERTAIN OTHER TERMS.—The terms ''affiliate'', ''bank holding company'', ''control'' (when used with respect to a depository institution), ''depository institution'', ''Federal banking agency'', ''Federal savings association'', ''including'', ''insured branch'', ''insured depository institution'', ''savings association'', ''State savings association'', and ''subsidiary'' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 1202. AMENDMENTS TO THE HOME OWNERS' LOAN ACT RELATING TO TRANSFER OF FUNCTIONS.

(a) AMENDMENTS TO SECTION 2.—Section 2 of the Home Owners' Loan Act (12 U.S.C. 1462) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) BOARD OF GOVERNORS.—The term 'Board of Governors' means the Board of Governors of the Federal Reserve System.''; and

(2) by striking paragraph (3) and inserting the following new paragraph:

''(3) [repealed]''.

(b) AMENDMENTS TO SECTION 3.—Section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) ESTABLISHMENT OF DIVISION OF THRIFT SUPERVISION.—To carry out the purposes of

this Act, there is hereby established the Division of Thrift Supervision, which shall be a division within the Office of the Comptroller of the Currency.'';

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) IN GENERAL.—The Division of Thrift Supervision shall be headed by a Senior Deputy Comptroller of the Currency who shall be subject to the general oversight of the Comptroller of the Currency.'';

(B) in paragraph (2), by striking ''Director'' and inserting ''Comptroller of the Currency''; and

(C) by striking paragraphs (3) and (4);

(3) by striking subsections (c), (d), and (e) and inserting the following new subsection:

''(c) POWERS OF THE COMPTROLLER OF THE CURRENCY.—The Comptroller of the Currency shall have all the powers, duties, and functions transferred by the Financial Stability Improvement Act of 2009 to the Comptroller of the Currency to carry out this Act.'';

(4) by redesignating subsections (f) and (i) as subsections (d) and (e), respectively;

(5) in subsection (d) (as so redesignated), by striking ''Director'' each place such term appears and inserting ''Comptroller of the Currency'';

(6) by striking subsections (g), (h), and (j); and

(7) in subsection (e) (as so redesignated), by striking ''compensation of the Director and other employees of the Office and all other expenses thereof'' and inserting ''expenses incurred by the Comptroller of the Currency in carrying out this Act''.

(c) AMENDMENTS TO SECTION 4.—Section 4 of the Home Owners' Loan Act (12 U.S.C. 1463) is amended by striking ''Director'' each time it appears and inserting ''Comptroller of the Currency''.

(d) AMENDMENTS TO SECTION 5.—

(1) UNIVERSAL.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended—

(A) by striking ''Director'' and ''Director of the Office of Thrift Supervision'' each place such terms appear and inserting ''Comptroller of the Currency''; and

(B) by striking ''Director's'' each place such term appears and inserting ''Comptroller of the Currency's''.

(2) SPECIFIC PROVISIONS.—

(A) Section 5(d)(2)(E) of the Home Owners' Loan Act is amended by striking ''or the Resolution Trust Corporation, as appropriate,'' each place such term appears.

(B) Section 5(d)(3)(B) of the Home Owners' Loan Act is amended by striking ''or the Resolution Trust Corporation''.

(e) AMENDMENTS TO SECTIONS 8 AND 9.—Sections 8 and 9 of the Home Owners' Loan Act (12 U.S.C. 1466a and 1467) are each amended by striking ''Director'' each place such term appears and inserting ''Comptroller of the Currency''.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 3.—The heading for section 3 of the Home Owners' Loan Act is amended by striking ''**DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION**'' and inserting ''**DIVISION OF THRIFT SUPERVISION**''.

(2) SECTION 5.—The heading for paragraph (2)(E)(ii) of section 5(d) of the Home Owners' Loan Act and the heading for paragraph (3)(B) of such section are each amended by striking ''OR RTC''.

(g) CLERICAL AMENDMENT.—The table of contents section for the Home Owners' Loan Act is amended by striking the item relating to section 3 and inserting the following new item:

''Sec. 3. Division of Thrift Supervision.''.

SEC. 1203. 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.

''There shall be in the Department of the Treasury a bureau, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Comptroller of the Currency shall have the same authority over matters as were vested in the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the date of enactment of the Financial Stability Improvement Act of 2009 other than those authorities with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date. 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.''.

(b) AMENDMENTS TO SECTION 327.—Section 327 of the Revised Statutes of the United States (12 U.S.C. 4) is amended to read as follows:

''SEC. 327 DEPUTY COMPTROLLERS.

''(a) APPOINTMENT.—The Secretary of the Treasury shall appoint no more than 5 Deputy Comptrollers of the Currency—

''(1) 1 of whom shall be designated the Senior Deputy Comptroller for National Banks, who shall oversee the regulation and supervision of national banks; and

''(2) 1 of whom shall be designated the Senior Deputy Comptroller for Thrift Supervision, who shall oversee the regulation and supervision of Federal savings associations.

''(b) PAY.—The Secretary of the Treasury shall fix the compensation of the Deputy Comptrollers of the Currency and provide such other benefits as the Secretary may determine to be appropriate.

''(c) OATH OF OFFICE; DUTIES.—Each Deputy Comptroller shall take the oath of office and shall perform such duties as the Comptroller of the Currency shall direct.

''(d) SERVICE AS ACTING COMPTROLLER.—During a vacancy in the office or during the absence or disability of the Comptroller, each Deputy Comptroller shall possess the power and perform the duties attached by law to the Office of the Comptroller under such order of succession as the Comptroller shall direct.''.

(c) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting ''or any Federal savings association'' before the period at the end.

(d) AMENDMENT TO SECTION 5240.—The fourth sentence of the second undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481) is amended by striking ''Secretary of the Treasury;'' and all that follows through the end of the sentence, and inserting ''Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter shall be set and adjusted pursuant to chapter 71 of title 5, United States Code and without regard to the provisions of other laws applicable to officers or employees of the United States.''

(e) AMENDMENT TO SECTION 5240.—The first sentence in the first undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 482) is amended by inserting ''pursuant to chapter 71 of title 5, United States Code,'' after ''shall,''.

SEC. 1204. POWER AND DUTIES TRANSFERRED.

(a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this subtitle, all functions of the Director of the Office of Thrift Supervision are transferred to the Office of the Comptroller of the Currency.

(2) COMPTROLLER'S AUTHORITY.—Except as otherwise provided in this subtitle, the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date other than those powers, authorities, rights, and duties with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date.

(3) FUNCTIONS RELATING TO SUPERVISION OF STATE SAVINGS ASSOCIATIONS.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of State savings associations are transferred to the Corporation.

(B) CORPORATION'S AUTHORITY.—The Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date, relating to the supervision and regulation of State savings associations.

(b) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended in subsection (q)—

(1) by amending paragraph (1) to read as follows:

''(1) the Comptroller of the Currency in the case of any national bank, Federal savings association or any Federal branch or agency of a foreign bank;'';

(2) in paragraph (2)(F), by adding ''and'' at the end after the semicolon;

(3) by amending paragraph (3) to read as follows:

''(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank, a State savings association or a foreign bank having an insured branch.''; and

(4) by striking paragraph (4).

(c) TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in subsection (a) or (b) shall affect any transfer of consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(d) EFFECTIVE DATE.—Subsections (a) and (b) shall become effective on the transfer date.

SEC. 1205. TRANSFER DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the date for the transfer of functions to the Office of the Comptroller of the Currency and the Corporation under section 1204 shall be 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency and the Director of the Office of Thrift Supervision, may designate a calendar date for the transfer of functions of the Office of Thrift Supervision to the Office of the Comptroller of the Currency, and the Corporation under section 1204 that is later than 1 year after the date of enactment of this title if the Secretary—

(A) transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) a written determination that orderly implementation of this subtitle is not feasible on the date that is 1 year after the date of enactment of this subtitle;

(ii) an explanation of why an extension is necessary for the orderly implementation of this subtitle; and

(iii) a description of the steps that will be taken to effect an orderly and timely implementation of this subtitle within the extended time period; and

(B) publishes notice of that designated later date in the Federal Register.

(2) EXTENSION LIMITED.—In no case shall any date designated under paragraph (1) be later than 18 months after the date of enactment of this subtitle.

(3) EFFECT ON REFERENCES TO ''TRANSFER DATE''.—If the Secretary takes the actions provided in paragraph (1) for designating a date for the transfer of functions to the Office of the Comptroller of the Currency, and the Corporation under section 1204, references in this title to ''transfer date'' shall mean the date designated by the Secretary.

SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.

(a) IN GENERAL.—Notwithstanding section 325 of the Revised Statutes of the United States, the term of the person serving as Comptroller on the date of the enactment of this title shall terminate as of such date.

(b) ACTING COMPTROLLER.—Subject to sections 3345, 3346, and 3347 of title 5, United States Code, the President may designate a person to serve as acting Comptroller and perform the functions and duties of the Comptroller until a Comptroller has been appointed and qualified in the manner established in section 325 of the Revised Statutes of the United States.

SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 90 days after the transfer date, the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

SEC. 1208. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1204(a) and 1207 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 subtitle 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—

(A) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency or the Office of the Comptroller of the Currency shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding as of the transfer date; and

(B) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Chairman of the Corporation shall be substituted for the Director of the Office of Thrift Supervision as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—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 Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and 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—

(1) the Office of the Comptroller of the Currency, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(2) the Corporation, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) CONTINUATION OF EXISTING OTS ENFORCEMENT ACTIONS.—Any formal or informal enforcement action taken by the Director of the Office of Thrift Supervision with respect to a savings and loan holding company, a subsidiary of a savings and loan holding company (other than a savings association) or an institution-affiliated party of a savings and loan holding company or such a subsidiary, that is in effect on the day before the date of the enactment of this title shall continue to be effective and enforceable against such company, subsidiary, or institution-affiliated party after such date as if—

(1) such savings and loan holding company, or the savings and loan holding company related to such subsidiary or institution-affiliated party, had been a bank holding company on the effective date of the final enforcement action; and

(2) the action had been taken by the Board, unless otherwise terminated or modified by the Board.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Comptroller of the Currency shall—

(A) after consultation with the Chairperson of 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) after 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.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, 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 Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, 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 Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

SEC. 1209. REGULATIONS AND ORDERS.

In addition to any powers transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency may prescribe such regulations and issue such orders as the Comptroller of the Currency determines to be appropriate to carry out this title and the powers and duties transferred to the Comptroller of the Currency by this title.

SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.

Before the transfer date, the Comptroller of the Currency shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Comptroller of the Currency;

(2) determine and redetermine, 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 title and ending on the transfer date;

(B) what 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 during the period beginning on the date of enactment of this title and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—When requested by the Comptroller of the Currency to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Comptroller of the Currency, 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 that the Comptroller of the Currency determines to be necessary under section 1210(2)(A);

(2) detail to the Office of the Comptroller of the Currency such personnel as the Comptroller of the Currency determines to be appropriate under section 1210(2)(B); and

(3) make available to the Office of the Comptroller of the Currency such property and provide the Office of the Comptroller of the Currency such administrative services as the Comptroller of the Currency determines to be necessary under section 1210(2)(C).

(b) NOTICE REQUIRED.—The Comptroller of the Currency shall give the Office of Thrift

Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency intends to make under subsection (a).

SEC. 1212. EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—

(1) OTS EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to either the Comptroller of the Currency or the Corporation for employment.

(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—

(I) the functions of the Office of Thrift Supervision that are transferred to the Office of the Comptroller of the Currency by this title; and

(II) the functions of the Office of Thrift Supervision that are transferred to the Corporation by this title;

(ii) consistent with the numbers determined under clause (ii), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation in a manner that the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation, in their discretion, deem equitable.

(2) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in paragraph (1) shall affect the transfer of employees performing or supporting consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted 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.—The Office of the Comptroller of the Currency and the Corporation may decline to accept 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.

(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 his or her 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 SUBTITLE.—If any provision of this subtitle conflicts with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEES' STATUS AND ELIGIBILITY.—The transfer of functions and employees under this title, and the abolition of the Office of Thrift Supervision, 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.—Each employee transferred from the Office of Thrift Supervision shall be placed in a position at either the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as he or she held on the day before the transfer date.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—Examiners transferred to the Office of the Comptroller of the Currency or the Corporation shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Office of the Comptroller of the Currency or the Corporation examining the same types of institutions as they examined before they were transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 3-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each affected employee shall not, during the 3-year period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area as defined by the Office of Personnel Management.

(B) AFFECTED EMPLOYEES.—For purposes of this paragraph, the term ''affected employee'' means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date;

(ii) an employee of the Office of the Comptroller of the Currency holding a permanent position on the day before the transfer date; and

(iii) an employee of the Corporation holding a permanent position on the day before the transfer date.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or 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) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each employee transferred from the Office of Thrift Supervision shall, during the 1-year period beginning on the transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to reduce a transferred employee's rate of basic pay—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Office of the Comptroller of the Currency or the Corporation to increase a transferred employee's pay.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each employee transferred from the Office of Thrift Supervision may remain enrolled in his or her existing retirement plan or plans as long as he or she remains employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation shall pay any employer contributions to the existing retirement plan of each employee transferred from the Office of Thrift Supervision as required under that plan.

(B) DEFINITION.—For purposes of this paragraph, 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 from which the employee was transferred, which the employee was enrolled in on the day before the transfer date.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the transfer date, retain membership in any other employee benefit program of the Office of Thrift Supervision, including a 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 shall pay any employer cost 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 transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any dental, vision, or life insurance program of the Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program 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; and

(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 transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any long term care insurance program of the Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation 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'S CONTRIBUTION.—

(i) IN GENERAL.—Subject to clause (ii), an individual enrolled in the Federal Employees Health Benefits program under this subparagraph shall pay any employee contribution required by the plan.

(ii) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation 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 Office of the Comptroller of the Currency or the Corporation 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 (i).

(E) 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 the Office of Thrift Supervision on the day before the 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 Office of the Comptroller of the Currency or the Corporation, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—

(I) IN GENERAL.—Subject to subclause (II), an individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation 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 Office of the Comptroller of the Currency or the Corporation 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 subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Corporation 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) EQUITABLE TREATMENT.—In administering the provisions of this section, the Office of the Comptroller of the Currency and the Corporation—

(1) shall take no action that would unfairly disadvantage transferred employees relative to other employees of the Office of the Comptroller of the Currency or the Corporation based on their prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' 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;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

SEC. 1213. PROPERTY TRANSFERRED.

(a) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a).

(b) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—All contracts, agreements, leases, licenses, permits, and similar arrangements 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 together with that property.

(c) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

(d) 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).

SEC. 1214. FUNDS TRANSFERRED.

Except to the extent needed to dispose of affairs under section 1215, all funds that, on the day before the transfer date, are available to the Director of the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a), on the transfer date.

SEC. 1215. DISPOSITION OF AFFAIRS.

(a) IN GENERAL.—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 agency related to any function transferred to the Office of the Comptroller of the Currency or the Corporation by this subtitle—

(A) manage any employees of the Office of Thrift Supervision and provide for the payment of the compensation and benefits of any such employees that accrue before the transfer date; and

(B) manage any property of the Office of Thrift Supervision until the property is transferred under section 1213; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision relating to the transferred functions.

(b) AUTHORITY AND STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfers of functions under this subtitle, the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, retain and may exercise any authority vested in the Director on the day before the transfer date that is necessary to carry out the requirements of this subtitle during that 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 he or she was receiving on the day before the transfer date.

SEC. 1216. 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 to be transferred to the Office of the Comptroller of the Currency or the Corporation, shall—

(1) continue to provide those services, subject to reimbursement, until the transfer of those functions is complete; and

(2) consult with any such agency to coordinate and facilitate a prompt and orderly transition.

SEC. 1217. CONTRACTING AND LEASING AUTHORITY.

In addition to any powers transferred to the Comptroller of the Currency by this subtitle, 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 real or personal property, or interest in property, as the Comptroller of the Currency determines to be necessary or convenient to carry out the duties and responsibilities of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of any real or personal property or interest in property without regard to title 40, United States Code, title III of the Federal Properties and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other Federal laws of a similar type governing the procurement of goods and services or the acquisition or disposition of any property or interest in property by Federal agencies.

SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended as follows:

(1) In subsection (m)—

(A) in paragraph (2), by striking ''Director'' and inserting ''Comptroller'';

(B) in paragraph (2), by striking ''Director may grant'' and inserting ''Comptroller of the Currency may grant'';

(C) in paragraph (2), by striking ''the Director deems'' and inserting ''the Comptroller deems'';

(D) in paragraph (2)(A), by striking ''Director'' and inserting ''Comptroller'';

(E) in paragraph (2)(B), by striking ''Director'' and inserting ''Comptroller'';

(F) in paragraph (2)(B)(iii), by striking ''Director'' and inserting ''Comptroller'';

(G) by striking subparagraph (A) of paragraph (3) and inserting the following new subparagraph:

''(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall—

''(i) immediately be subject to the restrictions in subparagraph (B); and

''(ii) become one or more banks (other than a savings bank) within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, except as provided in subparagraph (C)(i).'';

(H) by striking subclause (III) of paragraph (3)(B)(i) and inserting the following new subclause:

''(III) DIVIDENDS.—The savings association shall be prohibited from paying dividends except for such dividends—

''(aa) as would be permissible for a national bank;

''(bb) that are necessary to meet obligations of a company that controls such savings association; and

''(cc) that are specifically approved by the Comptroller and the Board of Governors after prior written request of at least 30 days to the Comptroller and the Board of Governors.'';

(I) by striking clause (ii) of paragraph (3)(B);

(J) by striking subparagraphs (C) and (D) of paragraph (3) and inserting the following new subparagraphs:

''(C) REGULATORY AUTHORITY.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners' Loan Act and subject to actions authorized by section 5(d) of the Home Owners' Loan Act.

''(D) REQUALIFICATIONS.—

''(i) A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (A)(ii) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender.

''(ii) If the savings association referred to in clause (i) (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender it shall immediately be subject to subparagraph (A)(ii) as if the one-year time period provided for in subparagraph (A)(ii) already has expired, and as if the exception in clause (i) was not applicable or available to such savings association.'';

(K) in paragraph (4)(D) by striking ''Director'' and inserting ''Comptroller'';

(L) in paragraph (4)(E) by striking ''Director'' and inserting ''Comptroller''; and

(M) in paragraph (7)(B) by striking ''Director'' and inserting ''Comptroller''.

(2) In subsection (o)—

(A) in paragraph (3) in the heading by striking ''DIRECTOR'' and inserting ''BOARD'';

(B) in paragraph (3)(A) by striking ''Director'' and inserting ''Board'';

(C) in paragraph (3)(B) by striking ''Director'' and inserting ''Board'';

(D) in paragraph (3)(C) by striking ''Director'' and inserting ''Board'';

(E) in paragraph (3)(D) by striking ''Director'' and inserting ''Comptroller'';

(F) in paragraph (5)(E), by striking ''activities described in subsection (c)(2) or (c)(9)(A)(ii)'' and inserting ''activities otherwise permissible for the company pursuant to, and in accordance with, section 4 of the Bank Holding Company Act of 1956'';

(G) in paragraph (7) by striking ''chartered by the Director'' and inserting ''chartered by the Comptroller''; and

(H) in paragraph (7) by striking ''regulations as the Director may'' and inserting ''regulations as the Board may''.

SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLDING COMPANIES PRESERVED.

(a) TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.—Section 3(g) of the Bank Holding Company Act of 1956 (12 U.S. C. 1842(g)) is amended by adding at the end the following new paragraphs:

''(3) DECLARATION OF DIVIDENDS.—Every subsidiary savings association of a mutual holding company shall give the Board not less than 30 days advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Board. Any such dividend declared within such period, or without the giving of such notice to the Board, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

''(4) WAIVER OF DIVIDENDS.—Any mutual thrift holding company organized under section 10(b) of the Home Owners' Loan Act shall be permitted to waive such company's right to receive any dividend declared by a subsidiary, if—

''(A) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

''(B) the mutual holding company provides the Board with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend and the Board does not object.

''(5) STANDARDS FOR WAIVER OF DIVIDEND.—The Board shall not object to a notice of intent to waive dividends under paragraph (4) if—

''(A) the waiver would not be detrimental to the safe and sound operation of the savings association; and

''(B) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company.

''(6) RESOLUTION INCLUDED IN WAIVER NOTICE.—A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the Board, together with any supporting materials relied upon by the board of directors, concluding that the proposed dividend waiver is consistent with the board of director's fiduciary duties to the mutual members of the mutual holding company.

''(7) VALUATION.—The Board will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.''.

SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 90 days of the enactment of the Financial Stability Improvement Act of 2009, the Secretary and the Corporation, in consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, shall jointly submit a plan to the Congress and the Inspectors General of the Department of the Treasury and of the Corporation detailing the steps the Secretary, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of the date on which the Congress receives the plan required under subsection (a), the Inspectors General of the Department of the Treasury and of the Corporation shall jointly provide a written report to the Secretary and the Corporation and shall submit a copy to the Congress detailing whether the plan conforms with the intent of the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the Congress receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury and the Corporation shall jointly provide a written report on the status of the implementation of the plan to the Secretary and the Corporation and shall submit a copy to the Congress.

SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Chairman of the Board of Governors of the Federal Reserve System, or such other member of the Board of Governors as the Chairman of the Board of Governors shall designate'';

(2) by amending subsection (d)(2) to read as follows:

''(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency, the acting Comptroller of the Currency shall be a member of the Board of Directors in the place of the Comptroller of the Currency.''; and

(3) in subsection (f)(2), by striking ''or of the Office of Thrift Supervision''.

SEC. 1222. AMENDMENTS TO SECTION 3.

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)(1)(C) (relating to the definition of the term ''savings association''), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(2) in subsection (l)(5) (relating to the definition of the term ''deposit''), in the introductory text, by striking ''Director of the Office of Thrift Supervision,''; and

(3) in subsection (z) (relating to the definition of the term ''Federal banking agency''), by striking ''the Director of the Office of Thrift Supervision,''.

SEC. 1223. AMENDMENTS TO SECTION 7.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in paragraph (2)(A)—

(A) in the first sentence, by striking ''the Director of the Office of Thrift Supervision'';

(B) in the second sentence, by striking ''the Director of the Office of Thrift Supervision,'';

(2) in paragraph (3), in the first sentence, by striking '', the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the

Currency and the Chairman of the Board of Governors of the Federal Reserve System''; and

(3) in paragraph (7), by striking '', the Director of the Office of Thrift Supervision,''.

SEC. 1224. AMENDMENTS TO SECTION 8.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in subsection (a)(8)(B)(ii), in the last sentence—

(A) by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency''; and

(B) by inserting ''the Office of Thrift Supervision, as a successor to'' after ''as a successor to'';

(2) in subsection (o), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(3) in subsection (w)(3)(A), by striking ''Office of Thrift Supervision'' and inserting ''Office of the Comptroller of the Currency''.

SEC. 1225. AMENDMENTS TO SECTION 11.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (c)(6)—

(A) in the heading, by striking ''DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION'' and inserting ''COMPTROLLER OF THE CURRENCY'';

(B) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(C) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(2) in subsection (d)—

(A) in paragraph (17)(A)—

(i) by striking '', or the Director of the Office of Thrift Supervision''; and

(ii) by striking ''appropriate''; and

(B) in paragraph (18)(B), by striking ''or the Director of the Office of Thrift Supervision''; and

(3) in subsection (n)—

(A) in paragraph (1)(A), by striking ''the Director of the Office of Thrift Supervision, with respect to 1 or more insured''

(B) in paragraph (2)(A), by striking ''the Director of the Office of Thrift Supervision'';

(C) in paragraph (4)(D), by striking ''and the Director of the Office of Thrift Supervision, as appropriate,'';

(D) in paragraph (4)(G), by striking ''and the Director of the Office of Thrift Supervision, as appropriate,''; and

(E) in paragraph (12)(B), by striking ''or the Director of the Office of Thrift Supervision, as appropriate,''.

SEC. 1226. AMENDMENTS TO SECTION 13.

Section 13(k)(1)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1227. AMENDMENTS TO SECTION 18.

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

(1) in subsection (c)(2)—

(A) in subparagraph (A), by striking ''bank;'' and inserting ''bank or a savings association; and'';

(B) in subparagraph (B), by inserting ''and'' at the end after the semicolon;

(C) in subparagraph (C), by striking ''bank (except a savings bank supervised by the Director of the Office of Thrift Supervision); and'' and inserting ''bank or State savings association.''; and

(D) by striking subparagraph (D); and

(2) in subsection (g)(1), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(3) in subsection (i)(2)—

(A) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) the Corporation, if the resulting institution is to be a State nonmember insured bank or insured State savings association.''; and

(B) by striking subparagraph (C);

(4) in subsection (m)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B)—

(I) by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency''; and

(II) by striking ''Director may deem appropriate'' and inserting ''Comptroller may deem appropriate''; and

(C) in paragraph (3)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1228. AMENDMENTS TO SECTION 28.

Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(ii) in subparagraph (C), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(iii) in subparagraph (F), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(2) in subsection (h)(2), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) AMENDMENTS TO SECTION 802.—Section 802(a)(3) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

(1) by striking ''Comptroller of the Currency,'' and inserting ''Comptroller of the Currency and''; and

(2) by striking '', and the Director of the Office of Thrift Supervision''.

(b) AMENDMENTS TO SECTION 804.—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) with respect to banks, savings associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as prescribed by the Comptroller of the Currency to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency under laws other than this section; and'';

(2) in paragraph (2), by striking ''; and'' and inserting a period; and

(3) by striking paragraph (3).

SEC. 1230. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 4(f)(12)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended striking ''the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or'' and inserting ''the Federal Deposit Insurance Corporation or''.

SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and federal savings associations,'';

(2) in paragraph (2), by inserting ''and'' at the end;

(3) in paragraph (3), by striking '', and'' and inserting a period; and

(4) by striking paragraph (4).

SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY ACT.

Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(1) in paragraph (4), by striking ''insured bank,'' and inserting ''insured bank or'';

(2) by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(3) by striking '', the Federal Savings and Loan Insurance Corporation,''.

SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''national banks'' and inserting ''national banks or savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)''; and

(B) in subparagraph (B), by striking ''and bank holding companies;'' and inserting '', bank holding companies and savings and loan holding companies;''; and

(2) by striking the first paragraph (2) (relating to section 8 of the Federal Deposit Insurance Act).

SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'';

(2) in paragraph (2), by striking ''and bank holding companies,'' and inserting '', bank holding companies, and savings and loan holding companies,''

(3) by striking paragraph (4); and

(4) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'';

(2) in paragraph (2), by striking ''and bank holding companies,'' and inserting '', bank holding companies, and savings and loan holding companies,'';

(3) at the end of paragraph (3), by inserting ''and'' after the comma;

(4) by striking paragraph (4); and

(5) by redesignating paragraph (5) as paragraph (4).

(c) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3208(a)) is amended—

(1) by striking ''his'' and inserting ''the''; and

(2) by inserting ''of the Attorney General'' after ''enforcement functions''.

SEC. 1235. AMENDMENTS TO THE EMERGENCY HOMEOWNERS' RELIEF ACT.

Section 110 of the Emergency Homeowners' Relief Act (12 U.S.C. 2709) is amended—

(1) by striking the ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''; and

(2) by striking ''the Federal Savings and Loan Insurance Corporation,''.

SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) in paragraph (1)(A), by striking ''and Federal branches and Federal agencies of foreign banks,'' and inserting ''Federal branches and Federal agencies of foreign banks, or a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation,'';

(2) by striking paragraph (2); and

(3) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8).

SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENTS TO SECTION 206.—Section 206(g)(7) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)) is amended—

(1) in subparagraph (A)—

(A) in clause (v), by inserting ''and'' after the semicolon;

(B) in clause (vi)—

(i) by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking clause (vii); and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v).

SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) AMENDMENT TO SECTION 1002.—Section 1002 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301) is amended by striking ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''.

(b) AMENDMENT TO SECTION 1003.—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking ''the Office of Thrift Supervision,''.

(c) AMENDMENTS TO SECTION 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENTS TO SECTION 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended—

(1) by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency'';

(2) in paragraph (1)(B), by striking ''and the agencies under its administration or supervision''; and

(3) in paragraph (5), by striking ''and such agencies''.

(b) REPEAL OF SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is hereby repealed.

SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.

Section 19(b) of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in paragraph (1)(F), by striking ''the Director of the Office of Thrift Supervision'' and inserting ''the Comptroller of the Currency''; and

(2) in paragraph (4)(B), by striking ''the Director of the Office of Thrift Supervision'' and inserting ''the Comptroller of the Currency''.

SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENTS TO SECTION 302.—Section 302(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(b) AMENDMENT TO SECTION 305.—Section 305(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(c) AMENDMENT TO SECTION 308.—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 Supervision'' and inserting ''Comptroller of the Currency''.

(d) AMENDMENTS TO SECTION 402.—Section 402 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 note) is amended—

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

(2) in subsection (b), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(3) in subsection (e)—

(A) in paragraph (1), by striking ''Office of Thrift Supervision'' and inserting ''Office of the Comptroller of the Currency'';

(B) in paragraph (2), by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency'';

(C) in paragraph (3), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(D) in paragraph (4), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(e) AMENDMENT TO SECTION 1103.—Section 1103(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2)) is amended by striking ''and the Resolution Trust Corporation''.

(f) AMENDMENTS TO SECTION 1205.—Subsection 1205(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision, or the Director's designee'' and inserting ''Comptroller of the Currency, or the Comptroller's designee'';

(B) by striking subparagraph (D); and

(C) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;

(2) in paragraph (2), by striking ''paragraph (1)(F)'' and inserting ''paragraph (1)(E)'';

(3) in paragraph (3), by striking ''paragraph (1)(F)'' and inserting ''paragraph (1)(E)''; and

(4) in paragraph (5), by striking ''through (E)'' and inserting ''through (D)''.

(g) AMENDMENTS TO SECTION 1206.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(1) by striking ''the Oversight Board of the Resolution Trust Corporation'' and inserting ''and''; and

(2) by striking '', and the Office of Thrift Supervision,''.

(h) AMENDMENTS TO SECTION 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2), (5), and (6);

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(C) in paragraph (2) (as redesignated), by adding ''and'' at the end;

(2) in subsection (c)—

(A) by striking ''the Director of the Office of Thrift Supervision,'' and inserting ''and''; and

(B) by striking '', the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation''; and

(3) in subsection (d)—

(A) by striking paragraphs (3), (5) and (6); and

(B) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the introductory text by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1243. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992 AND THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.

(a) AMENDMENTS TO SECTION 543 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section 543 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) in subsection (c)(1)—

(A) by striking subparagraphs (D) through (F); and

(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively; and

(2) in subsection (f)—

(A) in paragraph (2)—

(i) by striking ''the Office of Thrift Supervision,''; and

(ii) in subparagraph (D), by striking ''the Office of Thrift Supervision,''; and

(B) in paragraph (3)—

(i) by striking ''the Office of Thrift Supervision,''; and

(ii) in subparagraph (D), by striking ''Office of Thrift Supervision,'' and inserting ''Comptroller of the Currency,''.

(b) AMENDMENT TO SECTION 1315 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1315(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4515(b)) is amended by striking ''the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.'' and inserting ''and the Federal Deposit Insurance Corporation.''.

(c) AMENDMENT TO SECTION 1317 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1317(c) of the of the Federal Housing Enterprises Financial Safety and Soundness

Act of 1992 (12 U.S.C. 4517(c)) is amended by striking ''the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision'' and inserting ''or the Federal Deposit Insurance Corporation''.

SEC. 1244. AMENDMENT TO THE HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p–1) is amended in the first sentence by striking ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''.

SEC. 1245. AMENDMENTS TO THE NATIONAL HOUSING ACT.

Section 202(f) of the National Housing Act is amended—

(1) by amending paragraph (5) to read as follows:

''(5) if the mortgagee is a national bank, a subsidiary or affiliate of such a bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;'';

(2) in paragraph (6), by adding ''and'' at the end;

(3) in paragraph (7)—

(A) by inserting ''or State savings association'' after ''State bank''; and

(B) by striking ''; and'' and inserting a period; and

(4) by striking paragraph (8).

SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended by striking subparagraph (B).

SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) AMENDMENTS TO SECTION 255.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by striking ''Office of Thrift Supervision (20–4108–0–3–373);''.

(b) AMENDMENTS TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

(1) by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C) through (G), respectively.

SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.

(a) AMENDMENTS TO SECTION 2539.—Section 2539(c)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) through (G), respectively.

(b) AMENDMENT TO SECTION 2554.—Section 2554(b)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1249. AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.

Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking ''the Office of Thrift Supervision,''.

SEC. 1250. AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.

Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(3)) is amended by striking ''Federal Savings and Loan Insurance Corporation'' and inserting ''Comptroller of the Currency''.

SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act is amended by striking ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''.

SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO SECTION 3.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking ''bank;'' and inserting ''bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;'';

(B) in clause (iii), by adding ''and'' at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(2) in subparagraph (B)—

(A) in clause (i), by striking ''bank;'' and inserting ''bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;'';

(B) in clause (iii), by adding ''and'' and the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(3) in subparagraph (C)—

(A) in clause (i), by striking ''bank;'' and inserting ''bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;'';

(B) in clause (iii), by adding ''and'' at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv); and

(4) in subparagraph (F)—

(A) in clause (i), by striking ''bank;'' and inserting ''or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation;'';

(B) by striking clause (ii); and

(C) redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii) and (iv), respectively.

(b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1) by striking ''the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,''.

SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of title 18, United States Code, is amended—

(1) by striking subparagraph (C); and

(2) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

(b) AMENDMENT TO SECTION 657.—Section 657 of title 18, United States Code, is amended by striking ''Office of Thrift Supervision, the Resolution Trust Corporation,''.

(c) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,''; and

(2) by striking ''or the Office of Thrift Supervision''.

(d) AMENDMENT TO SECTION 982.—Section 982(a)(3) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,'';and

(2) by striking ''or the Office of Thrift Supervision''.

(e) AMENDMENT TO SECTION 1006.—Section 1006 of title 18, United States Code, is amended—

(1) by striking ''Office of Thrift Supervision,''; and

(2) by striking ''the Resolution Trust Corporation,''.

(f) AMENDMENT TO SECTION 1014.—Section 1014 of title 18, United States Code, is amended—

(1) by striking ''the Office of Thrift Supervision,''; and

(2) by striking ''the Resolution Trust Corporation,''.

(g) AMENDMENT TO SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,''; and

(2) by striking ''or the Director of the Office of Thrift Supervision''.

SEC. 1254. AMENDMENTS TO TITLE 31, UNITED STATES CODE.

(a) AMENDMENT TO SECTION 309.—Section 309 of title 31, United States Code, is amended to read as follows:

''§ 309. Division of Thrift Supervision

''The Division of Thrift Supervision established under section 3(a) of the Home Owners' Loan Act shall be a division in the Office of the Comptroller of the Currency.''.

(b) AMENDMENTS TO SECTION 321.—Section 321 of title 31, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1), by adding ''and'' at the end;

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(c) AMENDMENTS TO SECTION 714.—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 within 12 months of the enactment of the Financial Stability Improvement Act of 2009.

''(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.''.

SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAPITAL REQUIREMENTS.

Section 908(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)) is amended by adding at the end the following new paragraph:

''(3) Each appropriate Federal banking agency shall, in establishing capital requirements under this Act or other provisions of Federal law for banking institutions, seek to make such requirements countercyclical so that the amount of capital required to be maintained by a banking institution increases in times of economic expansion and may decrease in times of economic contraction, consistent with the safety and soundness of the institution.''.

SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH RESPECT TO SAVINGS AND LOAN HOLDING COMPANIES.

(a) TRANSFER OF FUNCTIONS.—Notwithstanding any other provision of this subtitle, all functions of the Director of the Office of Thrift Supervision with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance are transferred to the Board.

(b) BOARD'S AUTHORITY.—Notwithstanding any other provision of this subtitle, the Board shall succeed to all powers, authorities, rights, and duties with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date.

(c) SAVINGS AND LOAN HOLDING COMPANY DEFINED.—The term ''savings and loan holding company'' shall have the meaning given such term under section 10 of the Home Owners' Loan Act.

Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES, SAVINGS ASSOCIATIONS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by striking subsection (a)(1) and inserting the following:

''(a) BANK HOLDING COMPANY.—

''(1) IN GENERAL.—Except as provided in paragraph (5), the term 'bank holding company' means—

''(A) any company, other than a company described in section 4(p), which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act; and

''(B) any section 6 holding company established by a company described in section 6(a)(1)(C).''.

(2) in subsection (a)(5), by adding at the end the following new subparagraph:

''(G) No company is a bank holding company by virtue of its ownership or control of a section 6 holding company or any subsidiary of a section 6 holding company, so long as the requirements of sections 4(p) and 6 of this Act are met, as applicable, by the section 6 holding company;'';

(3) in subsection (c)(1)(A), by striking ''insured bank'' and inserting ''insured depository institution'', and by striking ''section 3(h) of the Federal Deposit Insurance Act'' and inserting ''section 3(c)(2) of the Federal Deposit Insurance Act'';

(4) in subsection (c)(2)—

(A) in subparagraph (B), by inserting before the period the following: ''that is controlled by a company that is, on a consolidated basis, predominantly engaged in the business of insurance''; and

(B) by striking subparagraph (H); and

(5) by adding at the end the following new subsection:

''(r) SECTION 6 HOLDING COMPANIES.—The term 'section 6 holding company' means a company that is required to be established as an intermediate holding company under section 6 of this Act.''.

(b) NONBANKING ACTIVITIES EXCEPTIONS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (f)(1)(B) by striking ''for purposes of this Act'' and inserting ''for purposes of section 4(a)''; and

(2) in subsection (f)(2)—

(A) in subparagraph (B)(ii), by striking ''; or'' and inserting a semicolon;

(B) in subparagraph (C), by striking the period and inserting ''; or''; and

(C) by adding at the end the following new subparagraph:

''(D) such company fails to—

''(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after the adoption of rules required by this section; and

''(ii) conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk.''; and

(3) by inserting at the end the following new subsections:

''(p) CERTAIN COMPANIES NOT SUBJECT TO THIS ACT.—

''(1) IN GENERAL.—Except as provided in paragraphs (6) and (7), any company which—

''(A) was—

''(i) a unitary savings and loan holding company on May 4, 1999, or became a unitary savings and loan holding company pursuant to an application pending before the Director of the Office of Thrift Supervision on of before that date, and that—

''(I) on June 30, 2009, continued to control not fewer than 1 savings association that it controlled on May 4, 1999, or that such company acquired pursuant to an application pending before the Director of the Office of Thrift Supervision on or before such date, which became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(4)(A); and

''(II) on June 30, 2009, and the date of enactment of the Financial Stability Improvement Act of 2009, such savings association subsidiary was and remains a qualified thrift lender (as determined by section 10 of the Home Owners' Loan Act); or

''(ii) on November 23, 2009—

''(I) controlled an institution which became a bank as a result of the enactment of section 1301(a)(3)(B) of the Financial Stability Improvement Act of 2009;

''(II) had an application pending, or approved but not executed, before the Federal Deposit Insurance Corporation, that, if approved, would permit the applicant to control an industrial loan company, industrial bank, or other similar institution—

''(aa) that is a federally insured, State-chartered depository institution;

''(bb) that is organized under the laws of a State that on March 5, 1987, had in effect, or had under consideration in the legislature of such State, a statute that required such institution to obtain insurance under the Federal Deposit Insurance Act; and

''(cc) that—

''(AA) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties; or

''(BB) maintains total assets of less than $100,000,000; or

''(III) controlled an institution it has continuously controlled since March 5, 1987, which became a bank as a result of the enactment of the Competitive Equality Banking Act of 1987, pursuant to subsection (f);

''(B) was not on June 30, 2009—

''(i) a bank holding company; or

''(ii) subject to the Bank Holding Company Act of 1956 by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

''(C) on June 30, 2009, directly or indirectly controlled shares or engaged in activities that did not, on the day before the date of enactment of the Financial Stability Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution and control of a section 6 holding company established pursuant to section 6.

''(2) LOSS OF EXEMPTION.—A company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

''(A) such company fails to—

''(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after adoption of rules required by this section, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days; and

''(ii) maintain a section 6 holding company in compliance with all the requirements for a section 6 holding company under section 6 of this Act.

''(B) such company directly or indirectly (including through the section 6 holding company it must form pursuant to this subsection and section 6 of this Act) acquires

control of an additional bank or insured depository institution after June 30, 2009, provided that such company directly or indirectly (including through the section 6 holding company) may acquire—

''(i) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

''(ii) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

''(iii) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

''(iv) shares held in an account solely for trading purposes;

''(v) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

''(vi) loans or other accounts receivable acquired from an insured depository institution in the normal course of business;

''(vii) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

''(viii) shares or assets acquired directly or indirectly by a depository institution controlled by such company in a transaction involving an insured depository institution for which the Federal Deposit Insurance Corporation has been appointed as receiver or which has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority;

''(ix) shares or assets of another industrial loan company meeting the requirements of this Act if such company continuously controlled an industrial loan company since the date of enactment of the Financial Stability Improvement Act of 2009; and

''(x) shares or assets of a savings association acquired directly or indirectly by the savings association controlled by such company if such company continuously controlled a savings association since the date of enactment of the Financial Stability Improvement Act of 2009;

''(C)(i) the section 6 holding company required to be established by such company, or any subsidiary bank of such company undergoes a change in control after the date of enactment of the Financial Stability Improvement Act of 2009, other than—

''(I) the merger or whole acquisition of such parent company in a bona fide merger or acquisition (as shall be determined by the Board, which is authorized to find that a transaction is not a bona fide merger or acquisition and thus results in the loss of exemption), with a company that is predominantly engaged in activities not permissible for a financial holding company pursuant to section 4(k), or

''(II) the acquisition of additional shares by a company that owned or controlled 7.5 percent or more of any class of such parent company's outstanding voting stock on or before June 30, 2009, and continuously owned or controlled at least such 7.5 percent since June 30, 2009.

''(ii) Nothing in this subparagraph shall be construed as preventing the Board from requiring compliance with this subsection, section 6 or the requirements of the Change in Bank Control Act, as applicable to a company that is permitted to acquire control without loss of the exemption in this subsection 4(p)(2); or

''(D) any subsidiary bank of such company engages in any activity after the date of enactment of the Financial Stability Improvement Act of 2009 which would have caused such institution to be a bank (as defined in section 2(c) of this Act, as in effect before such date) if such activities had been engaged in before such date.

''(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

''(A) either—

''(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

''(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

''(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

''(4) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

''(A) registers as a bank holding company under section 2(a) of this Act;

''(B) immediately upon such registration, complies with all of the requirements of this chapter, and regulations prescribed by the Board pursuant to this chapter, including the nonbanking restrictions of this section; and

''(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

''(5) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Financial Stability Improvement Act of 2009, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

''(6) EXAMINATIONS AND REPORTS.—The Board may, from time to time, examine a company described in paragraph (1) or a bank controlled by such a company, and may require reports under oath from a company described in paragraph (1), and appropriate officers or directors of such company, in each case solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

''(7) LIMITED ENFORCEMENT.—

''(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act, and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

''(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company described in paragraph (1) or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

''(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

''(q) PRESERVATION OF CERTAIN SAVINGS AND LOAN HOLDING COMPANY AUTHORITIES.—Notwithstanding subsection (a), a company that was a savings and loan holding company on June 30, 2009, that became a bank holding company by operation of section 1301 of the Financial Stability Improvement Act of 2009 may continue to engage in the following activities in which such company was continuously engaged on June 30, 2009 through the day of enactment of the Financial Stability Improvement Act of 2009:

''(1) Furnishing or performing management services for a savings association subsidiary of such company.

''(2) Conducting an insurance agency or escrow business.

''(3) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

''(4) Holding or managing properties used or occupied by a savings association subsidiary of such company.

''(5) Acting as trustee under deed of trust.

''(6) Any other activity in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.''.

(c) SECTION 6 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.

''(a) ESTABLISHMENT, PURPOSE AND REQUIREMENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

''(1) REQUIREMENT.—A special purpose holding company (hereafter in this section referred to as a 'section 6 holding company') shall be established and maintained by a company—

''(A) described in section 4(f)(1) as required by section 4(f)(2)(D) of this Act;

''(B) described in section 4(p)(1) as required by section 4(p)(2)(A) of this Act; or

''(C) that—

''(i) is subject to stricter prudential standards under subtitle B of the Financial Stability Improvement Act of 2009;

''(ii) is not—

''(I) a bank holding company, or

''(II) subject to the Bank Holding Company Act by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

''(iii) directly or indirectly controlled shares or engaged in activities that did not, on the date the company is first subject to stricter prudential standards pursuant to subtitle B of the Financial Stability Improvement Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board.

''(2) PURPOSE.—

''(A) The purpose of this section is to provide for consolidated supervision of certain financial companies by the Board.

''(B) A company that is required to form a section 6 holding company shall conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a

subsidiary of the section 6 company) may continue to engage in that activity so long as at least two-thirds of the assets or two-thirds of the revenues of generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk.

''(C) A section 6 holding company shall be prohibited from conducting any nonbanking activities or investing in any nonbank companies other than those permissible for a financial holding company under sections 3 and 4, unless the Board specifically determines otherwise in accordance with paragraph (6), and provided that, for purposes of this paragraph, a company designated as a section 6 holding company and described under paragraph (4) (or any permitted successor) is not prohibited from continuing to engage in any impermissible activity in which it was engaged continuously during the 6 months prior to the date of enactment, from owning any shares or types of assets related to such activity, or continuing to own such other shares or assets that it owned on the date of enactment.

''(3) REGISTRATION.—

''(A) A section 6 holding company required to be established by a company described in paragraph (1)(A) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(f).

''(B) A section 6 holding company required to be established by a company described in paragraph (1)(B) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(p).

''(C) A section 6 holding company required to be established by a company described in paragraph (1)(C) shall be—

''(i) established, and such company shall register with the Board, as a bank holding company within 90 days after such company or such company's parent holding company has been notified by the Board that such company is subject to stricter prudential standards under subtitle B of the Financial Stability Improvement Act of 2009, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days;

''(ii) treated as a financial holding company under this Act; and

''(iii) subject to the authority of the Board to enforce compliance with the provisions of this section under section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such company were a bank holding company.

''(4) RULE OF CONSTRUCTION.—For purposes of this section, designation of an already established intermediate holding company that will serve as the section 6 holding company shall satisfy the requirement to establish a section 6 holding company, provided that such existing intermediate holding company complies with all other provisions applicable to a section 6 holding company.

''(5) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is not a bank holding company or treated as a bank holding company pursuant to section 8(a) of the International Bank Act of 1978 that has been notified that it is a financial holding company subject to stricter standards, pursuant to subtitle A of the Financial Stability Improvement Act of 2009, shall—

''(A) not be deemed to be, or treated as, a bank holding company, solely because of its ownership or control of a section 6 holding company; and

''(B) not be subject to this Act, except for such provisions as are explicitly made applicable in this section.

''(6) BOARD AUTHORITY.—

''(A) RULES AND EXEMPTIONS.—In addition to any other authority of the Board, the Board shall prescribe rules and regulations or issue orders providing for the establishment and registration of section 6 holding companies and shall provide exemptions from the requirements of this Act (including an order in response to a request from an affected company), including, but not limited to, exemptions—

''(i) with respect to the requirement to conduct such activities which are financial in nature, as determined under section 4(k), other than financial activities conducted for such company or any affiliate, including any financial activity engaged in for both the company or an affiliate and a nonaffiliate as permitted under section 4(f)(2)(D) or section 6(a)(2)(B), through such section 6 holding company, if the Board makes a finding that such exemption—

''(I)(aa) would facilitate the extension of credit to individuals, households, and businesses; or

''(bb) would allow for greater efficiency, improved customer service, or other public benefits in the conduct of financial activities by affected companies;

''(II) would not threaten the safety and soundness of the section 6 holding company, or of any insured depository institution or other subsidiary of the section 6 holding company;

''(III) would not increase systemic risk or threaten the stability of the overall financial system;

''(IV) would not, as applied to the activities that are the subject of the rule, order or request, result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; and

''(V) would meet the financial and managerial standards for financial holding companies described in subparagraphs (A) and (B) of section 4(j)(4); and

''(ii) from the affiliate transaction requirements of subsection (b), including but not limited to exemptions that would facilitate extensions of credit to unaffiliated persons for the personal, household, or business purposes of such unaffiliated persons, unless the Board makes a finding that such exemption—

''(I) is not consistent with the purposes of section 23A and section 23B of the Federal Reserve Act;

''(II) would threaten the safety and soundness of the section 6 holding company, or any insured depository institution or other subsidiary of the section 6 holding company;

''(III) would increase systemic risk or threaten the stability of the overall financial system;

''(IV) would not, as applied to the activities that are the subject of the rule, order or request result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; or

''(V) would permit an unfair, deceptive, abusive, or unsafe-and-unsound act or practice.

''(B) PARENT COMPANY REPORTS.—The Board may, from time to time, require reports under oath from a company that controls a section 6 holding company, and appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section (including assessing the company's ability to serve as a source of financial strength pursuant to subsection (g)) and enforcing such compliance.

''(C) LIMITED PARENT COMPANY ENFORCEMENT.—

''(i) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

''(ii) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls a section 6 holding company or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of clause (i).

''(iii) NO EFFECT ON OTHER AUTHORITY.—No provision of this subparagraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

''(b) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

''(1) SECTION 23A AND 23B APPLICABILITY.—

''(A) IN GENERAL.—Transactions between a section 6 holding company (or any nonbank subsidiary thereof) and any affiliate not controlled by the section 6 holding company shall be subject to the restrictions and limitations contained in section 23A and section 23B of the Federal Reserve Act as if the section 6 holding company were a member bank, provided, that a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services but shall be subject to review under section 23A(f)(1) of such Act.

''(B) COVERED TRANSACTIONS.—A depository institution controlled by a section 6 holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate that is not the section 6 holding company or a subsidiary of the section 6 holding company; provided that, for purposes of the prohibition, a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services, but shall be subject to review under section 23A(f)(1) of the Federal Reserve Act.

''(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting any subsidiary insured depository institution of a section 6 holding company from compliance with section 23A or 23B of the Federal Reserve Act with respect to each affiliate of such institution (as defined in section 23A or 23B of the Federal Reserve Act), including any affiliate that is the section 6 holding company or subsidiary of the section 6 holding company.

''(c) TYING PROVISIONS.—A company that directly or indirectly controls a section 6 holding company shall be—

''(1) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

''(2) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any

transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

''(d) FINANCIAL HOLDING COMPANY REQUIREMENTS.—A section 6 holding company shall be subject to—

''(1) the conditions for engaging in expanded financial activities in section 4(l); and

''(2) the provisions applicable to financial holding companies that fail to meet certain requirements in section 4(m).

''(e) INDEPENDENCE OF SECTION 6 HOLDING COMPANY.—

''(1) No less than 25 percent of the members of the board of directors of a section 6 holding company, and each subsidiary of a section 6 holding company, shall be independent of the parent company of the section 6 holding company and any subsidiary of such parent company. For purposes of this subsection, a director shall be independent of the parent company if such person is not currently serving, and has not within the previous two-year period served, as a director, officer, or employee of any affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

''(2) No executive officer of a section 6 holding company or any subsidiary of a section 6 holding company may serve as a director, officer, or employee of an affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

''(3) The Board shall issue regulations that require effective legal and operational separation of the functions of a section 6 holding company from its affiliates that are not subsidiaries of such section 6 holding company, provided, however that such rules shall not require operational separation of internal functions including, but not limited to, human resources management, employee benefit plans, and information technology.

''(f) SOURCE OF STRENGTH.—A company that directly or indirectly controls a section 6 holding company shall serve as a source of financial strength to its subsidiary section 6 holding company.''.

(d) CONFORMING CHANGES.—Section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)), is amended—

(1) in paragraph (1), by striking ''subparagraph (D), (F), (G), or (H)'' and inserting ''subparagraph (C) or (D)''; and

(2) in paragraph (2), by striking ''subparagraph (D), (F), (G), or (H)'' and inserting ''subparagraph (C) or (D)''.

SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING COMPANIES.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting at the end the following new subsection:

''(h) CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.—

''(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the date of enactment of the Financial Stability Improvement Act of 2009, was not a bank holding company but which, by reason of sections 4(p) and 6 becomes a bank holding company by operation of law, shall register as a bank holding company with the Board in accordance with section 5(a) within 90 days of the date of enactment of that Act.

''(2) COMPLIANCE WITH BANK HOLDING COMPANY ACT.—With respect to any company described in paragraph (1), the Board may grant temporary exemptions or provide other appropriate temporary relief to permit such company to implement measures necessary to comply with the requirements under the Bank Holding Company Act.''.

SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS OF BANK HOLDING COMPANIES.—Sections 5(c)(1)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are amended to read as follows:

''(A) IN GENERAL.—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath that the Board determines are necessary or appropriate for the Board to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with the applicable provisions of law.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, use:

''(I) reports that a bank holding company or any subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

''(II) information that is otherwise required to be reported publicly; and

''(III) externally audited financial statements.

''(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall promptly provide to the Board, at the request of the Board, a report referred to in clause (i)(I).''.

(b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end the following new subparagraph:

''(C) DEFINITION.—For purposes of this subsection and section 6, the term 'functionally regulated subsidiary' means any subsidiary (other than a depository institution) of a bank holding company that is—

''(i) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

''(ii) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;

''(iii) an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; and

''(iv) a futures commission merchant, commodity trading advisor, and commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, for which the Commodity Futures Trading Commission is the Federal regulatory agency, with respect to the commodities activities of such entity and activities incidental to such commodities activities.''.

(c) EXAMINATIONS OF BANK HOLDING COMPANIES.—Sections 5(c)(2)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B)) are amended to read as follows:

''(A) IN GENERAL.—The Board may make examinations of a bank holding company and any subsidiary of such a company to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with applicable provisions of law.

''(B) FUNCTIONALLY REGULATED AND DEPOSITORY INSTITUTION SUBSIDIARIES.—The Board shall, to the fullest extent possible, use reports of examination of functionally regulated subsidiaries and subsidiary depository institutions made by other Federal or State regulatory authorities.''.

(d) REGULATION OF FINANCIAL HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking subparagraphs (C), (D), and (E).

(e) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841, et seq.) is amended by striking section 10A (12 U.S.C. 1848a).

SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking ''and'';

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) the bank holding company is well capitalized and well managed; and''; and

(4) in subparagraph (D) (as so redesignated) by amending clause (ii) to read as follows:

''(ii) a certification that the company meets the requirements of subparagraphs (A) through (C).''.

SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) BANK HOLDING COMPANY ACT OF 1956 AMENDMENT.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

(1) by striking ''adequately capitalized'' and inserting ''well capitalized''; and

(2) by striking ''adequately managed'' and inserting ''well managed''.

(b) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

''(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.''.

SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)(1), by striking subparagraph (D) and inserting the following new subparagraph:

''(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and''

(2) in subsection (b)(7)(A), by inserting ''(including a purchase of assets subject to an agreement to repurchase)'' after ''affiliate'';

(3) in subsection (b)(7)(C), by striking '', including assets subject to an agreement to repurchase,'';

(4) in subsection (b)(7)(D)—

(A) by inserting ''or other debt obligations'' after ''acceptance of securities'', and

(B) by striking ''or'' after the semicolon;

(5) in subsection (b)(7), by inserting at the end the following new subparagraphs:

''(F) any securities borrowing and lending transactions with an affiliate to the extent that the transactions create credit exposure of the member bank to the affiliate; or

''(G) current and potential future credit exposure to the affiliate on derivative transactions with the affiliate;'';

(6) in subsection (c)(1), by striking ''at the time of the transaction,'' and inserting ''at all times'';

(7) in subsection (c)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;

(8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting ''or other debt obligations'' after ''securities'';

(9) in subsection (f)(2), by inserting at the end the following: ''The Board may not, by regulation or order, grant an exemption under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.''; and

(10) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4);

(B) and inserting after paragraph (2) the following new paragraph:

''(3) CONCURRENCE OF THE COMPTROLLER OF THE CURRENCY.—With respect to a transaction or relationship involving a national bank or Federal savings association, the Board may not grant an exemption under this section unless the Board obtains the concurrence of the Comptroller of the Currency (in addition to obtaining the concurrence of the Chairman of the Federal Deposit Insurance Corporation under paragraph (2)).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371–1(e)), is amended by inserting at the end the following new paragraph:

''(3) The Board may not grant an exemption or exclusion under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.''.

SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking ''shall include all direct or indirect'' and all that follows through ''commitment;'' and inserting: ''shall include—

''(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

''(B) to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

''(C) credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;'';

(2) in subsection (b)(2) by striking the period at the end and inserting ''; and'';

(3) in subsection (b), by inserting after paragraph (2) the following new paragraph:

''(3) the term 'derivative transaction' means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''; and

(4) in subsection (d), by inserting after paragraph (2) the following new paragraph:

''(3) The Comptroller of the Currency shall prescribe rules to administer and carry out the purposes of this section with respect to credit exposures arising from any derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. Rules required to be prescribed under this paragraph (3) shall take effect, in final form, not later than 180 days after the date of enactment of the Financial Stability Improvement Act of 2009.''.

SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS AND THRIFTS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by redesignating section 7 as section 8 and by inserting after section 6 the following:

''SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.

''A national bank may not convert to a State bank during any period of time in which it is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Comptroller of the Currency.''

(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence: ''The Comptroller of the Currency shall not approve the conversion of a State bank to a national bank during any period of time in which the State bank is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into or issued by a State bank supervisor, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve Bank.''.

(c) CONVERSION BETWEEN A FEDERAL SAVINGS ASSOCIATION AND A STATE SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

''(6) PROHIBITION ON CERTAIN CONVERSIONS.—A Federal savings association may not convert to a State savings association, and a State savings association may not convert to a Federal savings association, during any period of time in which such savings association is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Director of the Office of Thrift Supervision or a State savings association supervisor.''.

SEC. 1310. LENDING LIMITS TO INSIDERS.

Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting '', except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person'' before the period at the end.

SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (y) (as added by section 1408) the following new subsection:

''(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act) unless the transaction is on market terms and, if the transaction represents more than 10 percent of the institution's capital stock and surplus, the transaction has been approved in advance by a majority of the institution's board of directors (with interested directors of the insured depository institution not participating in the approval of the transaction).''.

(b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may prescribe rules to implement the requirements of subsection (a) and the amendments made by subsection (a).

(c) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22 of the Federal Reserve Act (12 U.S.C. 375) is amended by striking subsection (d).

SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING COMPANIES.

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting '', including regulations relating to the capital levels of bank holding companies'' before the period at the end.

SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSIDERED IN CERTAIN ACQUISITIONS.

(a) BANK ACQUISITIONS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by inserting at the end the following new paragraph:

''(7) FINANCIAL STABILITY.—

''(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States , including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

''(B) STANDARDS FOR APPROVAL.—The Board may in its sole discretion disapprove any acquisition, merger, or consolidation of, or by, a financial company subject to stricter prudential standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a greater threat to financial stability during times of severe economic distress.''.

(b) NONBANK ACQUISITIONS.—

(1) Section 4(j)(2)(A) of the Bank Holding Company is amended by—

(A) striking ''or'' before ''unsound banking practices''; and

(B) inserting before the period at the end the following: '', or risk to the stability of the United States financial system or the economy of the United States''.

(2) Section 4(k)(6) of the Bank Holding Company Act of 1956 is amended by striking subparagraph (B) and inserting the following new subparagraph:

''(B) A financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board, except—

''(i) for a transaction in which the total assets to be acquired by the financial holding company exceed $25 billion; and

''(ii) as provided in subsection (j) with regard to the acquisition of a savings association.''.

(c) BANK MERGER ACT TRANSACTIONS.—Section 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by—

(1) in paragraph (5), by striking ''and'' before ''the convenience and needs of the community to be served'';

(2) in paragraph (5), by inserting before the period at the end the following: '', and the risk to the stability of the United States financial system and the economy of the

United States based on, among other things, the scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature''; and

(3) in paragraph (7)(B), by inserting ''subparagraphs (A) and (B) of'' before ''paragraph''.

SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 is amended by inserting after section 5 the following new section:

''SEC. 5A. EXAMINATION FEES.

''The Board of Governors of the Federal Reserve System or the Federal Reserve Banks shall assess fees on bank holding companies with total consolidated assets of $10 billion or more. Such fees shall be sufficient to defray the cost of the examination of such bank holding companies.''.

Subtitle E—Improvements to the Federal Deposit Insurance Fund

SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DEPOSIT INSURANCE FUND.

(a) Section 7(b)(1)(C) of the Federal Deposit Insurance Act is amended to read as follows:

''(C) 'RISK-BASED ASSESSMENT SYSTEM' DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system for calculating a depository institution's assessment based on—

''(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution;

''(ii) the likely amount of any such loss;

''(iii) the risks to the Deposit Insurance Fund attributable to such depository institution, including risks posed by its affiliates to the extent the Corporation determines appropriate, taking into account—

''(I) the amount, different categories, and concentrations of assets of the insured depository institution and its affiliates, including both on-balance sheet and off-balance sheet assets;

''(II) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the insured depository institution and its affiliates; and

''(III) any other factors the Corporation determines are relevant to assessing the risks; and

''(iv) the revenue needs of the Deposit Insurance Fund.''.

(b) Section 7(b)(2) of the Federal Deposit Insurance Act is amended by striking subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.

Section 7(b)(2) of such Act, as amended, is further amended by amending subparagraph (C) to read as follows:

''(C) ASSESSMENT.—The assessment of any insured depository institution imposed under this subsection shall be an amount equal to the product of—

''(i) an assessment rate established by the Corporation; and

''(ii) the amount of the insured depository institution's average total assets during the assessment period minus the amount of the insured depository institution's average tangible equity during the assessment period.''.

SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

Section 7(e) of the Federal Deposit Insurance Act is amended—

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

''(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).'';

(B) by amending subparagraph (C) to read as follows:

''(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph''; and

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking ''paragraphs (2)(D) and'' and inserting ''paragraphs (2) and''.

SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking '', after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate,''.

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking ''such as'' and inserting ''including''; and

(2) by striking clause (iii).

SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:

''(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.15 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).''.

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting '', or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)'' before the period.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act.

Subtitle F—Improvements to the Asset-backed Securitization Process

SEC. 1501. SHORT TITLE.

This subtitle may be cited as the ''Credit Risk Retention Act of 2009''.

SEC. 1502. CREDIT RISK RETENTION.

(a) AMENDMENT.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 28 the following new section:

''SEC. 29. CREDIT RISK RETENTION.

''(a) IN GENERAL.—

''(1) INTEREST IN LOANS MADE BY CREDITORS.—Within 180 days of the date of the enactment of this section, the appropriate agencies shall prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of any such loan that the creditor transfers, sells, or conveys to a third party, including for the purpose of including such loan in a pool of loans backing an issuance of asset-backed securities.

''(2) INTEREST IN ASSETS BACKING ASSET-BACKED SECURITIES.—The appropriate agencies shall prescribe regulations to require any securitizer of asset-backed securities that are backed by assets not described in paragraph (1) to retain an economic interest in a material portion of any such asset used to back an issuance of securities.

''(b) ALTERNATIVE RISK RETENTION FOR CREDIT SECURITIZERS.—The appropriate agencies may apply the risk retention requirements of this section to securitizers of loans or particular types of loans in addition to or in substitution for any or all of the requirements that apply to creditors that make such loans or types of loans, if the agencies determine that applying the requirements to such securitizers would—

''(1) be consistent with helping to ensure high quality underwriting standards for creditors, taking into account other applicable laws, regulations, and standards; and

''(2) facilitate appropriate risk management practices by such creditors, improve access of consumers to credit on reasonable terms, or otherwise serve the public interest.

''(c) STANDARDS FOR REGULATION.—Regulations prescribed under subsections (a) and (b) shall—

''(1) prohibit a creditor or securitizer from directly or indirectly hedging or otherwise transferring the credit risk such creditor or securitizer is required to retain under the regulations;

''(2) require a creditor or securitizer to retain 5 percent of the credit risk on any loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer except—

''(A) an appropriate agency may specify that the percentage of risk may be less than 5 percent of the credit risk, or exempt such creditor or securitizer from the risk retention requirement, if—

''(i) the credit underwriting by the creditor or the due diligence by the securitizer meets such standards as an appropriate agency prescribes; and

''(ii) the loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer meets terms, conditions, and characteristics that are determined by an appropriate agency to reflect loans with reduced credit risk, such as loans that meet certain interest rate thresholds, loans that are fully amortizing, and loans that are included in a securitization in which a third-party purchaser specifically negotiates for the purchase of the first-loss position and provides due diligence on all individual loans in the pool prior to the issuance of the asset-backed securities, and retains a first-loss position; and

''(B) an appropriate agency may specify that the percentage of risk may be more than 5 percent of the credit risk if the underwriting by the creditor or due diligence by the securitizer is insufficient;

''(3) specify that the credit risk retained must be no less at risk for loss than the average of the credit risk not so retained; and

''(4) set the minimum duration of the required risk retention.

''(d) EXEMPTIONS AND ADJUSTMENTS.—

''(1) IN GENERAL.—The appropriate agencies shall have authority to provide exemptions or adjustments to the requirements of this section, including exemptions or adjustments relating to the percentage of risk retention required to be held and the hedging prohibition.

''(2) APPLICABLE STANDARDS.—Any exemptions or adjustments provided under paragraph (1) shall—

''(A) be consistent with the purpose of ensuring high quality underwriting standards for creditors, taking into account other applicable laws, regulations, or standards; and

''(B) facilitate appropriate risk management practices by such creditors, improve access for consumers to credit on reasonable terms, or otherwise serve the public interest.

''(e) APPROPRIATE AGENCY DEFINED.—For purposes of this section, the term 'appropriate agency' means any of the following agencies with regard to the respective loans and asset-backed securities:

''(1) BANKING AGENCIES.—The Federal banking agencies, the National Credit Union Administration Board, and the Commission, with respect to any loan or asset-backed security for which there is no appropriate agency under paragraph (2).

''(2) OTHER AGENCIES.—

''(A) With regard to any mortgage insured under title II of the National Housing Act, the Secretary of Housing and Urban Development.

''(B) With regard to any loan meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation or any asset-backed security issued by either such corporation, the Federal Housing Finance Agency.

''(C) With regard to any loan insured by the Rural Housing Service, the Rural Housing Service.

''(f) JOINT APPROPRIATE AGENCY REGULATIONS.—All regulations prescribed by the agencies identified in subsection (e)(1) shall be prescribed jointly by such agencies.

''(g) ENFORCEMENT.—

''(1) Compliance with the requirements imposed under this section shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

''(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

''(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, bank holding companies, and subsidiaries of bank holding companies (other than insured depository institutions), by the Board; and

''(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

''(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation and a savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank); and

''(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union.

''(2) Except to the extent that enforcement of the requirements imposed under this section is specifically committed to some other Federal agency under paragraph (1), the Commission shall enforce such requirements.

''(3) The authority of the Commission under this section shall be in addition to its existing authority to enforce the securities laws.

''(h) EXCLUSIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan—

''(1) insured, guaranteed, or administered by the Secretary of Education, the Secretary of Agriculture, the Secretary of Veterans Affairs, or the Small Business Administration; or

''(2) made, insured, guaranteed, or purchased by any person that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

''(i) DEFINITIONS.—For purposes of this section:

''(1) The term 'asset-backed security' has the meaning given such term in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto.

''(2) The term 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.

''(3) The term 'insured depository institution' has the meaning given such term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

''(4) The term 'securitization vehicle' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

''(A) is the issuer, or is created by the issuer, of pass-through certificates, participation certificates, asset-backed securities, or other similar securities backed by a pool of assets that includes loans; and

''(B) holds such loans.

''(5) The term 'securitizer' means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the benefit of the securitization vehicle.''.

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—The Board, in coordination and consultation with the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission, shall conduct a study of the combined impact by each individual class of asset-backed security of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (a); and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this title, 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).

SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.

Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by inserting '', other than securities of any class of asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto),'' after ''securities of each class'';

(2) by inserting at the end the following: ''The Commission may by rules and regulations provide for the suspension or termination of the duty to file under this subsection for any class of issuer of asset-backed security upon such terms and conditions and for such period or periods as it deems necessary or appropriate in the public interest or for the protection of investors. The Commission may, for the purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.''; and

(3) by inserting after the fifth sentence the following: ''The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security. In adopting regulations under this subsection, the Commission shall set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes. The Commission shall require issuers of asset-backed securities at a minimum to disclose asset-level or loan-level data necessary for investors to independently perform due diligence. Asset-level or loan-level data shall include data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or the securitizer of such assets.''.

SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

The Commission shall prescribe regulations on the use of representations and warranties in the asset-backed securities market that—

(1) require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) IN GENERAL.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking ''4(6)'' and inserting ''4(5)''.

SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.

(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

(6) recommendations for implementation and enabling legislation.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle G—Enhanced Dissolution Authority

SEC. 1601. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This subtitle may be cited as the ''Dissolution Authority for Large, Interconnected Financial Companies Act of 2009''.

(b) PURPOSE.—The purpose of this subtitle is to protect the financial system of the United States in times of severe crisis by providing for the orderly resolution of large, interconnected financial companies whose failure could create, or increase, the risk of significant liquidity, credit, or other financial problems spreading among financial institutions or markets and thereby threaten the stability of the overall financial system of the United States. There shall be a strong presumption that resolution under the bankruptcy laws will remain the primary method of resolving financial companies, and the authorities contained in this subtitle will only be used in the most exigent circumstances.

SEC. 1602. DEFINITIONS.

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

(1) APPROPRIATE REGULATORY AGENCY.—

(A) CORPORATION AND COMMISSION.—The term ''appropriate regulatory agency'' means—

(i) the Corporation;

(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)); and

(iii) if the financial company or an affiliate of the financial company is an insurance company (other than an insured depository institution), the applicable State insurance authority of the State in which the insurance company is domiciled.

(B) RULES OF CONSTRUCTION.—More than 1 agency may be an appropriate regulatory agency with respect to any given financial company. In such instances, the Commission shall be the appropriate regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is a broker or dealer as measured by total assets as of the end of the previous calendar quarter, the applicable State insurance authority of the State in which the insurance company is domiciled shall be the appropriate regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is an insurance company as measured by total assets as of the end of the previous calendar quarter, and otherwise the Corporation shall be the appropriate regulatory agency for purposes of section 1603.

(2) BRIDGE FINANCIAL COMPANY.—The term ''bridge financial company'' means a new financial company organized in accordance with section 1609(h) by the Corporation.

(3) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(4) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(5) COVERED FINANCIAL COMPANY.—The term ''covered financial company'' means a financial company for which a determination has been made pursuant to and in accordance with section 1603(b).

(6) COVERED SUBSIDIARY.—The term ''covered subsidiary'' means a subsidiary covered in paragraph (9)(B)(v).

(7) CUSTOMER PROPERTY.—The term ''customer property'' has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

(8) FEDERAL RESERVE BOARD.—The term ''Federal Reserve Board'' means the Board of Governors of the Federal Reserve System.

(9) FINANCIAL COMPANY.—The term ''financial company'' means any company that—

(A) is incorporated or organized under Federal law or the laws of any State;

(B) is—

(i) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any company that has been subjected to stricter prudential regulation under section 1103;

(iii) any insurance company;

(iv) any company predominantly engaged in activities that 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)) or that have been identified for stricter prudential standards under section 1103 of this title; or

(v) any subsidiary of companies described in clauses (i) through (iv) (other than an insured depository institution or any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) that is a member of the Securities Investor Protection Corporation); and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

(10) FUND.—The term ''Fund'' means the Systemic Dissolution Fund established in accordance with section 1609(n).

(11) INSURANCE COMPANY.—The term ''insurance company'' includes any person engaged in the business of insurance to the extent of such activities.

(12) SECRETARY.—The term ''Secretary'' shall mean the Secretary of the Treasury.

(13) STATE.—The term ''State'' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(14) CERTAIN OTHER TERMS.—The terms ''affiliate,'' ''company,'' ''control,'' ''deposit,'' ''depository institution,'' ''foreign bank,'' ''insured depository institution,'' and ''subsidiary'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

SEC. 1603. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE APPROPRIATE REGULATORY AGENCY.—

(1) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the Federal Reserve Board or, in cases where an financial company has a broker or dealer as its largest subsidiary as measured by total assets as of the end of the previous calendar quarter, the Commission, the Federal Reserve Board and the appropriate regulatory agency shall; or on their own initiative, the Federal Reserve Board and the appropriate regulatory agency may; consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company, which recommendation shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and two-thirds of the members of the board or of the commission then serving of the appropriate regulatory agency, as applicable.

(2) RECOMMENDATION REQUIRED.—Any written recommendations made by the Federal Reserve Board and the appropriate regulatory agency under paragraph (1) shall contain the following:

(A) A description of the effect that the default of the financial company would have on economic conditions or financial stability in the United States.

(B) A description of the effect that the default of the financial company would have on economic conditions or financial stability for low-income, minority, or underserved communities.

(C) A recommendation regarding the nature and the extent of actions that the Board and the appropriate regulatory agency recommend be taken under section 1604 regarding the financial holding company subject to stricter standards.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the appropriate regulatory agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or is in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and

(3) any action under section 1604 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the Treasury, and the potential to increase moral hazard on the part of creditors, counterparties, and shareholders in the financial company,

then the Secretary must take action under section 1604(a), the Corporation must act in accordance with section 1604(b), and the Corporation may take 1 or more actions specified in section 1604(c) in accordance with the requirements of that subsection, except that, prior to the Secretary or Corporation taking any action under section 1604, the Federal Reserve Board or the appropriate Federal regulatory agency shall take action to avoid or mitigate potential adverse effects on low-income, minority, or underserved communities affected by the failure of such financial company.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b); and,

(B) retain the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under subsection (b), including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto; and

(C) the likely effect of the determination and such action on the incentives and conduct of financial holding companies subject to stricter standards and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Within 48 hours after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial

Services and the Committee on the Judiciary of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a financial holding company subject to stricter standards shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with that subsection:

(1) A case has been, or likely will promptly be, commenced with respect to the financial holding company subject to stricter standards under title 11, United States Code.

(2) The financial holding company subject to stricter standards is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board.

(3) The financial holding company subject to stricter standards has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1604.

(4) The assets of the financial holding company subject to stricter standards are, or are likely to be, less than its obligations to creditors and others.

(5) The financial holding company subject to stricter standards is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

SEC. 1604. RESOLUTION; STABILIZATION.

(a) APPOINTMENT OF RECEIVER.—

(1) IN GENERAL.—Upon the Secretary making a determination in accordance with section 1603(b), the Secretary shall appoint the Corporation as receiver for the covered financial company.

(2) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—Any appointment of the Corporation as receiver under paragraph (1) shall terminate on the date that is the end of the 1-year period beginning on the date such appointment is made.

(b) RESOLUTION LIMITATIONS.—

(1) IN GENERAL.—An insolvent financial company may be resolved under this subtitle only if the failure and resolution of such company under title 11, United States Code, would be systemically destabilizing, as determined by the appropriate Federal regulatory agencies and the Secretary of the Treasury (in consultation with the President) in accordance with section 1603(b).

(2) LIQUIDATION.—A financial company that comes within coverage of this subtitle for resolution shall be placed in liquidation, and the associated liquidation costs shall be paid from the company's assets and borne by the shareholders and unsecured creditors of such company.

(3) ASSESSMENT FOR EXCESS LIQUIDATION COSTS.—Any liquidation costs that exceed the amount of liquidated assets of the company shall be paid through assessments on large financial companies.

(c) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the regulators of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly resolution of the covered financial company;

(2) may consult with, or under section 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire services of, any outside experts as appropriate to inform and aid the Corporation in the resolution process; and

(3) shall consult with the primary regulators of any subsidiaries of the covered financial company that are not covered subsidiaries as described in section 1602(9)(B)(iv) and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

(d) EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER.—Upon the Secretary appointing the Corporation as receiver under subsection (a), the Corporation may, in its corporate capacity and as an agency of the United States, with the approval of the Secretary and subject to the conditions in subsections (f) through (g), take the following actions under such terms and conditions that the Corporation and the Secretary jointly deem appropriate:

(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary.

(2) Purchasing 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 one 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 company or any covered subsidiary to secure repayment of any transactions conducted under this subsection.

(5) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary.

(e) TREATMENT OF CERTAIN INSURANCE SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (a), if a covered financial company is an insurance company covered by a State law designed specifically to deal with the insolvency of an insurance company, resolution of such company, and any subsidiary of such company, will be conducted as provided under such State law.

(2) EXCEPTION FOR COVERED SUBSIDIARIES.—The requirement of paragraph (1) shall not apply with respect to any covered subsidiary of such an insurance company.

(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described under paragraph (1), if, after the end of the 60-day period beginning on the date a determination is made under section 1603(b) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into resolution under the State's laws and requirements, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into resolution under the State's laws and requirements.

(f) MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.—The Corporation as receiver is authorized to take the stabilization actions listed in subsection (d) only if—

(1) the Secretary and the Corporation determine that such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company;

(2) the Corporation ensures that the shareholders of a covered financial company do not receive payment until after all other claims are fully paid;

(3) the Corporation ensures that any funds from taxpayers shall be repaid as part of the resolution process before payments are made to creditors;

(4) the Corporation ensures that unsecured creditors bear losses;

(5) the Corporation ensures that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time the Corporation is appointed as receiver); and

(6) the Corporation ensures that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed (if such members have not already been removed at the time the Corporation is appointed as receiver).

(g) RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.—Amounts expended from the Fund by the Corporation under this section shall be repaid in full to the Fund from the following sources:

(1) RESOLUTION PROCESS.—Amounts attributable to the proceeds of the sale of, or income from, the assets of the covered financial company.

(2) INDUSTRY ASSESSMENTS.—If the sources described in paragraph (1) are insufficient to repay the amount of the stabilization action in full, the difference shall be recouped through assessments on financial companies in accordance with section 1609(o).

SEC. 1605. JUDICIAL REVIEW.

If a receiver is appointed, the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver to be removed. Review of such an action shall be limited to the appointment of a receiver under section 1604.

SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the covered financial company's shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary's appointment of the Corporation as receiver for the covered financial company under section 1604; or

(2) an acquisition, combination, or transfer of assets or liabilities under section 1609.

SEC. 1607. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

(a) TERMINATION AND EXCLUSION OF BANKRUPTCY.—The Corporation's acting as receiver for a covered financial company under this subtitle shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered financial company, and no such case or proceeding may be commenced with respect to the covered financial company at any time while the Corporation acts as receiver for the covered financial company.

(b) CONVERSION TO BANKRUPTCY.—

(1) CONVERSION.—The Corporation may at any time, with the approval of the Secretary and after consulting with the Council, convert the receivership of a covered financial company to a proceeding under chapter 7 or 11 of title 11, United States Code, by filing a petition against the covered financial company under section 303(m) of such title. The Corporation may serve as the trustee for the covered financial company in bankruptcy.

(2) BRIDGE FINANCIAL COMPANY.—The Corporation's exercise of authority under paragraph (1) shall not affect any powers or duties of the Corporation with regard to any

bridge financial company established under section 1609(h).

(c) REPORTING TO THE CONGRESS.—

(1) IN GENERAL.—

(A) INITIAL REPORT.—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall issue a report on the issue described under paragraph (3)(A).

(B) CONTINUING REPORTS.—At the end of each 180-day period after the appointment of the Corporation as receiver under section 1604(a), and continuing while the Corporation is acting as receiver, the Corporation shall issue a report on the issues described under subparagraph (A) through (C) of paragraph (3).

(2) COMMITTEES TO RECEIVE REPORTS.—Reports issued under this subsection shall be issued to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives.

(3) REPORTING ISSUES.—

(A) Why the receivership should continue instead of converting the receivership into a proceeding under chapter 7 or 11 of title 11, United States Code.

(B) The extent to which unsecured creditors are likely to receive at least as much as they would receive if the receivership of the covered financial company was converted to a case under chapter 7 of title 11, United States Code.

(C) An explanation of each instance where the Corporation as receiver of a covered financial company waived the requirement of 12 CFR Part 366 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.

SEC. 1608. RULEMAKING.

The Corporation may, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe such regulations as the Corporation considers necessary or appropriate to implement the provisions of this title.

SEC. 1609. POWERS AND DUTIES OF CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under section 1604, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company, and of any stockholder, member, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATE THE COVERED FINANCIAL COMPANY.—The Corporation as receiver for a covered financial company may—

(i) take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company and conduct all business of the covered financial company;

(ii) collect all obligations and money due the covered financial company;

(iii) perform all functions of the covered financial company in the name of the covered financial company;

(iv) preserve and conserve the assets and property of the covered financial company; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this section.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver, will remove management responsible for the failed condition of the covered financial company (if such management has not already been removed at the time the Corporation is appointed as receiver).

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver, and subject to all legally enforceable and perfected security interests, place the covered financial company in liquidation and proceed to realize upon the assets of the covered financial company in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ORGANIZATION OF NEW COMPANIES.—The Corporation as receiver may organize a bridge financial company under subsection (h).

(F) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clause (ii), the Corporation as receiver may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section, or is extended pursuant to subsection (e)(2) of such section.

(II) EMERGENCY.—If the Secretary in consultation with the Chairman of the Federal Reserve Board has found that the Corporation must act immediately to prevent the probable failure of the covered financial company involved, the approval and prior notification referred to in subclause (I) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supercede 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 5 relates to unfair methods of competition).

(G) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver, shall, to the extent funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver in accordance with the prescriptions and limitations of this title.

(H) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, for purposes of carrying out any power, authority, or duty with respect to a covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(I) INCIDENTAL POWERS.—The Corporation, as receiver, may—

(i) exercise all powers and authorities specifically granted to receivers under this section and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Corporation determines is in the best interests of the covered financial company, its customers, its creditors, its counterparties, or the stability of the financial system.

(J) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as receiver, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable, efficient, and cost effective.

(K) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation as receiver for a covered financial company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions in section 1609(b).

(L) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation as receiver for a covered financial company shall coordinate with the appropriate foreign financial authorities regarding the resolution of subsidiaries of the covered financial company that are established in a country other than the United States.

(M) APPOINTMENT OF CONSUMER PRIVACY ADVISOR.—

(i) APPOINTMENT.—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall appoint a Consumer Privacy Advisor.

(ii) DUTIES.—The Consumer Privacy Advisor appointed under clause (i) shall advise the Corporation with respect to—

(I) the covered financial company's consumer privacy policies;

(II) the potential losses or gains of privacy to consumers upon any sale, lease, or other transfer of material assets of the covered financial company;

(III) the potential costs or benefits to consumers upon any sale, lease, or other transfer of material assets of the covered financial company; and

(IV) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(2) AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the covered financial company's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the covered financial company's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the covered financial company's books, within 30 days after the discovery of such name and address.

(3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subsection (b), the Corporation shall, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing for administrative determination of claims and review of such determination.

(B) EXISTING RULES.—The Corporation may elect to use the regulations adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance Act with respect to the determination of claims for a covered financial company as if the covered financial company were an insured depository institution.

(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the covered financial company's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIM.—The Corporation shall allow any claim received on or before the date specified in the notice published under paragraph (2)(B)(i) by the Corporation from any claimant which is proved to the satisfaction of the Corporation.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (2)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered financial company; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal Reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered financial company securing any such extension of credit.

(iv) PAYMENTS TO FULLY SECURED CREDITORS.—Notwithstanding any other provision of law, in any receivership of a covered financial company in which amounts realized from the resolution are insufficient to satisfy completely any amounts owed to the United States or to the Fund, as determined in the receiver's sole discretion, an allowed claim under a legally enforceable or perfected security interest (that became a legally enforceable or perfected security interest after the date of the enactment of this clause), other than a legally enforceable or perfected security interest of the Federal Government, in any of the assets of the covered financial company in receivership may be treated as an unsecured claim in the amount of up to 20 percent as necessary to satisfy any amounts owed to the United States or to the Fund. Any balance of such claim that is treated as an unsecured claim under this subparagraph shall be paid as a general liability of the covered financial company.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the Corporation shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Corporation shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i),

the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the covered financial company's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial company for which the Corporation has been appointed as receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The Corporation as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or

(ii) determined by the final judgment of any court of competent jurisdiction.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation (in the Corporation's capacity as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered financial company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay for a period not to exceed 90 days in any noncriminal judicial action or proceeding to which such covered financial company is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the appointment of the receiver under section 1604) and the Corporation, including but not limited to removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) minimizes the cost to the general fund of the Treasury;

(iv) mitigates the potential for serious adverse effects to the financial system and the U.S. economy;

(v) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(vi) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers.

(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as receiver, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of an institution affiliated party, or any person who the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered financial company or the Corporation.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

(i) any transfer that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver of a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(E) DEFINITION.—For purposes of this subsection, the term ''institution affiliated party'' means—

(i) any director, officer, employee, or controlling stockholder of, or agent for, a covered financial company;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regulation or otherwise) who participates in the conduct of the affairs of a covered financial company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered financial company.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a covered financial company the Corporation may destroy any records of such covered financial company which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of a covered financial company which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(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), subject to the limitations for such payments contained in title 11, United States Code, including the amount (11 U.S.C. 507(a)(4)) and restrictions on severance payments to insiders (11 U.S.C. 503(c)).

(D) Contributions to employee benefit plans, subject to the limitations in title 11, United States Code (11 U.S.C. 507(a)(5)).

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F) or (E)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G)).

(G) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation as receiver is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—Subject to the priorities established under paragraphs (2) and (3), all claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim and then only with regard to the difference between the claim and the amount realized from the security.

(4) DEFINITIONS.—As used in this subsection, the term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a covered financial company or liquidating or otherwise resolving the affairs of a covered financial company for which the Corporation has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered financial company.

(5) RULEMAKING.—The Corporation shall, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe rules to carry out this section.

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the receiver, in the receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the receiver determines, in the receiver's discretion, will promote the orderly administration of the covered financial company's affairs.

(2) TIMING OF REPUDIATION.—The receiver appointed for any covered financial company under section 1604 shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d) except as otherwise specifically provided in this subsection.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the receiver repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the appointment of the receiver shall be—

(i) a claim to be paid in accordance with subsections (a), (b) and (d); and

(ii) deemed to have arisen as of the date the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the receiver accepts performance by the other person before the receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this section (other than subsection (a)(7)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i).

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(9) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the covered financial company for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as receiver of a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or any receiver appointed for such company.

(D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement,'' as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which for purposes of this clause shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraph (10)—

(I) The term ''default'' shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

(II) The term ''in danger of default'' shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(CC) in the opinion of the Corporation or such authority—

(bb) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(cc) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered financial company's equity of redemption.

(x) PERSON.—The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by a receiver of such covered financial company, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) RECORDKEEPING.—The Corporation, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the receiver of the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation by regulation to be a financial institution, and the term ''clearing organization'' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the receiver for a covered financial company in default or in danger of default transfers any assets and liabilities of the covered financial company; and

(ii) the transfer includes any qualified financial contract,

the receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company if the receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a receiver with respect to any qualified financial contract to which a covered financial company is a party, the receiver for such covered financial shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an interest is taken in contemplation of the company's insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The receiver may enforce any contract, other than a director's or officer's liability insurance contract or a financial institution bond, entered into by the covered financial company notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the receiver to enforce or recover under a director's or officer's liability insurance contract or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the receiver, as appropriate, of the covered financial company during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the receiver to fail to comply with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including, but not limited, to the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) AUTHORITY REGARDING COLLECTIVE BARGAINING AGREEMENTS.—The Corporation as receiver for any covered financial company shall not disaffirm or repudiate any collective bargaining agreement to which the covered financial company is a party unless the Corporation determines that repudiation is necessary for the orderly resolution of the covered financial company after taking into consideration the cost to taxpayers and the financial stability of the United States.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Corporation determines to utilize with respect to a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered financial company for which such receiver is appointed shall equal the amount such claimant would have received if—

(A) a determination had not been made under section 1603(b) with respect to the covered financial company; and

(B) the covered financial company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including a case initiated by the Securities Investor Protection Corporation with respect to a financial company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered financial company if the Corporation determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the resolution of the covered financial company under this section; or

(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the receiver appointed for a covered financial company, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver of such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under section 1604.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a covered financial company's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered financial company's assets shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver of one or more covered financial companies may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Corporation is appointed as receiver for a covered financial company, the Corporation may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with

the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including, but not limited to, the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which a receiver has been appointed may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1)(B).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1)(B).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Corporation determines that such actions are necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of up to 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) EXEMPT TAX STATUS.—

(A) EXEMPTION FROM FEDERAL INCOME TAX.—Subsection (l) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph: ''(4) Any bridge financial company organized under section 1609(h) of the Financial Stability Improvement Act of 2009.''.

(B) EXEMPTION FROM CERTAIN OTHER TAXES.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States, or by any State, county, municipality, or local taxing authority.

(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such

section, or is extended pursuant to subsection (e)(2) of such section.

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Federal Reserve Board, has found that the Corporation must act immediately to prevent the probable failure of the covered financial company involved, 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 supercede 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 5 relates to unfair methods of competition).

(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (12), (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company as provided in paragraph (14).

(13) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if a bridge financial company's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Corporation shall remain the receiver of a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as such receiver shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered financial company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—Whenever the Corporation has been appointed as receiver for a covered financial company, the Federal Reserve Board and the company's primary appropriate regulatory agency, if any, shall each make all records relating to the company available to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case,

based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver of any covered financial company and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(1) in the case of any covered financial company or bridge financial company that is or has a subsidiary that is a stockbroker (as that term is defined in section 101 of title 11 of the United States Code) but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of the United States Code in respect of the distribution to any ''customer'' of all ''customer name securities'' and ''customer property'' (as such terms are defined in section 741 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(2) in the case of any covered financial company or bridge financial company that is a commodity broker (as that term is defined in section 101 of title 11 of the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United States Code in respect of the distribution to any ''customer'' of all ''customer property'' (as such terms are defined in section 761 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(n) SYSTEMIC DISSOLUTION FUND.—

(1) ESTABLISHMENT AND PURPOSE.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the ''Systemic Dissolution Fund''—

(i) to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy, as determined under 1603(b); and

(ii) to ensure that any taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of $50,000,000,000, adjusted for inflation, or more.

(B) ADJUSTMENT OF THRESHOLD.—The threshold referred to in subparagraph (A)(ii) shall be adjusted on an annual basis, based on the growth of assets owned or managed by financial companies (as defined in section 1602(9)).

(2) AUTHORITY.—The Systemic Dissolution Fund shall be administered by the Corporation, which shall have exclusive authority to—

(A) impose assessments on covered financial companies in accordance with paragraphs (6) through (8);

(B) maintain and administer the Fund in a manner so as to make clear to the general public that such Fund is unrelated to any other Fund maintained and administered by the Corporation, including the Deposit Insurance Fund;

(C) utilize the Fund to facilitate the dissolution of a covered financial company (as defined by section 1602(5)) as provided in paragraph (3), or take such other actions as are authorized by this subtitle;

(D) invest the Fund in accordance with section 13(a) of the Federal Deposit Insurance Act; and

(E) exercise borrowing authority as prescribed in subsection (o).

(3) USES.—

(A) The Fund shall be available to the Corporation for use with respect to the dissolution of a covered financial company to—

(i) cover the costs incurred by the Corporation, including as receiver, in exercising its rights, authorities, and powers and fulfilling its obligations and responsibilities under this section;

(ii) repay such funds in accordance with subsection (o)(6); and

(iii) cover the costs of systemic stabilization actions, pursuant to subsections (d) and (f) of section 1604.

(B) The Fund shall not be used in any manner to benefit any officer or director of such company removed pursuant to section 1604(f)(6).

(4) DEPOSITS TO FUND.—All amounts assessed against a financial company under this section shall be deposited into the Fund.

(5) SIZE OF FUND.—The Corporation shall, by rule, establish the minimum size of the Fund consistent with subparagraphs (C) and (D) of paragraph (6).

(6) ASSESSMENTS.—

(A) ASSESSMENTS TO MAINTAIN FUND.—The Corporation shall impose risk-based assessments on financial companies in such amount and manner and subject to such terms and conditions that the Corporation determines, by regulation and in consultation with the Council, are necessary for the amount in the Fund to at least equal the minimum size established pursuant to paragraph (5).

(B) ASSESSMENTS TO REPLENISH THE FUND.—If the Fund falls below the minimum size established pursuant to paragraph (5), the Corporation shall impose assessments on financial companies in such amounts and manner and subject to such terms and conditions as the Corporation determines, by regulation and in consultation with the Council, are necessary to replenish the fund subject to the limitations in subparagraph (D).

(C) MINIMUM ASSESSMENT THRESHOLD.—

(i) IN GENERAL.—The Corporation shall not assess financial companies with less than $50,000,000,000, adjusted for inflation, of assets on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess financial companies with $10,000,000,000, adjusted for inflation or more in assets in accordance with paragraphs (7) and (8).

(ii) HEDGE FUNDS.—The Corporation shall not assess financial companies that manage hedge funds (as defined by the Corporation for the purpose of this section, in consultation with the Securities and Exchange Commission) with less than $10,000,000,000, adjusted for inflation, of assets, under management on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess any financial companies that manage hedge funds with $10,000,000,000 or more of assets under management in accordance with paragraphs (7) and (8).

(D) MAXIMUM SIZE OF FUND VIA ASSESSMENTS.—

(i) IN GENERAL.—The Corporation shall suspend assessments on financial companies on the day after the date on which the total of the assessments, excluding interest or other earnings from investments made pursuant to paragraph (2)(D), equals $150,000,000,000.

(ii) EXCEPTIONS.—Any suspension of assessments under clause (i)—

(I) may be set aside if the Fund falls below $150,000,000,000; and

(II) shall be set aside if the Fund falls below the minimum level established in subparagraph (C).

(7) FACTORS.—The Corporation, in consultation with the Council shall establish a risk matrix to be used in establishing assessments that takes into account—

(A) the actual or expected risk of losses to the Fund;

(B) economic conditions generally affecting financial companies so as to allow assessments and the Fund to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(C) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation or other State insolvency proceeding with respect to 1 or more insurance companies;

(D) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the dissolution of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the company's liabilities, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and

State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates; and

(E) such other factors as the Corporation, in consultation with the Council, may determine to be appropriate.

(8) REQUIREMENT FOR EQUITABLE TREATMENT IN ASSESSMENTS.—In establishing the assessment system for the Fund, the Corporation, by regulation and in consultation with the Council, shall differentiate among financial companies based on complexity of operations or organization, interconnectedness, size, direct or indirect activities, and any other factors the Corporation or the Council may deem appropriate to ensure that the assessments charged equitably reflect the risk posed to the Fund by particular classes of financial companies.

(9) MINIMUM COMMENT PERIOD.—In order to ensure sufficient opportunity for public and congressional review and evaluation of any assessment system, any proposed regulations regarding the implementation of the assessment system under this subtitle shall provide an opportunity for public comment during a period of not less than 60 days.

(o) BORROWING AUTHORITY.—

(1) BORROWING FROM TREASURY.—

(A) IN GENERAL.—Subject to paragraphs (3), (4), and (5), the Corporation may borrow from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required, in addition to the funds available in the Systemic Dissolution Fund, to permit the orderly dissolution of 1 or more covered systemically significant financial companies, covered affiliates, or covered subsidiaries under this title.

(B) RATE OF INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(2) PUBLIC DEBT ISSUANCES.—For the purposes described in subsection (1), the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(3) BORROWING AUTHORITY WHEN FUND ASSETS ARE LESS THAN $150,000,000,000.—

(A) Subject to paragraph (B), the borrowing authority granted in paragraph (1) shall be available to the Corporation where—

(i) the value of the Fund is less than $150,000,000,000;

(ii) the Corporation determines that the immediate dissolution of a financial company or financial companies requires more funds than are available in the Fund; and

(iii) the Corporation has provided a specific plan for repayment under paragraph (7)(A).

(B) The Corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the Fund on the date the Corporation makes a request to borrow funds, would not exceed $150,000,000,000.

(C) For purposes of paragraph (1), the Corporation's total debt may not exceed $150,000,000,000 (not including any funds borrowed pursuant to subsection (s)).

(4) ADDITIONAL BORROWING AUTHORITY.—

(A) If at any time the Corporation anticipates that the dissolution of any financial company or financial companies will require funds in excess of $150,000,000,000—

(i) the Corporation shall submit to the Secretary and the President a written request for additional borrowing authority subject to the limitation in subparagraph (5), which shall be accompanied by a certification indicating the anticipated amount needed, the basis on which such amount was determined, and any such information as the Secretary may deem necessary; and

(ii) the President shall transmit a request to the House of Representatives and the Senate requesting the additional borrowing authority, which shall include the certification referred to in clause (i) and which includes a repayment schedule as outlined in paragraph (7).

(B) Any request for borrowing authority under paragraph (A) shall be effective only if approved by affirmative vote of the House of Representatives and the Senate in accordance with subsection (s).

(5) LIMITATIONS ON ADDITIONAL BORROWING AUTHORITY.—

(A) No request for borrowing authority is permitted under paragraph (4) unless the President, in consultation with the Council, certifies to the House of Representatives and the Senate that the borrowing authority is necessary to avoid or mitigate an imminent financial emergency.

(B) The amount of borrowing authority requested under subparagraph (A)(i) may not exceed $50,000,000,000.

(6) PROCEEDS FROM LIQUIDATION, REPAYMENT OF FUNDS.—

(A) IN GENERAL.—The Corporation shall take such measures as may be appropriate to maximize the amount of funds from any dissolution that may be available for repayment under subparagraph (B) consistent with systemic concerns.

(B) REPAYMENT PRIORITY.—Amounts realized from the dissolution of any financial company under this subtitle that are not otherwise utilized by the Corporation to dissolve a financial company under subsection (n)(3)(A) shall be paid—

(i) first, to repay any costs incurred in exercising the borrowing authority granted in paragraph (1); and

(ii) second, to recapitalize the Fund to such level as the Corporation deems necessary, but not to exceed $150,000,000,000.

(7) REPAYMENT PLAN AND SCHEDULES REQUIRED FOR ANY BORROWING.—

(A) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under paragraph (1) unless an agreement is in effect between the Secretary and the Corporation which—

(i) provides a specific plan and schedule for assessments under (n)(6) to achieve the repayment of the outstanding amount of any borrowing under such subsection; and

(ii) demonstrates that income to the Corporation from assessments under this section will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(B) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

(i) consult with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement; and

(ii) submit a copy of each repayment schedule agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (1).

(p) INFORMATION GATHERING AND VERIFICATION; PAYMENTS .—

(1) IN GENERAL.—The Corporation may require each financial company to make available such information as the Corporation may require—

(A) for purposes of—

(i) determining the financial company's assessment under this section;

(ii) verifying the accuracy of information; and

(iii) preparing for resolution, including a resolution plan as required by this section; and

(B) for such other purposes as may be appropriate and necessary to promote the orderly dissolution of the financial company.

(2) USE OF EXISTING REPORTS.—The Corporation shall, to the fullest extent possible, accept—

(A) reports that a financial company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(3) AUTHORITY FOR ON-SITE INSPECTION.—The Corporation may make on-site inspections of a financial company's books and records as necessary to carry out the purposes of this subsection.

(4) RULEMAKING.—The Corporation may promulgate such rules or regulations as are necessary or appropriate to implement this subsection.

(5) PAYMENTS OF ASSESSMENTS REQUIRED .—

(A) IN GENERAL.—Any financial company subject to an assessment under this section shall pay to the Corporation such assessment.

(B) FORM OF PAYMENT.—The payments required under this section shall be made in such manner and at such time or times as the Corporation, in consultation with the Council, shall prescribe by regulation.

(6) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—Any financial company that fails or refuses to pay any assessment under this section shall be subject to a penalty under section 18(h) of the Federal Deposit Insurance Act, as if that financial company were an insured depository institution.

(q) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any financial company the amount of any unpaid assessment lawfully payable by such company.

(2) STATUTE OF LIMITATIONS.—Notwithstanding any other provision in Federal law, or the law of any State—

(A) any action by a financial company to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C);

(B) any action by the Corporation to recover from a financial company the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C); and

(C) if a financial company has made a false or fraudulent statement with intent to evade

any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(r) REQUIREMENT TO MAINTAIN SYSTEMIC DISSOLUTION FUND AS SEPARATE FUND.—The Systemic Dissolution Fund shall at all times be administered in a manner that is separate and distinct from the Deposit Insurance Fund, and the Corporation shall take such actions as may be necessary to ensure that such distinction is made with respect to internal processes and procedures as well as with regard to any public information, discussion or other communications involving either Fund.

(s) CONGRESSIONAL APPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

(1) INTRODUCTION.—On the day on which the request of the President is received by the House of Representatives and the Senate under subsection (o)(4)(A)(ii), a joint resolution specified in paragraph (5) shall be introduced in the House by the majority leader of the House and in the Senate by the majority leader of the Senate. If either House is not in session on the day on which such a request is received, the joint resolution with respect to such request shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under paragraph (1) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(B) PROCEEDING TO CONSIDERATION.—After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution for the majority leader, to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under paragraph (4)(C). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

(3) CONSIDERATION IN THE SENATE.—

(A) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(B) 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 applicable date of introduction in the Senate and ending on the 6th day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(4) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(C) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

(i) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(ii) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(D) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(5) DEFINITION.—In this section, the term ''joint resolution'' means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: ''Joint resolution relating to the approval of request for borrowing authority under the Financial Stability Improvement Act of 2009.''; and

(C) the sole matter after the resolving clause of which is as follows: ''That the Congress approves the request for additional borrowing authority transmitted to the Congress on _____ by the President under section 1609(o)(4)(A)(ii) of the Financial Stability Improvement Act of 2009.'', the blank space being filled with the appropriate date.

(t) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered financial company (or any covered subsidiary thereof) that is placed into receivership is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

(2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or agents of a covered financial company that is placed into receivership are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation, acting as receiver or of any Federal agency who serves at the request of the receiver as an interim director, director, officer, employee, or agent of a covered financial company that is placed into receivership shall not—

(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or;

(B) receive any salary or benefits for service in any such capacity with respect to a covered financial company that is placed into receivership in addition to such salary or benefits as are obtained through employment with the Corporation or other Federal agency.

(u) STUDY OF PAYMENT OF CONSUMER CLAIMS.—Not later than 6 months following the dissolution of a covered financial company under section 1603(b), the Comptroller General of the United States shall carry out a study, and report on such study to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives, regarding the satisfaction of claims arising from violations of the provisions of the Truth in Lending Act, if any, in instances where any assets were transferred from such covered financial company.

SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph (1) by deleting ''or'' before ''the National Credit Union Administration Board,'' and by inserting immediately thereafter ''or the Corporation, as defined in section 1602 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009,''.

(b) CONFORMING CHANGE.—The heading of section 1032 of title 18, United States Code, is amended by striking ''**of financial institution**''.

SEC. 1611. OFFICE OF RESOLUTION.

(a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

(1) TRIGGER.—If the Secretary appoints the Corporation as receiver for a financial company under section 1604, the Inspector General of the Corporation shall, as soon as possible after such appointment, establish in accordance with this section the Office of Resolution as an office within the Office of the Inspector General of the Corporation.

(2) PLAN.—The Inspector General of the Corporation shall, in consultation with the Council of Inspectors General on Financial Oversight established under section 1702, formulate and maintain a plan to allow for the timely establishment of an Office of Resolution in accordance with paragraph (1). The Inspector General of the Corporation shall make such plan available to the Financial Services Oversight Council established under section 1001.

(b) SPECIAL DEPUTY INSPECTOR GENERAL.—The head of the Office of Resolution is the Special Deputy Inspector General for Resolution (in this section referred to as the ''Special Deputy Inspector General''), who shall be appointed by and report to the Inspector General of the Corporation.

(c) DUTIES.—

(1) AUDITS AND INVESTIGATIONS.—It shall be the duty of the Special Deputy Inspector General, in consultation with and subject to the approval of the Inspector General of the Corporation, to conduct, supervise, and coordinate audits and investigations of the activities of the Corporation in its capacity as receiver for a financial company under section 1604, including by collecting the following information:

(A) A description of each financial company for which the Corporation has been appointed as receiver under section 1604.

(B) A description of the activities and future plans of the Corporation with respect to each financial company for which it has been appointed as receiver, and an analysis of whether such activities and plans conform to the requirements of this subtitle and other applicable law and are in the best interest of the overall stability of the financial system.

(C) Such other information as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation.

(2) ADDITIONAL DUTIES.—

(A) SYSTEMS, PROCEDURES, AND CONTROLS.—The Special Deputy Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation, to discharge the duties under paragraph (1).

(B) REPORTING OF CRIMINAL VIOLATIONS TO ATTORNEY GENERAL.—If the Special Deputy Inspector General, in carrying out this section, discovers facts that give the Special Deputy Inspector General reasonable grounds to believe there has been a violation of Federal criminal law, the Special Deputy Inspector General shall expeditiously report such facts to the Attorney General.

(C) MINIMIZING DUPLICATION OF EFFORT.—The Inspector General of the Corporation and the Special Deputy Inspector General shall coordinate to minimize duplication of effort in the oversight of the Corporation's activities as receiver for financial companies under section 1604.

(3) DUTIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—In addition to the duties specified in paragraphs (1) and (2), the Special Deputy Inspector General shall assist the Inspector General of the Corporation in carrying out such duties and responsibilities of inspectors general under the Inspector General Act of 1978 as the Inspector General of the Corporation considers appropriate.

(d) AUTHORITIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—The Inspector General of the Corporation may confer on the Special Deputy Inspector General such authorities provided to the Inspector General of the Corporation in section 6 of the Inspector General Act of 1978 as the Inspector General of the Corporation considers necessary to enable the Special Deputy Inspector General to carry out the duties specified in subsection (c).

(e) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—

(1) IN GENERAL.—The Special Deputy Inspector General may, in consultation with and subject to the approval of the Inspector General of the Corporation, expend such amounts from the fund established under section 1609(n) as are necessary to carry out the duties described in subsection (c) and to submit the reports required by subsection (h).

(2) ADDITIONAL FUNDS.—If the fund established under section 1609(n) is insufficient to enable the Special Deputy Inspector General to begin carrying out the duties of the Special Deputy Inspector General in a timely fashion or later becomes insufficient to enable the Special Deputy Inspector General to carry out such duties, the Inspector General of the Corporation shall detail the necessary personnel, facilities, or other resources to the Special Deputy Inspector General.

(f) CORRECTIVE RESPONSES TO AUDIT PROBLEMS.—The Chairman of the Corporation shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Deputy Inspector General; or

(2) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(g) COOPERATION AND COORDINATION WITH OTHER ENTITIES.—In carrying out the duties, responsibilities, and authorities of the Special Deputy Inspector General under this section, the Special Deputy Inspector General shall work with each of the inspectors general who is a member of the Council of Inspectors General on Financial Oversight established under section 1703(a)(1), in order to avoid duplication of effort and ensure comprehensive oversight of the Corporation's activities as a receiver appointed under section 1604.

(h) REPORTS.—

(1) IN GENERAL.—In lieu of the semiannual reports required by section 5(a) of the Inspector General Act of 1978, the Special Deputy Inspector General shall submit to the appropriate committees of Congress at the following times a report prepared in consultation with and approved by the Inspector General of the Corporation:

(A) Not later than 30 days after the appointment of the Special Deputy Inspector General.

(B) During the first 3 years after such appointment, not later than 30 days after the end of each fiscal quarter during which the Corporation acts as receiver for a financial company under section 1604.

(C) During the 4th year after such appointment and each year thereafter, not later than 30 days after the end of the 2nd and the 4th fiscal quarters, if the Corporation acts as receiver for a financial company under section 1604 during such semiannual period.

(2) CONTENT OF REPORTS.—Each report required by paragraph (1) shall include a summary, for the period since the last required report (or, in the case of the first report, for the period since the Corporation was first appointed as a receiver under section 1604) of—

(A) the activities of the Special Deputy Inspector General; and

(B) the activities and future plans of the Corporation with respect to each financial company for which it served as receiver.

(i) TERMINATION.—The Office of Resolution shall terminate 6 months after the Corporation ceases to serve as a receiver for any financial company under section 1604, subject to reestablishment pursuant to subsection (a)(1).

SEC. 1612. MISCELLANEOUS PROVISIONS.

(a) BANKRUPTCY CODE AMENDMENTS.—(1) Section 109(b)(2) of title 11 of the United States Code is amended by inserting ''covered financial company (as that term is defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009),'' after ''a domestic insurance company,''.

(2) Section 303 of title 11, United States Code, is amended—

(A) in subsection (h)—

(i) by striking '' or'' at the end of paragraph (1);

(ii) by striking the period at the end of paragraph (2) and inserting ''; or''; and

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

''(3) an involuntary case is filed against a covered financial company, as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009, by the Federal Deposit Insurance Corporation under section 1607 of that Act.''; and

(B) by adding at the end the following new subsection:

''(m) Notwithstanding subsections (a) and (b) of this section and section 109(b)(2), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a covered financial company (as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009). Such involuntary case may be commenced by the Federal Deposit Insurance Corporation in accordance with section 1607 of that Act.''.

(3) Title 11, United Stades Code, is amended by inserting after section 303 the following new section:

''SEC. 304. CASES INVOLVING FDIC DISSOLUTION AUTHORITY.

''(a) APPOINTMENT.—In any case commenced by the Federal Deposit Insurance Corporation under section 303(m), on the request of the Federal Deposit Insurance Corporation, such Corporation shall be appointed to serve as trustee in such case, notwithstanding any other provision of this title.

''(b) QUALIFICATION.—Sections 321, 322, 324, and 326 shall not apply with respect to the appointment or service of such Corporation as trustee in any case so commenced.''.

(b) FEDERAL DEPOSIT INSURANCE ACT AND FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—

(1) Section 18(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting at the end the following new sentence: ''The determination with regard to the Corporation's exercise of authority under this subparagraph shall apply to only an insured depository institution except when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions.''.

(2) Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting ''section 1609(c) of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),'' after ''section 11(e) of the Federal Deposit Insurance Act,''.

SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 11A the following new section:

''SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.

''(a) SYSTEMIC DISSOLUTION AUTHORITY.—The Corporation shall establish a Systemic Dissolution Authority, which shall function as a subsidiary of the Corporation.

''(b) SYSTEMIC DISSOLUTION FUND.—Any fund established for the purpose of facilitating the dissolution of a financial company under subtitle G of the Financial Stability Improvement Act shall be called the Systemic Dissolution Fund, which shall be managed by the Corporation, through the Systemic Dissolution Authority.

''(c) MANAGEMENT OF FUND.—

''(1) SEPARATE MAINTENANCE.—The Systemic Dissolution Fund shall be separately maintained and not commingled with any other fund of the Corporation.

''(2) TREATMENT OF AND ACCOUNTING FOR ASSETS.—The assets and liabilities of the Systemic Dissolution Fund—

''(A) shall be the assets and liabilities of the Fund and not of the Corporation; and

''(B) shall not be consolidated with the assets and liabilities of the Deposit Insurance Fund or the Corporation for accounting, reporting, or any other purpose.

''(d) RIGHTS, POWERS, AND DUTIES.—

''(1) IN GENERAL.—The Corporation, in addition to any rights, powers, and duties under this Act or any other law, shall, through the Systemic Dissolution Authority, have all rights, powers, and duties necessary to implement and maintain the Systemic Dissolution Fund in accordance with subtitle G of the Financial Stability Improvement Act of 2009.

''(2) POWERS AS RECEIVER FOR COVERED FINANCIAL COMPANY.—When acting as receiver with respect to any covered financial company, as defined in subtitle G of the Financial Stability Improvement Act of 2009, the Corporation, through the Systemic Dissolution Authority, shall have all rights, powers, and duties that the Corporation has as receiver under such subtitle.

''(3) SPECIFIC AND INCIDENTAL POWERS.—The Corporation, through the Systemic Dissolution Authority, or any duly authorized officer or agent of the Authority, may exercise all powers specifically granted by the provisions of this Act and subtitle G of the Financial Stability Improvement Act and such incidental powers as shall be necessary to carry out the powers so granted and accomplish the purposes of subtitle G of the Financial Stability Improvement Act.

''(e) STAFF AND RESOURCES.—

''(1) IN GENERAL.—The Corporation shall assign such staff, and provide such administrative and other support services to the Systemic Dissolution Authority as is necessary to fulfill the statutory responsibilities of the Authority.

''(2) ADMINISTRATIVE EXPENSES.— The cost of all personnel, services, and resources provided on behalf of the Systemic Dissolution Authority shall be paid from the Systemic Dissolution Fund.''.

SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

The provisions of section 111 of the Emergency Economic Stabilization Act of 2008 shall apply to a covered financial institution for which a receiver has been appointed pursuant to section 1604. Such covered financial institution shall be considered a TARP recipient for purposes of such section 111 for so long as such institution is in receivership.

SEC. 1615. STUDY ON THE EFFECT OF SAFE HARBOR PROVISIONS IN INSOLVENCY CASES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the safe harbor provisions under Federal law for derivatives, swaps, and securities transactions addressing—

(1) how the safe harbor provisions have been applied in insolvency cases;

(2) how such provisions impact the rights of parties in interest in insolvency cases;

(3) whether these provisions impede or interfere with allowing a debtor a reasonable period of time to pursue rehabilitation and reorganization; and

(4) whether these provisions had an adverse impact on the financial marketplace.

(b) REPORT TO THE CONGRESS.—Not later than 180 days after the date of the enactment of this title, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any adverse impacts presented by the Federal safe harbor provisions.

Subtitle H—Additional Improvements for Financial Crisis Management

SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended by striking the 3rd undesignated paragraph and inserting the following new subsection:

''(c) FINANCIAL CRISIS MANAGEMENT.—

''(1) IN GENERAL.—In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, upon the written determination, pursuant to section 1109 of the Financial Stability Improvement Act of 2009, of the Financial Stability Oversight Council, that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of such Council then serving), and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), may authorize any Federal reserve bank, during such periods as the Board may determine and at rates established in accordance with the provision designated as (d) of section 14, to discount for an individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank and in conformance with regulations or guidelines issued by the Board of Governors regarding the quality of notes, drafts, and bills of exchange available for discount and of the security for those notes, drafts and bills of exchange, unless a joint resolution (as defined in paragraph (5)) is adopted. Upon making any determination under this paragraph, with the consent of the Secretary of the Treasury, the Financial Stability Oversight Council shall promptly submit a notice of such determination to the House of Representatives and the Senate. The amounts made available under this subsection shall not exceed $4,000,000,000,000.

''(2) CLARIFICATION OF 'SECURED TO THE SATISFACTION OF THE FEDERAL RESERVE BANK'.—No member of the Board of Governors of the Federal Reserve System shall vote to authorize any action permitted under paragraph (1) and the Secretary of the Treasury shall not provide the written consent required by paragraph (1) unless that member believes and the Secretary of the Treasury believes:

''(A) that there is at least a 99 percent likelihood that all funds disbursed or put at risk by such action will be repaid to the Federal Reserve System; and

''(B) that there is at least a 99 percent likelihood that all interest due on any funds disbursed will also be paid to the Federal Reserve System.

''(3) LOW QUALITY ASSETS EXCLUDED.—The notes, drafts, and bills of exchange available for discount for purposes of paragraph (1), and the security for those notes, drafts and bills of exchange may only include any of the following assets if such asset is used to further enhance the security for those notes, drafts and bills of exchange which shall be fully secured with assets that are not any of the following assets:

''(A) An asset (including a security) that would be classified as ''substandard,'' ''doubtful,'' or ''loss,'' or treated as ''special mention'' or ''other transfer risk problems,'' in a report of examination or inspection of bank or an affiliate of a bank prepared by either a Federal or State supervisory agency or in any internal classification system used by such individual, partnership or corporation.

''(B) An asset in a nonaccrual status.

''(C) An asset on which principal or interest payments are more than 30 days past due.

''(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor unless such asset has been performing for at least 6 months since the renegotiation.

''(4) NO SINGLE OR SPECIFIC BENEFICIARIES.—The Board of Governors of the Federal Reserve System may authorize a Federal reserve bank to discount notes, drafts, or bills of exchange under this section only as part of a broadly available credit or other facility and may not authorize a Federal Reserve bank to discount notes, drafts, or bills of exchange for only a single and specific individual, partnership, or corporation.

''(5) EVIDENCE OF UNAVAILABILITY OF CREDIT.—Before discounting any note, draft, or bill of exchange under this subsection for an individual, a partnership or corporation as part of a broadly available credit or other facility the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All discounts under this subsection for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

''(6) CONGRESSIONAL DISAPPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

''(A) INTRODUCTION.—Within 90 days of the day on which notice from the Financial Stability Oversight Council is received by the House of Representatives and the Senate under paragraph (1), a joint resolution specified in subparagraph (E) may be introduced in the House by the majority leader and in the Senate by the majority leader.

''(B) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

''(i) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under subparagraph (A) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

''(ii) PROCEEDING TO CONSIDERATION.—After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged

from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution, for the majority leader to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under subparagraph (D)(iii)(I). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

''(iii) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

''(C) CONSIDERATION IN THE SENATE.—

''(i) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(ii) 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 applicable date of introduction of the joint resolution in the Senate and ending on the 6th day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

''(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

''(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

''(D) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

''(i) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

''(I) The joint resolution of the other House shall not be referred to a committee.

''(II) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

''(ii) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

''(iii) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

''(I) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

''(II) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

''(iv) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are enacted by Congress—

''(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''(E) DEFINITION.—In this paragraph, the term 'joint resolution' means only a joint resolution—

''(i) which does not have a preamble;

''(ii) the title of which is as follows: 'Joint resolution relating to the use of authority relevant to section 13(c) of the Federal Reserve Act under the Financial Stability Improvement Act of 2009.'; and

''(iii) the sole matter after the resolving clause of which is as follows: 'That the Congress disapproves the use of authority pursuant to section 13(c) of the Federal Reserve Act transmitted to the Congress on _____ by the Board of Governors of the Federal Reserve System', the blank space being filled with the appropriate date.

''(F) NONSCORING OF JOINT RESOLUTIONS OF DISAPPROVAL.—A joint resolution of disapproval shall be treated as having no budgetary effect by the Congressional Budget Office and the Office of Management and Budget for any purpose under the Rules of the House of Representatives, the Standing Rules of the Senate, the Congressional Budget Act of 1974, or any statutory pay-as-you-go requirement.''.

SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.

Section 14 of the Federal Reserve Act is amended by adding at the end the following new subsection:

''(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.—A Federal reserve bank may not take any action pursuant to the authority provided under this section with respect to foreign currency swaps unless—

''(1) such action is approved in advance by the affirmative vote of not less than five members of the Board of Governors of the Federal Reserve System; and

''(2) such action is taken with the written concurrence of the Secretary of the Treasury.''.

SEC. 1703. 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.—The Council of Inspectors General shall, each year within a timeframe that permits consideration by the Financial Services Oversight Council (in this section referred to as the ''Oversight Council'') prior to the submission of its report for such year under section 1006, submit to the Oversight 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 OVERSIGHT 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 Oversight 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 Oversight 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 Secretary of the Treasury appoints the Federal Deposit Insurance Corporation as receiver under section 1604.

(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 Secretary of the Treasury's 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 OVERSIGHT COUNCIL.—The Oversight Council shall include in its annual report under section 1006 responses to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

Subtitle I—Miscellaneous

SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—Not later than 180 days following the enactment of this title, each agency shall establish an Office of Minority and Women Inclusion (hereinafter in this section referred to as the ''Office'') that shall advise the agency administrator of the impact of policies and regulations of the agency on minority-owned and women-owned businesses, and shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities, including the coordination of technical assistance, in accordance with such standards and requirements as the Director of the Office shall establish.

(2) CONSOLIDATION.—Each agency that has assigned these or comparable responsibilities to existing offices shall ensure that such responsibilities are consolidated within the Office.

(b) DIRECTOR.—

(1) IN GENERAL.—For each Office, the President shall appoint, by and with the advice and consent of the Senate, a Director of Minority and Women Inclusion (hereinafter in this section referred to as the ''Director''), who shall also hold a title within such agency comparable to that of other senior level staff who are, as applicable, either appointed by the President, by and with the advice and consent of the Senate, or act in a managerial capacity that requires reporting directly to the agency administrator.

(2) DUTIES.—Each Director shall—

(A) ensure equal employment opportunity and the racial, ethnic and gender diversity of the agency's workforce and senior management;

(B) increase the participation of minority-owned and women-owned businesses in the programs and contracts of the agency;

(C) provide guidance to the agency administrator to ensure that the policies and regulations of the agency strengthen minority-owned and women-owned businesses; and

(D) conduct an assessment, as part of the examination process for the entities regulated or monitored by the agency of the diversity and inclusion efforts by such entities.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) IN GENERAL.—Each Director shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), women, and minority-owned and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts (including, as applicable, contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of its assets, the making of its equity investments, and the implementation of programs to address economic recovery).

(2) CONTRACTS.—The processes established by each agency for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(3) WRITTEN ASSURANCE.—All such contract proposals, provided such proposals are of an amount greater than $50,000 and the contractor employs more than 50 employees, shall include a written assurance, in a form and substance that the Director shall prescribe, that the contractor shall ensure, to the maximum extent possible, the inclusion of minorities and women in its workforce and, as applicable, by its subcontractors.

(4) TERMINATION.—A Director may terminate any contract upon a finding that the contractor has failed to make a good faith effort to comply with paragraph (3), except that a contractor may appeal such finding and termination to the agency administrator within a reasonable amount of time as determined by the Director.

(d) APPLICABILITY.—This section shall apply to all contracts of an agency for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(e) REPORTS.—Not later than 90 days before the end of each Federal fiscal year, each Director shall report to the Congress detailed information describing the actions taken by the agency and the Director pursuant to this section, which shall—

(1) to the extent contracts exceed the contract amount and employment levels established in subsection (c)(3), include a statement of the total amounts paid by the agency to third party contractors since the last such report;

(2) the percentage of such amounts paid to businesses described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) such other information, findings, conclusions, and recommendations for legislative or agency action, as the Director may determine to be appropriate to include in such report.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States and the Federal government, which shall include—

(1) heavily 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, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(5) such other mass media communications that the Director determines are necessary.

(g) DEFINITIONS.—For purposes of this section:

(1) AGENCY.—The term ''agency'' means—

(A) the Department of the Treasury,

(B) the Federal Deposit Insurance Corporation,

(C) the Federal Housing Finance Agency,

(D) each of the Federal reserve banks,

(E) the Board,

(F) the National Credit Union Administration,

(G) the Office of the Comptroller of the Currency,

(H) the Office of Thrift Supervision,

(I) the Securities and Exchange Commission,

(J) the Federal department or agency that the President has identified as the main department or agency responsible for consumer financial protection,

(K) the Federal department or agency that the President has identified as the main department or agency responsible for insurance information,

and any successors to such entities.

(2) AGENCY ADMINISTRATOR.—The term ''agency administrator'' means the head of an agency.

Subtitle J—International Policy Coordination

SEC. 1901. INTERNATIONAL POLICY COORDINATION.

The President of the United States, or a designee of the President, shall coordinate through all available international policy channels similar policies as found in United States law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.

Subtitle K—International Financial Provisions

SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection

7(d)(3) of the International Banking Act of 1978 (U.S.C. 3105(d)(3)) is amended—

(1) by striking ''and'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; and''; and

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

''(E) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such systemic risk.''.

(b) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection 7(e)(1) of the International Banking Act of 1978 (U.S.C. 3105(e)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(3) by inserting after subparagraph (B), the following new subparagraph:

''(C) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), the home country of the foreign bank has not adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.''.

(c) REGISTRATION OR SUCCESSION TO UNITED STATES BROKERAGE OR DEALER AND TERMINATION OF SUCH REGISTRATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

''(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Securities and Exchange Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), the home country of the foreign person has adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.

''(l) TERMINATION OF A UNITED STATES BROKER OR DEALER.—For a foreign person or an affiliate of a foreign person that presents such a systemic risk to the United States, the Securities and Exchange Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such systemic risk.''.

SEC.___. REDUCING TARP FUNDS TO OFFSET COSTS.

Section 115(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5525(a)(3)) is amended 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, outstanding at any one time'' and inserting ''$700,000,000,000, as such amount is reduced by $22,059,000,000, outstanding at any one time''.

TITLE II—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT

SEC. 2001. SHORT TITLE.

This title may be cited as the ''Corporate and Financial Institution Compensation Fairness Act of 2009''.

SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

''(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

''(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

''(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

''(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

''(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

''(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

''(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appropriate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.''.

SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

''SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

''(a) COMMISSION RULES.—

''(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

''(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

''(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

''(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

''(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

''(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

''(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

''(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

''(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

''(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

''(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

''(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c), and

''(2) to any independent counsel or other adviser to the compensation committee.''.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Securities Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 2 years after the rules required by the amendment made by this section take effect, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

SEC. 2004. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions; or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this subsection shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of covered financial institutions; or

(2) could have serious adverse effects on economic conditions or financial stability.

(c) ENFORCEMENT.—The provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

(d) DEFINITIONS.—As used in this section—

(1) the term ''appropriate Federal 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 Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency; and

(2) the term ''covered financial institution'' means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) LIMITATION.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this title, provided such compensation agreements are for a period of no more than 24 months. Nothing in this title shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

(g) GAO STUDY.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2009 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission's Consolidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this title, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).

TITLE III—OVER-THE-COUNTER DERIVATIVES MARKETS ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Over-the-Counter Derivatives Markets Act of 2009''.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

''(9) DERIVATIVE.—The term 'derivative' means—

''(A) a contract of sale of a commodity for future delivery; or

''(B) a swap.'';

(3) by redesignating paragraph (35) (as redesignated by paragraph (1)) as paragraph (36);

(4) by adding after paragraph (34) (as redesignated by paragraph (1)) the following:

''(35) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

''(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

''(B) EXCLUSIONS.—The term 'swap' does not include:

''(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

''(ix) any foreign exchange swap;

''(x) any foreign exchange forward;

''(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

''(xii) any security-based swap, other than a security-based swap as described in paragraph (38)(C).

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).'';

(5) in paragraph (13) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in clause (vii), by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(ii) in clause (xi), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis''; and

(B) in subparagraph (C), by striking ''determines'' and inserting ''and the Securities and Exchange Commission may jointly determine'';

(6) in paragraph (30) (as redesignated by paragraph (1)), by—

(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking ''and''; and

(C) inserting after subparagraph (D) the following:

''(E) a swap execution facility registered under section 5h;

''(F) a swap repository; and'';

(7) by adding after paragraph (36) (as redesignated by paragraph (3)) the following:

''(37) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.'';

(8) by adding after paragraph (37) the following:

''(38) SECURITY-BASED SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

''(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

''(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

''(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

''(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it references or is based upon a government security.

''(C) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

''(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).'';

(9) by adding after paragraph (38) the following:

''(39) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise.

''(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'';

(10) by adding after paragraph (39) the following:

''(40) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer and—

''(i) who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

''(ii) whose outstanding swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties.

''(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' and 'substantial net counterparty exposure' at a threshold that the Commissions determine prudent for the effective monitoring of, management and oversight of the financial system. In the event the Commissions are unable to agree upon a level within 60 days of the commencement of such consultations, the Secretary of the Treasury shall make such determination, which shall be binding on and adopted by such Commissions.

''(41) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a swap dealer and—

''(i) who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

''(ii) whose outstanding security-based swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties.

''(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' and 'substantial net counterparty exposure' at a threshold that the Commissions determine prudent for the effective monitoring of, management and oversight of the financial system. In the event the Commissions are unable to agree upon a level within 60 days of the commencement of such consultations, the Secretary of the Treasury shall make such determination, which shall be binding on and adopted by such Commissions.'';

(11) by adding after paragraph (41) the following:

''(42) 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)).'';

(12) by adding after paragraph (42) the following:

''(43) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

''(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a State-chartered bank that is a member of the Federal Reserve System; or

''(ii) a State-chartered branch or agency of a foreign bank;

''(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a national bank; or

''(ii) a federally chartered branch or agency of a foreign bank; and

''(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.'';

(13) by adding after paragraph (43) the following:

''(44) SECURITY-BASED SWAP DEALER.—

''(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-based swaps for such person's own account, through a broker or otherwise.

''(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'';

(14) by adding after paragraph (44) the following:

''(45) GOVERNMENT SECURITY.—The term 'government security' has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).'';

(15) by adding after paragraph (45) the following:

''(46) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.'';

(16) by adding after paragraph (46) the following:

''(47) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.'';

(17) by adding after paragraph (47) the following:

''(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10).'';

(18) by adding after paragraph (48) the following:

''(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant, or any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6).''; and

(19) by adding after paragraph (49) the following:

''(50) SWAP REPOSITORY.—The term 'swap repository' means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.

''(51) RESTRICTED OWNER.—The term 'restricted owner' means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, person associated with a swap dealer or major swap participant, or person associated with a security-based swap dealer or major security-based swap participant.''.

(b) JOINT RULEMAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule 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'' no later than 180 days after the effective date of this title.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(c) JOINT RULEMAKING UNDER THIS TITLE.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe uniform rules and regulations under any provision of this title in a timely manner, the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall prescribe rules and regulations under such provision. A rule prescribed by the Secretary of the Treasury shall be enforced as if prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission and shall remain in effect until the Secretary rescinds the rule or until the effective date of a corresponding rule prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission in accordance with this section, whichever is later.

(3) DEADLINE.—The Secretary of the Treasury shall adopt rules and regulations under paragraph (2) within 180 days of the time that the Commodity Futures Trading Commission and the Securities and Exchange Commission failed to adopt uniform rules and regulations.

(4) 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 prescribe requirements to treat functionally or economically similar products similarly.

(5) 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.

(6) JOINT INTERPRETATION.—Any 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.

SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by striking ''(C) and (D)'' and inserting ''(C), (D), and (G)'';

(2) by striking ''subsections (c) through (i)'' and inserting ''subsections (c) and (f)''; and

(3) by striking ''involving contracts of sale'' and inserting ''involving swaps or contracts of sale''.

(b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by inserting after subparagraph (F) the following:

''(G) Nothing contained in this paragraph shall supersede or limit the jurisdiction conferred on the Securities and Exchange Commission or other regulatory authority by, or otherwise restrict the authority of the Securities and Exchange Commission or other regulatory authority under, the Over-the-Counter Derivatives Markets Act of 2009, including with respect to a security-based swap as described in section 1a(38)(C) of this Act.''.

(c) ADDITIONS.—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''.

SEC. 3103. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms 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) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

''(j) CLEARING OF SWAPS.—

''(1) IN GENERAL.—

''(A) PRESUMPTION OF CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing.

''(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

''(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

''(ii) provide for non-discriminatory clearing of a swap executed on or through the rules of an unaffiliated designated contract market or swap execution facility.

''(2) COMMISSION APPROVAL.—

''(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval each swap, or any group, category, type, or class of swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

''(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Commission fails to take final action within the time limitation established under this subparagraph is deemed approved.

''(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with section 5b(c)(2).

''(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission for approval, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

''(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

''(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

''(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

''(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

''(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with section 5b(c)(2); or

''(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

''(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

''(4) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this Act provided that any such rules or interpretations must be issued jointly to be effective.

''(5) REQUIRED REPORTING.—

''(A) IN GENERAL.—All swap transactions that are not accepted for clearing by any derivatives clearing organization shall be reported to either a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

''(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties may agree which counterparty will report the swap transaction. In transactions where only 1 counterparty is a swap dealer, the swap dealer will report the transaction.

''(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

''(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

''(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

''(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

''(7) TRADE EXECUTION.—

''(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1) and where both counterparties are either swap dealers or major swap participants, such 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 with the Commission.

''(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.

''(C) REQUIRED REPORTING.—If the exception of subparagraph (B) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

''(8) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.

''(9) EXCEPTIONS.—The requirements of paragraph (1) shall not apply to a swap if—

''(A) no derivatives clearing organization registered under this Act will accept the swap for clearing; or

''(B) one of the counterparties to the swap is not a swap dealer or major swap participant.

''(10) EXCLUSION.—Paragraph (1) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this paragraph.''.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) are amended to read as follows:

''(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to—

''(1) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

''(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

''(B) 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

''(2) a swap.

''(b) VOLUNTARY REGISTRATION.—

''(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

''(2) CLEARING AGENCIES.—A derivatives clearing organization may clear security-based swaps that are required to be cleared by a person who is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).''.

(2) 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 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) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(i) CONSULTATION.—The Commission and the Securities and Exchange Commission shall consult with the appropriate Federal banking agencies prior to adopting rules under this section with respect to swaps.

''(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that such derivatives clearing organization 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 organization's home country.

''(k) DESIGNATION OF COMPLIANCE OFFICER.—

''(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

''(2) DUTIES.—The compliance officer—

''(A) shall report directly to the board or to the senior officer of the derivatives clearing organization;

''(B) shall—

''(i) review compliance with the core principles in section 5b(c)(2);

''(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

''(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(iv) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(C) shall establish procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of noncompliant issues.

''(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.''.

(3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) is amended to read as follows:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in subparagraphs (B) through (N) this paragraph. The Commission may conform the core principles to reflect evolving United States and international standards.''.

(4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is further amended by adding after subsection (k), as added by paragraph (2), the following:

''(l) REPORTING.—

''(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission and any designated swap repository all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to such security-based swap agreements. Subject to section 8, the Commission shall share such information, upon request, with the Board, the Securities and Exchange Commission (with respect to swaps other than security-based swap agreements), the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).''.

(5) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence by adding ''central bank and ministries'' after ''department'' each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

''SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

''(a) EXCLUSION.—Except as provided in subsection (b) or (c), no provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall apply to, and the Commodity Futures Trading Commission and the Securities and Exchange Commission shall not exercise regulatory authority under the Commodity Exchange Act with respect to, an identified banking product.

''(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product or a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

''(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)); and

''(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(c) ADDITIONAL EXCEPTION.—The exclusion in subsection (a) shall not apply to an identified banking product that—

''(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

''(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

''(3) has become known to the trade as a swap or security-based swap, or has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a

et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).''.

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after subsection (i) the following:

''(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) derivatives clearing organizations pursuant to section 5b(k)(2);

''(B) swap repositories pursuant to section 21(c)(3); and

''(C) reports received by the Commission pursuant to section 4r.''.

SEC. 3105. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

''SEC. 21. SWAP REPOSITORIES.

''(a) REGISTRATION REQUIREMENT.—

''(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

''(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

''(b) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap 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 that clear swaps.

''(c) DUTIES.—A swap repository shall—

''(1) accept data prescribed by the Commission for each swap under subsection (b);

''(2) maintain such data in such form and manner and for such period as may be required by the Commission;

''(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

''(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

''(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

''(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.''.

SEC. 3106. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

''(a) IN GENERAL.—Any person who enters into a swap and—

''(1) did not clear the swap in accordance with section 2(j)(1); and

''(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including time frames) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

''(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.''.

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

''SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

''(a) REGISTRATION.—

''(1) It shall be unlawful for any person to act as a swap dealer unless such person is registered as a swap dealer with the Commission.

''(2) It shall be unlawful for any person to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

''(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

''(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

''(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than one year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

''(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of such swap dealer or major swap participant, if such swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

''(c) DUAL REGISTRATION.—

''(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a security-based swap dealer.

''(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a major security-based swap participant.

''(d) JOINT RULES.—

''(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules for persons that are registered as swap dealers or major swap participants under this section and persons that are registered as security-based swap dealers or major security-based swap participants under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Securities and Exchange Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Securities and Exchange Commission to prescribe appropriate business conduct, reporting, and record-keeping requirements to protect investors.

''(e) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

''(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

''(2) JOINT RULES.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants.

''(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

''(3) CAPITAL.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose:

''(i) a capital requirement that is greater than zero for swaps that are cleared by a derivatives clearing organization; and

''(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not centrally cleared, higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization than for swaps that are centrally cleared.

''(B) EXCLUSION.—Subparagraph (A) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

''(C) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

''(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

''(E) A futures commission merchant, introducing broker, broker or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which it is subject.

''(4) MARGIN.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—The Prudential Regulators shall impose margin requirements under this subsection on all swaps that are not cleared by a registered derivatives clearing organization.

''(B) NON-SWAP DEALERS OR MAJOR SWAP PARTICIPANTS.—The Prudential Regulators may, but are not required to, impose margin requirements with respect to swaps in which one of the counterparties is neither a swap dealer, major swap participant, security-based swap dealer nor a major security-based swap participant. Any such margin requirements for swaps shall provide for the use of non-cash collateral.

''(C) EXCLUSION.—Subparagraph (B) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

''(D) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than margin requirements for swaps set by the Prudential Regulators.

''(f) REPORTING AND RECORDKEEPING.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant—

''(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

''(B) for which—

''(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

''(D) shall keep any such books and records relating to transactions in swaps based on one or more securities open to inspection and examination by the Securities and Exchange Commission.

''(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(g) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

''(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

''(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

''(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

''(5) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(h) BUSINESS CONDUCT STANDARDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

''(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

''(B) diligent supervision of its business as a swap dealer;

''(C) adherence to all applicable position limits;

''(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and

''(D) such other matters as the Commission shall determine to be necessary or appropriate.

''(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

''(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

''(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of—

''(i) information about the material risks and characteristics of the swap;

''(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate clearinghouse and for non-cleared swaps, upon the request of the counterparty, the daily mark of the swap dealer or major swap participant; and

''(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

''(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

''(3) RULES.—The Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009.

''(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation,

processing, netting, documentation, and valuation of all swaps.

''(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

''(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

''(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, information concerning—

''(A) terms and conditions of its swaps;

''(B) swap trading operations, mechanisms, and practices;

''(C) financial integrity protections relating to swaps; and

''(D) other information relevant to its trading in swaps.

''(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

''(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

''(B) provide the information to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, upon request.

''(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

''(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(B) address such other issues as the Commission determines appropriate.

''(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap dealer or major swap participant shall avoid—

''(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading.

''(k) RULES.—The Commission, the Securities and Exchange Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

''(l) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap dealer or major swap participant from the prudential requirements of the Over-the-Counter Derivatives Markets Act of 2009 if the Commission finds that such swap dealer or major swap participant 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 organization's home country.

''(m) EXEMPTIVE AUTHORITY.—

''(1) IN GENERAL.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, derivative, or transaction, or any class or classes of persons, derivatives, or transactions, from any provision of this Act that was added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

''(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.''.

SEC. 3108. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4s the following:

''SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

''(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the variation or initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of, a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

''(b) BACK OFFICE AUDIT REPORTING.—If a swap dealer does not segregate funds at the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 3109. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

''(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

''(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(2) address such other issues as the Commission determines appropriate.''.

SEC. 3110. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

''SEC. 5h. SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—

''(A) No person may operate a swap execution facility unless the facility is registered under this section.

''(B) The term 'swap execution facility' means an entity that facilitates the execution of swaps between two persons through any means of interstate commerce but which is not a designated contract market.

''(2) DUAL REGISTRATION.—Any person that is required to be registered as a swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a swap execution facility.

''(b) REQUIREMENTS FOR TRADING.—A swap execution facility that is registered under subsection (a) may trade any 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 swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

''(d) CRITERIA FOR REGISTRATION.—

''(1) IN GENERAL.—To be registered as a swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

''(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

''(A) obtain information necessary to perform the functions required under this section; or

''(B) use means to—

''(i) provide market participants with impartial access to the market; and

''(ii) capture information that may be used in establishing whether rule violations have occurred.

''(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

''(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

''(e) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

''(1) IN GENERAL.—To maintain its registration as a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

''(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce

compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

''(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in 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) ABILITY TO OBTAIN INFORMATION.—The 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 subsection;

''(B) provide the information to the Commission upon request; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

''(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

''(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related 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 report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to transactions in security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934). The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

''(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading on the swap execution facility.

''(10) CONFLICTS OF INTEREST.—

''(A) The swap execution facility shall establish and enforce rules to minimize conflicts of interest in its decision-making process, and establish a process for resolving any such conflicts of interest.

''(B) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

''(C) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

''(11) DESIGNATION OF COMPLIANCE OFFICER.—

''(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

''(B) DUTIES.—The compliance officer shall—

''(i) report directly to the board or to the senior officer of the facility;

''(ii) shall—

''(I) review compliance with the core principles in this subsection;

''(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

''(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(IV) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(iii) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

''(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such 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 organization's home country.

''(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C. 78c–2).''.

SEC. 3111. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7 and 7a-3) are repealed.

SEC. 3112. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

''(9) EXECUTION OF TRANSACTIONS.—

''(A) 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 board of trade's centralized market.

''(B) The rules 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 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.''.

(b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (15) and inserting the following:

''(15) CONFLICTS OF INTEREST.—

''(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

''(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

''(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.''.

(c) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding after paragraph (18) the following:

''(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade's financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of one year, calculated on a rolling basis.

''(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 give 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 board of trade's responsibilities and obligations; and

''(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.''.

SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting ''(1)'' after ''(a)'';

(2) striking ''on electronic trading facilities with respect to a significant price discovery contract'' in the first sentence and inserting ''swaps that perform or affect a significant price discovery function with respect to regulated markets'';

(3) inserting '', including any group or class of traders,'' in the second sentence after ''held by any person'';

(4) striking ''on an electronic trading facility with respect to a significant price discovery contract,'' in the second sentence and inserting ''swaps that perform or affect a significant price discovery function with respect to regulated markets,''; and

(5) inserting 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 upon 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) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

''(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

''(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

''(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon 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 swap is sufficiently related to the price of another contract traded on a regulated market based upon 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 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 regulated market 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 swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

''(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a 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 swap or class of swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.''.

(b) 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 swap execution facility or facilities''; and

(2) in paragraph (2), by striking ''or derivatives transaction execution facility or electronic trading facility'' and inserting ''or swap execution facility''.

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking ''The board of trade shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have''.

(b) Section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)) is amended to read as follows:

''(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

''(2) PRIOR APPROVAL.—

''(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

''(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval under subparagraph (A) each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and for which there is open interest.

''(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

''(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.''.

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking ''No rule or regulation'' and inserting ''Except as provided in paragraphs (1) and (2), no rule or regulation''.

(b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before ''The Commission'' the following: ''(1) 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 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.

''(2) 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—

''(A) 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

''(B) 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—

''(I) the information that the foreign board of trade will make publicly available;

''(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(III) 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

''(IV) 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 with information 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.

''(3) Paragraphs (1) and (2) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

''(4)''.

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7. U.S.C. 6(a)) is amended by inserting ''or by subsection (f)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is further amended by adding at the end the following:

''(f) 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 subsections (b)(1) and (b)(2).''.

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

''(5) 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. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

''(A) No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a 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) 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 thereto shall be entitled to rescind, or recover any payment made with respect to, such 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 to meet the definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).''.

SEC. 3117. MULTILATERAL CLEARING ORGANIZATIONS.

(a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended by striking ''section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act'' and inserting ''section 2(c) or 2(f) of such Act''.

(b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421) is further amended by inserting at the end the following:

''(4) The term 'over-the-counter derivative instrument' does not include a swap or a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and 1a(38)).''.

SEC. 3118. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding the following new section after section 4b:

''SEC. 4b–1. PRIMARY ENFORCEMENT AUTHORITY.

''(a) CFTC.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of Subtitle A of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

''(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

''(c) REFERRAL.—If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that such swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a recommendation under subsection (c), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.''.

SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting ''or swap'' before ''if the transaction is used or may be used''.

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting ''or of any swap,'' before ''or to corner''.

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by inserting ''swap repository,'' before ''or futures association''.

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by inserting ''swap repository,'' before ''or registered futures association'' and by inserting '', or swaps,'' before ''on the basis''.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following:

''(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository or swap execution facility, whether or not it 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 Over-the-Counter Derivatives Markets Act of 2009.''.

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

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))'';

(2) in paragraph (2), by inserting after subparagraph (C) the following:

''(D) RETAIL COMMODITY TRANSACTIONS.—

''(i) 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) Clause (i) 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 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 their line of business;

''(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)); or

''(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

''(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

''(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

''(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products.

''(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.''.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4t (as added by section 3108) the following:

''SEC. 4u. LARGE SWAP TRADER REPORTING.

''(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to regulated markets if—

''(1) such person shall directly or indirectly enter into such swaps during any one day in an amount equal to or in excess of such

amount as shall be fixed from time to time by the Commission; and

''(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep books and records of all such 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) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

''(c) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

''(d) Any such books and records relating to transactions in security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall be open at all times to inspection and examination by the Securities and Exchange Commission.

''(e) For the purpose of this section, the swaps, futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

''(f) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).''.

SEC. 3122. AUTHORITY TO BAN ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of the such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

SEC. 3123. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Prudential Regulators (as defined in section 1a(43) of the Commodity Exchange Act), and the financial stability regulator, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

SEC. 3124. AUTHORITY TO BAN ACCESS TO THE UNITED STATES FINANCIAL SYSTEM.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the U.S. financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

SEC. 3125. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3126. ANTITRUST.

Nothing in the amendments made by this title shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term ''antitrust laws'' has the same 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.

SEC. 3127. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting ''(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)'' after ''securities'' in each place it appears;

(2) in paragraph (10) by inserting ''security-based swaps'' after ''security future,''

(3) 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.'';

(4) 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.'';

(5) in paragraph (39)—

(A) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer or major security-based swap participant'' in subparagraph (B)(i)(I);

(B) by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (B)(i)(II);

(C) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer or major security-based swap participant'' in subparagraph (C); and

(D) by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (D); and

(6) by adding at the end the following:

''(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

''(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

''(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

''(68) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

''(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' has the same meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

''(71) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).

''(72) 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)).

''(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(74) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

''(75) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

''(76) SECURITY-BASED SWAP AGREEMENT.—

''(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term 'security-based swap agreement' means a 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.

''(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.

''(77) RESTRICTED OWNER.—The term 'restricted owner' has the same meaning as in section 1a(51) of the Commodity Exchange Act.''.

SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting ''(including security-based swaps)'' after ''securities''; and

(ii) by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''; and

(B) in subsection (d), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking ''(as defined in section 206B of

the Gramm-Leach-Bliley Act)'' each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

''(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement 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, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement 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 one or more persons conducted for the purpose of raising or depressing the price of such security.

''(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, 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, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement 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 one or more persons conducted for the purpose of raising or depressing the price of such security.''.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(4) Section 10 (15 U.S.C. 78j) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(B) in subparagraphs (B) and (C), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' in each place that the term appears.

(6) Section 15(i) (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) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking ''(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))'';

(B) in subsection (b), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' in each place that the term appears; and

(C) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (f), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(9) Section 21A (15 U.S.C. 78u–1) is amended—

(A) in subsection (a)(1), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

''SEC. 3B. CLEARING OF SECURITY-BASED SWAPS.

''(a) CLEARING REQUIREMENT.—

''(1) IN GENERAL.—

''(A) PRESUMPTION OF CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing;

''(B) OPEN ACCESS.—The rules of a clearing agency described in subparagraph (A) shall—

''(i) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are fungible and may be offset with each other; and

''(ii) provide for non-discriminatory clearing of a security-based swap executed on or through the rules of an unaffiliated exchange or alternative swap execution facility.

''(2) COMMISSION APPROVAL.—

''(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval each security-based swap, or any group, category, type or class of security-based swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

''(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Commission fails to take final action within the time limitation established under this subparagraph shall be deemed approved.

''(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if it finds that the request is consistent with the core principles specified under subsection (l).

''(D) RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a clearing agency's submission for approval, pursuant to this paragraph, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

''(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2)—

''(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

''(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.

''(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

''(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with the securities laws; or

''(ii) determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

''(D) RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency's clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

''(4) PREVENTION OF EVASION.—The Commission and the Commodities Futures Trading Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this Act. Any such rules or interpretations of rules shall be prescribed and issued jointly by both Commissions.

''(5) REQUIRED REPORTING.—

''(A) IN GENERAL.—Any security-based swap that is not accepted for clearing by any clearing agency shall be reported to either a security-based swap repository described in section 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule prescribe.

''(B) REPORTING BY SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In transactions where only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the transaction. In transactions where neither counterparty is a security-based swap dealer or major security-based swap participant, only 1 counterparty shall be required to report the transaction and the counterparties shall determine the reporting party by contract or otherwise.

''(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered

security-based swap repository or the Commission no later than 180 days after the effective date of such Act.

''(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

''(i) 90 days after the effective date of such Act; or

''(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

''(7) EXCEPTION.—The requirements of paragraph (1) shall not apply to a security-based swap if—

''(A) no clearing agency registered under this Act will accept the security-based swap for clearing; or

''(B) one of the counterparties to the security-based swap is not a security-based swap dealer or major security-based swap participant.

''(8) EXCLUSION.—Paragraph (1) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 180-day period that begins with the effective date of this paragraph.

''(b) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.''.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

''(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

''(h) VOLUNTARY REGISTRATION.—

''(1) CLEARING AGENCIES.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

''(2) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

''(i) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—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 a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

''(j) REPORTING.—

''(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission and any designated swap repository all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

''(k) DESIGNATION OF COMPLIANCE OFFICER.—

''(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

''(2) DUTIES.—The compliance officer shall—

''(A) report directly to the board or to the senior officer of the clearing agency;

''(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

''(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

''(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(E) establish procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints which will establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

''(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(l) STANDARDS FOR CLEARING AGENCIES CLEARING SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

''(m) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.

''(n) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1, et seq.) and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.).''.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

''(a) TRADE EXECUTION.—

''(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants, such counterparties shall—

''(A) execute the transaction on a national securities exchange registered pursuant to section 6(a) (in which event such transaction shall be subject to regulation under this title as a transaction in a security); or

''(B) execute the transaction on a swap execution facility registered with the Commission.

''(2) EXCEPTION.—The requirements of subparagraphs (A) or (B) of paragraph (1) shall not apply if no board of trade or swap execution facility makes the swap available to trade.

''(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants.

''(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges or swap execution facilities, agreements or transactions that would be commodity swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.''.

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3B (as added by subsection (a)) the following:

''SEC. 3C. SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—

''(A) No person may operate a swap execution facility unless such facility is registered under this section.

''(B) For purposes of this section, the term 'swap execution facility' means an entity that facilitates the execution of swaps between 2 persons through any means of interstate commerce but which is not a designated contract market.

''(2) DUAL REGISTRATION.—Any person that is required to be registered as a swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

''(b) REQUIREMENTS FOR TRADING.—A swap execution facility that is registered under subsection (a) may trade any security-based swap.

''(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

''(d) CRITERIA FOR REGISTRATION.—

''(1) IN GENERAL.—To be registered as a swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

''(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

''(A) obtain information necessary to perform the functions required under this section; or

''(B) use means to—

''(i) provide market participants with impartial access to the market; and

''(ii) capture information that may be used in establishing whether rule violations have occurred.

''(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

''(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

''(e) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

''(1) IN GENERAL.—To maintain its registration as a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation. Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

''(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the security-based swaps traded on or through the facility and any limitations on access to the facility.

''(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in security-based swaps to prevent manipulation and price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(5) ABILITY TO OBTAIN INFORMATION.—The 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 subsection;

''(B) provide the information to the Commission upon request; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

''(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

''(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related 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 report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

''(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading on the swap execution facility.

''(10) CONFLICTS OF INTEREST.—

''(A) IN GENERAL.—The swap execution facility shall establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

''(B) BENEFICIAL OWNERSHIP BY A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

''(C) ASSOCIATION WITH A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

''(11) DESIGNATION OF COMPLIANCE OFFICER.—

''(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

''(B) DUTIES.—The compliance officer—

''(i) shall report directly to the board or to the senior officer of the facility;

''(ii) shall—

''(I) review compliance with the core principles in section 3B(e);

''(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

''(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of noncompliant issues.

''(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

''(g) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3).''.

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b)) the following:

''SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

''(a) SEGREGATION.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing agency, the swap dealer shall segregate the variation or initial margin or collateral for the benefit of the counterparty, and maintain the variation or initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a securities-based swap counterparty is a swap dealer or major securities-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of, a custodian, the custodian shall not be considered independent from the securities-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

''(b) BACK OFFICE AUDIT REPORTING.—If a security-based swap dealer does not segregate funds at the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''.

(f) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(l) 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).''.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the

Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

''(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 security-based 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 security-based swap; or

''(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in (A) any such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.''.

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY-BASED SWAP AGREEMENTS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

''(j) 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 or any security-based swap agreement, 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 the purposes of this subsection, by rules and regulations 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.''.

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is further amended by inserting after section 10B (15 U.S.C. 78j–1) (as added by section 2003(a)) the following new section:

''SEC. 10C. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

''(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap or security-based swap agreement that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

''(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

''(2) any security-based swap and (A) 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 as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

''(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

''(c) SRO RULES.—

''(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

''(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

''(i) any member of such self-regulatory organization; or

''(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security-based swap agreement; and

''(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subparagraph (A).

''(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

''(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

''(B)(i) any security-based swap;

''(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 as described in section 3(a)(76); and

''(iii) any security-based swap and any other instrument relating to the same security or group or index of securities.

''(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a).''.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) clearing agencies pursuant to section 3A;

''(B) security-based swap repositories pursuant to subsection (n); and

''(C) reports received by the Commission pursuant to section 13A.

''(n) SECURITY-BASED SWAP REPOSITORIES.—

''(1) REGISTRATION REQUIREMENT.—

''(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

''(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

''(2) STANDARD SETTING.—

''(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

''(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

''(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

''(3) DUTIES.—A security-based swap repository shall—

''(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

''(B) maintain such data in such form and manner and for such period as may be required by the Commission;

''(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

''(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

''(5) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets

Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

''(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.''.

SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:

''SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

''(a) REGISTRATION.—

''(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

''(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

''(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

''(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsections (c) and (e), the Commission may provide conditional or unconditional exemptions from rules prescribed under this section for security-based swap dealers and major security-based swap participants that are subject to substantially similar requirements as brokers or dealers.

''(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

''(c) DUAL REGISTRATION.—

''(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a swap dealer.

''(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a major swap participant.

''(d) JOINT RULES.—

''(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act and persons that are registered as swap dealers or major swap participants under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

''(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

''(e) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

''(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Commission and the Commodity Futures Trading Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

''(2) JOINT RULES.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants.

''(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

''(3) CAPITAL.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose—

''(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

''(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

''(B) EXCLUSION.—Subparagraph (A) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

''(C) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

''(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

''(4) MARGIN.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The Prudential Regulators shall impose margin requirements under this subsection on all security-based swaps that are not cleared by a registered clearing agency.

''(B) NON-SWAP DEALERS AND MAJOR MARKET PARTICIPANTS.—The Prudential Regulators may, but are not required to, impose margin requirements with respect to security-based swaps in which one of the counterparties is not a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant. Margin requirements for swaps set by the Commission and the Commodity Futures Trading Commission shall provide for the use of non-cash assets as collateral.

''(C) EXCLUSION.—Subparagraph (B) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

''(D) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

''(f) REPORTING AND RECORDKEEPING.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

''(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

''(B) for which—

''(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; or

''(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

''(D) shall keep any such books and records relating to transactions in swaps based on 1 or more securities open to inspection and examination by the Commission.

''(2) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

''(g) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

''(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

''(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

''(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

''(5) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(h) BUSINESS CONDUCT STANDARDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

''(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

''(B) diligent supervision of its business as a security-based swap dealer;

''(C) adherence to all applicable position limits;

''(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and

''(E) such other matters as the Commission shall determine to be necessary or appropriate.

''(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

''(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

''(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of—

''(i) information about the material risks and characteristics of the security-based swap;

''(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate clearinghouse and for non-cleared swaps, upon the request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

''(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

''(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(3) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

''(2) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

''(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

''(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

''(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

''(A) terms and conditions of its security-based swaps;

''(B) security-based swap trading operations, mechanisms, and practices;

''(C) financial integrity protections relating to security-based swaps; and

''(D) other information relevant to its trading in security-based swaps.

''(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

''(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

''(B) provide the information to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

''(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

''(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(B) address such other issues as the Commission determines appropriate.

''(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

''(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

''(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) PRIMARY ENFORCEMENT AUTHORITY.—

''(A) SEC.—Except as provided in subsection (b), the Commission shall have primary authority to enforce the provisions of the amendments made by subtitle B of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

''(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

''(C) REFERRAL.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based

swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(D) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90 day period beginning on the date on which the Commission receives a recommendation under subparagraph (C), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.

''(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

''(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

''(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

''(3) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

''(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

''(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

''(4) It shall be unlawful—

''(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

''(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

''(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap dealer or major security-based swap participant from the prudential requirements of the Over-the-Counter Derivatives Markets Act of 2009 if the Commission finds that such security-based swap dealer or major security-based swap participant is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

''(n) EXEMPTIVE AUTHORITY.—

''(1) IN GENERAL.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, derivative, or transaction, or any class or classes of persons, derivatives, or transactions, from any provision of this Act that was added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

''(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.''.

SEC. 3205. NATIONAL SECURITY EXCHANGE REGISTRATION REQUIREMENTS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

''(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

''(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

''(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.''.

SEC. 3206. REPORTING AND RECORDKEEPING.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

''SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

''(a) IN GENERAL.—Any person who enters into a security-based swap and—

''(1) did not clear the security-based swap in accordance with section 3A; and

''(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

''(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).''.

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument as the Commission may define by rule, and'' after ''Alaska Native Claims Settlement Act,''.

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule'' after ''subsection (d)(1) of this section''.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1), or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule,''.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(2) in subparagraph (F), by inserting '', or security-based swap dealer, or a major security-based swap participant'' after ''or dealer''.

(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.''.

SEC. 3207. 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) 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 one or more actions, a total amount in excess of his actual damages 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. 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 (1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel 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, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.''.

SEC. 3208. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) 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 is referenced, 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

(3) by adding at the end the following:

''(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and (38)).

''(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, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

''(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Over-the-Counter Derivatives Markets Act of 2009. The Commission shall promulgate rules implementing this exemption.''.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

''(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).''.

SEC. 3209. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3210. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

''(c) EXEMPTIVE AUTHORITY.—The Commission may use its authority under subsection (a) to exempt any person, security, or transaction, or any class 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, as such term is defined in section 3(a) of this title.''.

SEC. 3211. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

Subtitle C—Miscellaneous

SEC. 3301. STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(b) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(1) commercial users and traders of derivatives;

(2) derivative clearing houses, exchanges and electronic trading platforms;

(3) trade repositories and regulator investigations of market activities; and

(4) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(c) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(d) REPORT.—Within 8 months after the date of the enactment of this title, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by subsections (a) through (c).

SEC. 3302. STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(b) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by subsection (a).

SEC. 3303. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of enactment of this title, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3101 of this title) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that

are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3304. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support the clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term ''Federal assistance'' shall be defined as the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization or a subsidiary;

(2) purchasing assets of a derivatives clearing organization or a subsidiary;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization or a subsidiary; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization or a subsidiary.

TITLE IV—CONSUMER FINANCIAL PROTECTION AGENCY ACT

SEC. 4001. SHORT TITLE.

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

SEC. 4002. DEFINITIONS.

For the purposes of subtitles A through F 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) AGENCY.—The term ''Agency'' means—

(A) before the Agency conversion date, the Consumer Financial Protection Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(3) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956.

(4) BOARD.—Except when used in connection with the term ''Board of Governors'', the term ''Board'' means the Consumer Financial Protection Oversight Board.

(5) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(6) 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.

(7) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(8) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.

(9) COVERED PERSON.—

(A) IN GENERAL.—The term ''covered person'' means any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(B) EXCLUSION.—The term ''covered person'' shall not include the Secretary, the Department of the Treasury, any agency or bureau under the jurisdiction of the Secretary, or any person collecting Federal taxes for the United States to the extent such person is acting in such capacity.

(10) CREDIT.—The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) CREDIT UNION.—The term ''credit union'' means a Federal credit union or a State credit union as defined in section 101 of the Federal Credit Union Act.

(12) DEPOSIT.—The term ''deposit''—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of services related to the acceptance of deposits;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members' share accounts by a credit union; or

(C) the receipt of money or its equivalent, as the Director may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

(14) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' has the meaning provided in section 4602.

(15) DIRECTOR.—The term ''Director'' means—

(A) before the Agency conversion date, the Director of the Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(16) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.)

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of such Act.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Homeowners Protection Act of 1998.

(I) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(J) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(K) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(L) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(M) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(17) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term ''Federal banking agencies'' means all of such agencies.

(18) FAIR LENDING.—The term ''fair lending'' means fair, equitable, and nondiscriminatory access to credit for both individuals and communities.

(19) FINANCIAL ACTIVITY.—

(A) IN GENERAL.—The term ''financial activity'' means any of the following activities:

(i) Deposit-taking activities.

(ii) Extending credit and servicing loans, including—

(I) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit;

(II) engaging in any other activity usual in connection with extensions of credit or servicing loans, including performing appraisals of real estate and personal property.

(iii) Check cashing and check-guaranty services, including—

(I) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

(II) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(iv) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(v) Collection of debt related to any consumer financial product or service.

(vi) Providing real estate settlement services.

(vii) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Director.

(viii) Acting as an investment adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State).

(ix) Acting as financial adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State), including—

(I) providing financial and other related advisory services;

(II) providing educational courses, and instructional materials to consumers on individual financial management matters;

(III) providing credit counseling or tax planning services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code or advice with respect to positions taken therein, or services regulated by the Secretary of the Treasury under section 330 of title 31, United States Code); or

(IV) providing services to assist a consumer with debt management or debt settlement, with modifying the terms of any extension of credit, or with avoiding foreclosure.

(x) For purposes of this title, the following shall not be considered acting as financial adviser:

(I) 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.

(II) Providing advice, analyses, or reports that do not relate to any securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act.

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a ''financial activity'' if with respect to financial data processing the person—

(I) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(II) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(III) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

(xii) Money transmitting.

(xiii) Sale, provision or issuance of stored value, except that, in the case of a sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

(xiv) Acting as a money services business.

(xv) Acting as a custodian of money or any financial instrument.

(xvi)(I) Any other activity that the Director defines, by regulation, as a financial activity after finding that—

(aa) the activity is financial in nature or is otherwise a permissible activity for a bank or bank holding company, including a financial holding company, under any provision of Federal law or regulation applicable to a bank or bank holding company, including a financial holding company;

(bb) the activity is incidental or complementary to any other financial activity regulated by the Agency; or

(cc) the activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(II) For purposes of subclause (I)(bb), the following activities provided to a covered person shall not be ''incidental or complementary'':

(aa) Providing information products or services to a covered person for identity authentication.

(bb) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(cc) Providing document retrieval or delivery services.

(dd) Providing public records information retrieval.

(ee) Providing information products or services for anti-money laundering activities.

(B) EXCEPTIONS.—The term ''financial activity'' shall not include the business of insurance or the provision of electronic data transmission, routing, intermediate or transient storage, or connections to a system or network, where the person providing such services does not select or modify the content of the electronic data, is not the sender or the intended recipient of the data, and such person transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such data is undifferentiated from other types of data that such person transmits, routes, stores, or provides connections.

(20) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service'' means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(21) 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.

(22) INSURED CREDIT UNION.—The term ''insured credit union'' has the same meaning as in section 101 of the National Credit Union Act.

(23) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(24) MONEY SERVICES BUSINESS.—The term ''money services business'' means a person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(25) MONEY TRANSMITTING.—The term ''money transmitting'' means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(26) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(27) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(28) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person who is—

(A) engaged in the business of insurance, and

(B) subject to regulation by any State insurance regulator,

but only to the extent that such person acts in such capacity.

(29) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any futures commission merchant, commodity trading adviser, commodity pool operator, introducing broker, boards of trade, derivatives clearing organizations, multilateral clearing organizations, retail foreign exchange dealer, or swap execution facility, to the extent that such person's actions are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and any agent, employee, or contractor acting on behalf of, registered with, or providing services to such person but only to the extent the person, or the employee, agent, or contractor of such person, acts in a registered capacity.

(30) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term ''person regulated by the Securities and Exchange Commission'' means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is 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;

(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 municipal securities dealer that is registered with the Securities and Exchange Commission;

(H) any self-regulatory organization that is registered with the Securities and Exchange Commission;

(I) any national securities exchange or other entity that is required to be registered under the Securities Exchange Act of 1934; and

(J) the Municipal Securities Rulemaking Board,

and any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any such person, but only to the extent that the person, or the employee agent, or contractor of such person, acts in a registered capacity.

(31) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The terms ''provision of a consumer financial product or service'' and ''providing a consumer financial product or service'' mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(32) 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 of the Treasury 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.

(33) RELATED PERSON.—

(A) IN GENERAL.—The term ''related person'', when used in connection with a covered person that is not a bank holding company, credit union, depository institution, means—

(i) any director, officer, employee charged with managerial responsibility, or controlling stockholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation 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), with respect to such covered person, who knowingly or recklessly participates in any—

(I) violation of any law or regulation; or

(II) breach of fiduciary duty.

(B) TREATMENT OF A RELATED PERSON AS A COVERED PERSON.—Any person who is a related person under subparagraph (A) shall be deemed to be a covered person for all purposes of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H.

(34) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(35) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

(ii) has direct interaction with a consumer (whether in person or via telecommunication device or other similar technology) regarding the consumer financial product or service; or

(iii) processes transactions relating to the consumer financial product or service.

(B) EXCEPTIONS.—The term ''service provider'' shall not apply to a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service;

(ii) a service that does not materially affect the terms or conditions of the consumer financial product or service, its performance or operation, or the propensity of a consumer to obtain or use such product or service; or

(iii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(36) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(37) STORED VALUE.—The term ''stored value''—

(A) 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

(B) includes a prepaid debit card or product (other than a card or product used solely for telephone services) or any other similar product,

regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(38) AGENCY CONVERSION DATE.—The term ''Agency conversion date'' means the date that is two years after the designated transfer date.

Subtitle A—Establishment of the Agency

SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION AGENCY.

(a) AGENCY ESTABLISHED.—There is established the Consumer Financial Protection Agency as an independent agency to 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.

(b) AGENCY STRUCTURE.—

(1) INITIAL STRUCTURE.—The Agency shall be led by a Director or Acting Director, established pursuant to section 4102, until the day before the Agency conversion date.

(2) SUBSEQUENT STRUCTURE.—On and after the Agency conversion date, the Agency shall consist of the commission established under section 4103.

(c) PRINCIPAL OFFICE.—The principal office of the Agency shall be located in the city of Washington, District of Columbia, at 1 or more sites.

SEC. 4102. DIRECTOR.

(a) ESTABLISHMENT OF POSITION.—

(1) IN GENERAL.—There is hereby established the position of the Director of the Agency who shall be the head of the Agency.

(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders in accordance with this title as the Director may determine to be necessary for carrying out this title and all other laws within the Director's jurisdiction and shall exercise any authorities granted under this title and all other laws within the Director's jurisdiction.

(b) APPOINTMENT; TERM.—

(1) NOMINATION.—Within 60 days after the date of enactment of this title, the President shall nominate the Director, from among individuals who—

(A) are citizens of the United States; and

(B) have strong competencies and experiences related to consumer financial protection.

(2) APPOINTMENT SUBJECT TO CONFIRMATION.—The Director nominated under paragraph (1) shall be appointed by and with the advice and consent of the Senate.

(3) ACTING DIRECTOR BEFORE SENATE CONFIRMATION.—The individual nominated pursuant to paragraph (1) shall serve as Acting Director with full authorities granted to the Director under this title until the Director is confirmed by the Senate.

(4) TERM.—The Director shall be appointed for a term that ends on the Agency conversion date.

(5) REMOVAL.—The Director may be removed before the end of a term only for cause.

(6) VACANCY.—

(A) IN GENERAL.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (2) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(B) ACTING DIRECTOR.—

(i) IN GENERAL.—In the event of a vacancy or during the absence of the Director (who has been confirmed by the Senate pursuant to paragraph (2)), an Acting Director shall be appointed in the manner provided in section 3345, of title 5, United States Code.

(ii) AUTHORITY OF ACTING DIRECTOR.—Any individual serving as Acting Director under this subparagraph shall be vested with all authority, duties, and privileges of the Director.

(7) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed and qualified.

(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any covered person.

(d) COMPENSATION.—The Director shall receive compensation at the rate prescribed for Level I of the Executive Schedule under section 5313 of title 5, United States Code.

SEC. 4103. ESTABLISHMENT AND COMPOSITION OF THE COMMISSION.

(a) ESTABLISHMENT OF THE COMMISSION.—

(1) IN GENERAL.—On the Agency conversion date, there shall be established a commission (hereinafter in this section referred to as the ''Commission'') that shall by operation of law succeed to all of the authorities of the Director of the Agency granted under this title and any other law.

(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Commission may prescribe such regulations and issue such orders in accordance with this title as the Commission may determine to be necessary for carrying out this title and all other laws within the Commission's jurisdiction and shall exercise any authorities granted under this title and all other laws within the Commission's jurisdiction.

(b) COMPOSITION OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who—

(A) are citizens of the United States; and

(B) have strong competencies and experiences related to consumer financial protection.

(2) INITIAL APPOINTMENTS.—

(A) IN GENERAL.—The initial members of the Commission, other than the initial Chair, may be appointed by the President, by and with the advice and consent of the Senate, prior to the Agency conversion date, but may not serve in their positions until such date.

(B) STAGGERING.—Except as provided under subsection (d)(1), the members of the Commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 4, and 5 years, respectively.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subsection (d)(1), each member of the Commission, including the Chair, shall serve for a term of 5 years.

(B) REMOVAL FOR CAUSE.—The President may remove any member of the Commission only for inefficiency, neglect of duty, or malfeasance in office.

(C) VACANCIES.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.

(D) CONTINUATION OF SERVICE.—Each member of the Commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire.

(E) OTHER EMPLOYMENT PROHIBITED.—No member of the Commission shall engage in any other business, vocation, or employment.

(c) AFFILIATION.—With respect to members appointed pursuant to subsection (b), not more than 3 shall be members of any one political party.

(d) CHAIR OF THE COMMISSION.—

(1) APPOINTMENT.—

(A) INITIAL CHAIR.—The first Chair of the Commission shall be the Director or Acting Director serving on the day before the Agency conversion date, and such individual shall

serve in the position of Chair for a period of 3 years.

(B) SUBSEQUENT CHAIRS.—Subsequent chairs shall be appointed by the President from among the members of the Commission to serve as the Chair.

(2) AUTHORITY.—The Chair shall be the principal executive officer of the Agency, and shall exercise all of the executive and administrative functions of the Agency, including with respect to—

(A) the appointment and supervision of personnel employed under the Agency (other than personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chair);

(B) the distribution of business among personnel appointed and supervised by the Chair and among administrative units of the Agency; and

(C) the use and expenditure of funds.

(3) LIMITATION.—In carrying out any of the Chair's functions under the provisions of this subsection the Chair shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chair without the prior approval of the commission.

(e) NO IMPAIRMENT BY REASON OF VACANCIES.—No vacancy in the members of the Commission shall impair the right of the remaining members of the Commission to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the Commission because of vacancies in the Commission, 2 members of the Commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the Commission because of vacancies in the Commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of Commission members to decline to 2.

(f) SEAL.—The Commission shall have an official seal.

(g) COMPENSATION.—

(1) CHAIR.—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

(E) OTHER MEMBERS OF THE COMMISSION.—The 4 other members of the Commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.

(h) INITIAL QUORUM ESTABLISHED.—During any time period prior to the confirmation of at least two members of the Commission under subsection (b)(2), one member of the Commission shall constitute a quorum for the transaction of business. Following the confirmation of at least 2 additional commissioners, the quorum requirements of subsection (e) shall apply.

(i) DEFINITIONS.—Notwithstanding section 4002, for purposes of this section:

(1) AGENCY.—The term ''Agency'' means the Consumer Financial Protection Agency.

(2) DIRECTOR.—FThe term ''Director'' means the Director of the Agency.

SEC. 4104. CONSUMER FINANCIAL PROTECTION OVERSIGHT BOARD.

(a) ESTABLISHED.—There is hereby established the Consumer Financial Protection Oversight Board as an instrumentality of the United States.

(b) DUTIES AND POWERS.—

(1) DUTY TO ADVISE DIRECTOR.—The Board shall advise the Director on—

(A) the consistency of a proposed regulation of the Director with prudential, market, or systemic objectives administered by the agencies that comprise the Board;

(B) the overall strategies and policies in carrying out the duties of the Director under this title; and

(C) actions the Director can take to enhance and ensure that all consumers are subject to robust financial protection.

(2) LIMITATION ON POWERS.—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) COMPOSITION.—The Board shall be comprised of 7 members as follows:

(1) The Chairman of the Board of Governors.

(2) The head of the agency responsible for chartering and regulating national banks.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Chairman of the National Credit Union Administration.

(5) The Chairman of the Federal Trade Commission.

(6) The Secretary of Housing and Urban Development.

(7) The Chairman of the liaison committee of representatives of State agencies to the Financial Institutions Examination Council.

(d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—

(1) COMPOSITION.—Notwithstanding subsection (c), the President, by and with the advice and consent of the Senate, shall appoint 5 additional members of the Board from among experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans, as such communities are identified by the Director through an analysis of data received by reason of the provisions of the Home Mortgage Disclosure Act of 1975 or other data on lending patterns.

(2) AFFILIATION.—With respect to members appointed pursuant to paragraph (1), not more than 3 shall be members of any one political party.

(e) MEETINGS.—

(1) IN GENERAL.—The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board.

(f) PROHIBITION ON ADDITIONAL COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(g) COMPLAINTS RELATED TO REQUIRED OFFERING OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The Board shall establish procedures to receive and analyze complaints from any person claiming that the Director is not in compliance with the requirements under section 4311.

SEC. 4105. EXECUTIVE AND ADMINISTRATIVE POWERS.

The Director may exercise all executive and administrative functions of the Agency, including to—

(1) establish regulations for conducting the Agency's general business in a manner not inconsistent with this title;

(2) bind the Agency and enter into contracts;

(3) direct the establishment of and maintain divisions or other offices within the Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H, and to satisfy the requirements of other applicable law;

(4) coordinate and oversee the operation of all administrative, enforcement, and research activities of the Agency;

(5) adopt and use a seal;

(6) determine the character of and the necessity for the Agency's obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid;

(7) delegate authority, at the Director's discretion, to any officer or employee of the Agency to take action under any provision of this title or under other applicable law;

(8) to implement this title and the Agency's authorities under the enumerated consumer laws and under subtitles F and H through regulations, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(9) perform such other functions as may be authorized or required by law.

SEC. 4106. ADMINISTRATION.

(a) OFFICERS.—The Director shall appoint the following officials:

(1) A secretary, who shall be charged with maintaining the records of the Agency and performing such other activities as the Director directs.

(2) A general counsel, who shall be charged with overseeing the legal affairs of the Agency and performing such other activities as the Director directs.

(3) An inspector general, who shall have the authority and functions of an inspector general of a designated Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3).

(4) An Ombudsperson, who shall—

(A) develop and maintain expertise in and understanding of the law relating to consumer financial products;

(B) at the request of a Federal agency or a State agency, and with the prior approval of the Director, advise such agency with respect to actions that may affect consumers;

(C) advise consumers who may have a legitimate potential or actual claim against a Federal agency involving the provision of consumer financial products regarding their rights under this title;

(D) identify Federal agency actions that have potential implications for consumers and, if appropriate, and with the prior approval of the Director, advise the relevant Federal agencies with respect to those implications;

(E) provide information to private citizens, civic groups, Federal agencies, State agencies, and other interested parties regarding the rights of those parties under this title;

(F) develop, maintain, and provide expertise designed to assist covered persons, especially smaller depository institutions and other smaller entities to comply with regulations and other requirements issued to implement the provisions of this title, and where such assistance for smaller depository institutions shall be provided jointly by the Agency and the appropriate Federal banking agency;

(G) develop procedures to assist covered persons, especially smaller depository institutions and other smaller entities, in responding to or challenging actions taken by the Director or the Agency to implement the provisions of this title and to ensure that safeguards exist to preserve the confidentiality of covered persons using those procedures; and

(H) perform such other duties as the Director may delegate to the Ombudsperson.

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

(B) EXPEDITED HIRING.—The Director may appoint, without regard to the provisions of sections 3309 through 3318, of title 5, United States Code, candidates directly to positions for which public notice has been given.

(C) HIRING VETERANS.—In hiring employees of the Agency, the Director shall establish appropriate targets, including timetables, to hire veterans (as defined in paragraphs (1) and (2) of section 2108 of title 5, United States Code) as employees of the Agency. In establishing appropriate targets under this paragraph, the Director may consider, among other relevant factors, the proportion of veterans hired by Federal agencies with comparable functions or types of occupations and their experiences in hiring veterans.

(2) COMPENSATION.—

(A) PAY.—The Director shall fix, adjust, and administer the pay for all employees of the Agency without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS.—The Director may provide additional benefits to Agency employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law or regulations.

(C) MINIMUM STANDARD.—The Director shall at all times provide compensation and benefits to classes of employees that, at a minimum, are equivalent to the compensation and benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Agency shall establish a unit whose functions shall include—

(A) conducting research on consumer financial counseling and education, including—

(i) on the topics of debt, credit, savings, financial product usage, and financial planning;

(ii) exploring effective methods, tools, and approaches; and

(iii) identifying ways to incorporate new technology for the delivery and evaluation of financial counseling and education efforts;

(B) researching, analyzing, and reporting on—

(i) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates;

(ii) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(iii) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(iv) consumer behavior with respect to consumer financial products or services, including performance on mortgage loan; and

(v) experiences of traditionally underserved consumers, including un-banked and under-banked consumers, regarding consumer financial products or services;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) CONSUMER COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about consumer financial products or services and resolution of complaints.

(B) COORDINATION.—In performing the functions described in subparagraph (A), the Director shall coordinate with the Federal banking agencies, the Federal Trade Commission, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) DATA SHARING REQUIRED.—To the extent permitted by law and the regulations prescribed by the Director regarding the confidential treatment of information, the Director shall share data relating to consumer complaints with Federal banking agencies, other Federal agencies, and State regulators. To the extent permitted by law and the regulations prescribed by the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Director and the Agency.

(4) CONSUMER FINANCIAL EDUCATION.—

(A) IN GENERAL.—The Agency shall establish a unit to be named the Office of Financial Literacy, whose functions shall include activities designed to facilitate the education of consumers on consumer financial products and services, including through the dissemination of materials to consumers on such topics.

(B) DIRECTOR.—The Office of Financial Literacy shall be headed by a director.

(C) DUTIES.—Such unit shall—

(i) develop goals for programs to be provided by persons that provide consumer financial education and counseling, including programs through which such persons—

(I) provide one-on-one financial counseling;

(II) help individuals understand basic banking and savings tools;

(III) help individuals understand their credit history and credit score;

(IV) assist individuals in efforts to plan for major purchases, reduce their debt, and improve their financial stability; and

(V) work with individuals to design plans for long-term savings;

(ii) develop recommendations regarding effective certification of persons providing programs, or performing the activities, described in clause (i), including recommendations regarding—

(I) certification processes and standards for certification;

(II) appropriate certifying bodies; and

(III) mechanisms for funding the certification processes;

(iii) develop a technology tool to collect data on financial education and counseling outcomes; and

(iv) conduct research to identify effective methods, tools, technoloy, and strategies to educate and counsel consumers about personal finance management, including on the topics of debt, credit, savings, financial product usage, and financial planning.

(D) COORDINATION.—Such unit shall coordinate with other units within the Agency in carrying out its functions, including—

(i) working with the unit established under paragraph (2) to—

(I) provide information and resources to community organizations, nonprofit organizations, and other entities to assist in helping educate consumers about consumer financial products and services; and

(II) develop a marketing strategy to promote financial education and one-on-one counseling; and

(ii) working with the unit established under paragraph (1) to conduct research related to consumer financial education and counseling.

(d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONSUMER COMPLAINTS AND INQUIRIES.—

(1) CALL INTAKE SYSTEM.—The Consumer Financial Protection Agency shall establish a single, toll-free telephone number for consumer complaints and inquiries concerning institutions regulated by such agencies and a system for collecting and monitoring complaints and, as soon as practicable, a system for routing such calls to the Federal financial institution regulatory agency that primarily supervises the financial institution, or that is otherwise the appropriate Federal agency to address the subject of the complaint or inquiry.

(2) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate call transfers from the system established under paragraph (1) if—

(A) the State agency's system has the functional capacity to receive calls routed by the system; and

(B) the State agency has satisfied any conditions of participation in the system that the Council, coordinating with State agencies through the chairperson of the State Liaison Committee, may establish.

(e) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this title, the Federal financial institution regulatory agencies shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the agencies' efforts to establish—

(1) a public interagency Web site for directing and referring Internet consumer complaints and inquiries concerning any financial institution to the Consumer Financial Protection Agency for purposes of collecting, monitoring, and responding to such complaints and, where appropriate, a system for referring complaints to the Federal financial institution regulatory agency, other Federal agency, or State agency that is otherwise the appropriate agency to address the subject of the complaint or inquiry; and

(2) a system to expedite the prompt and effective rerouting of any misdirected consumer complaint or inquiry documents between or among the agencies, with prompt referral of any complaint or inquiry to the appropriate Federal financial institution regulatory agency, and to participating State agencies.

(f) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency 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 the Office which shall include the following functions:

(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 Agency, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

(B) Coordinating fair lending enforcement efforts of the Agency 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.

(D) Providing annual reports to the Congress on the Agency's efforts to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is hereby established the position of Assistant Director of the Agency for Fair Lending and Equal Opportunity who—

(A) shall be appointed by the Director;

(B) shall carry out such duties as the Director may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

(4) PROHIBITIONS ON PARTICIPATION IN PROGRAMS WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—

(A) PROHIBITION.—The Director of the Office of Fair Lending and Equal Opportunity may not allow a covered organization to participate in any program established by such Director.

(B) COVERED ORGANIZATION.—In this paragraph, the term ''covered organization'' means any of the following:

(i) Any organization that has been indicted for a violation under any Federal or State law governing the financing of a campaign for election for public office or any law governing the administration of an election for public office, including a law relating to voter registration.

(ii) Any organization that had its State corporate charter terminated due to its failure to comply with Federal or State lobbying disclosure requirements.

(iii) Any organization that has filed a fraudulent form with any Federal or State regulatory agency.

(iv) Any organization that—

(I) employs any applicable individual, in a permanent or temporary capacity;

(II) has under contract or retains any applicable individual; or

(III) has any applicable individual acting on the organization's behalf or with the express or apparent authority of the organization.

(C) ADDITIONAL DEFINITIONS.—In this paragraph:

(i) The term ''organization'' includes the Association of Community Organizations for Reform Now (in this paragraph referred to as ''ACORN'') and any ACORN-related affiliate.

(ii) The term ''ACORN-related affiliate'' means any of the following:

(I) Any State chapter of ACORN registered with the Secretary of State's office in that State.

(II) Any organization that shares directors, employees, or independent contractors with ACORN.

(III) Any organization that has a financial stake in ACORN.

(IV) Any organization whose finances, whether federally funded, donor-funded, or raised through organizational goods and services, are shared or controlled by ACORN.

(iii) The term ''applicable individual'' means an individual who has been indicted for a violation under Federal or State law relating to an election for Federal or State office.

(D) REVISION OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to carry out the provisions of this paragraph relating to contracts.

(E) SEVERABILITY.—If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provision to any other person or circumstance shall not be affected.

SEC. 4107. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Director in the exercise of the functions of the Director and the Agency under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) MEMBERSHIP.—

(1) IN GENERAL.—In appointing the members of the Consumer Advisory Board, the Director shall seek—

(A) to assemble experts in financial services, community development, fair lending and civil rights, consumer protection, and consumer financial products or services; and

(B) to represent the interests of covered persons and consumers.

(2) PROHIBITION ON MEMBERSHIP WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—The director may not appoint an employee of a covered organization (as defined in section 4105(f)(4)(B)) to the Consumer Advisory Board.

(c) POLITICAL AFFILIATION.—Not more than 1 more than half of the members of the Consumer Advisory Board may be members of the same political party.

(d) 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.

(e) 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. 4108. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The Director shall coordinate with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Secretary of the Treasury, the Federal Trade Commission and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of, and enforcement related to, consumer and investment products, services, and laws.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The Director shall coordinate with each agency that is a member of the Financial Literacy and Education Commission established by the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its existing financial literacy and education initiatives to better achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Director shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

(c) COORDINATION.—The Agency may coordinate investigations, compliance examinations, information sharing, and related activities in support of activities undertaken pursuant to the Fair Housing Act by other Federal agencies.

SEC. 4109. REPORTS TO THE CONGRESS.

(a) REPORTS REQUIRED.—The Director shall prepare and submit to the President and the appropriate committees of the Congress a report at the beginning of each regular session of the Congress, beginning with the session following the designated transfer date.

(b) CONTENTS.—The reports required by subsection (a) shall include—

(1) a list of the significant regulations and orders adopted by the Director, as well as other significant initiatives conducted by the Director, during the preceding year and the Director's plan for regulations, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of complaints about consumer financial products or services that the Agency has received and collected during the preceding year;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Agency is a party (including adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding regulations, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer financial products or services affected by such regulations, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws;

(6) an analysis of the Agency's efforts to fulfill the fair lending mission of the Agency; and

(7) an appraisal of the regulatory and legal difficulties encountered by the Agency in carrying out the mission and duties of the Agency with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Agency by this title;

(C) the practices of persons, covered and uncovered under this title, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.

(c) ANNUAL APPEARANCE BEFORE THE CONGRESS.—The Director shall appear before the House Committee on Financial Services and the House Committee on Energy and Commerce at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives and plans of the Agency; and

(2) discuss and answer questions concerning such report.

SEC. 4110. GAO SMALL BUSINESS STUDIES.

(a) STUDIES REQUIRED.—Not later than the end of the 3-year period beginning on the designated transfer date, and also 3 years thereafter, the Comptroller General of the United States shall carry out a study to examine the effects that regulations issued by the Agency have on small businesses.

(b) REPORT.—At the conclusion of each study required under subsection (a), the Comptroller General of the United States shall issue a report to the Congress containing the finding and determinations made by the Comptroller General in carrying out such study.

SEC. 4111. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM THE BOARD OF GOVERNORS.—

(1) TRANSFER REQUIRED.—Each year, beginning on the designated transfer date, the Board of Governors shall transfer funds in an amount equaling 10 percent of the Federal Reserve System's total system expenses (as reported in the Budget Review of the Board of Governors most recent Annual Report to Congress) to the Director for the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H.

(2) PROCEDURES.—The Board of Governors, in consultation with the Agency, shall make appropriate arrangements to transfer funds to the Director in accordance with this subsection.

(b) FEES AND ASSESSMENTS.—

(1) ASSESSMENT REQUIRED.—

(A) IN GENERAL.—Taking into account such other sums available to the Agency and subject to the provisions of this subsection and subsection (d), the Director shall assess fees on covered persons to meet the Agency's expenses for carrying out the duties and responsibilities of the Agency, including supervising such covered persons.

(B) BASIS FOR ASSESSMENT.—The Agency shall assess fees on covered persons pursuant to this subsection based on the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(2) REGULATIONS.—

(A) IN GENERAL.—The Director shall prescribe regulations to govern the imposition and collection of fees and assessments.

(B) FACTORS REQUIRED TO BE ADDRESSED.—Regulations prescribed by the Director under this subsection shall specify and define—

(i) the basis of fees or assessments (such as the outstanding number of consumer credit accounts, off-balance sheet receivables attributable to the covered person, total consolidated assets, total assets under management, or volume of consumer financial transactions or use of service providers);

(ii) the amount and frequency of fees or assessments; and

(iii) such other factors that the Director determines are appropriate, which shall include a covered person's compliance record under the enumerated consumer laws, the authorities transferred under subtitles F and H, and this title.

(3) ASSESSMENTS ON DEPOSITORY INSTITUTION COVERED PERSONS.—

(A) DEPOSITORY INSTITUTION COVERED PERSON DEFINED.—For purposes of this section, the term ''depository institution covered person'' means a covered person that is an insured depository institution or credit union.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for supervision as are appropriate on depository institution covered persons, taking into account the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(ii) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in section 4203(a), or an institution whose examination responsibilities have been delegated to an appropriate agency, pursuant to section 4202(c)(11).

(iii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency's expenses for carrying out the duties and responsibilities of the Director and the Agency under this title with regard to depository institution covered persons.

(C) COORDINATION DURING IMPLEMENTATION PERIOD.—The Director and the agencies responsible for chartering and or supervising depository institution covered persons shall coordinate on the levels of fees assessed on depository institution covered persons under this paragraph, so that levels of assessments under this subparagraph combined with levels of assessments by agencies responsible for chartering and or supervising depository institution covered persons shall be no more than the assessments such depository institution covered person was required to pay for the 12-month period ending on December 31, 2009.

(D) MARGINAL ASSESSMENT RATE.—

(i) IN GENERAL.—In setting assessment rates for depository institution covered persons, the Director shall not impose assessments that result in higher marginal assessment rates for depository institution covered persons with assets of less than $25,000,000,000 than the marginal rates for depository institutions covered persons with assets that exceed that amount.

(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as limiting or impairing the authority of the Director to set assessments that would result in higher marginal assessment rates on the larger depository institution covered persons.

(E) LIMITATIONS ON ASSESSMENTS.—

(i) ASSESSMENTS FOR ADMINISTRATIVE COSTS.—Notwithstanding any provision in this title, no depository institution covered person shall be charged an assessment to be used for the supervision, examination, enforcement or regulation by the Agency of nondepository covered persons.

(ii) AMOUNTS PAID FOR CONSUMER COMPLIANCE SUPERVISION.—Notwithstanding any provision in this title, no depository institution covered person shall pay more for consumer compliance supervision than it paid before the date of enactment of this title.

(4) ASSESSMENTS ON NONDEPOSITORY COVERED PERSONS.—

(A) NONDEPOSITORY COVERED PERSON DEFINED.—For purposes of this section, the term ''nondepository covered person''—

(i) means a covered person that is not a credit union or insured depository institution; and

(ii) includes any bank holding company.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for registration, examination, and supervision of nondepository covered persons.

(ii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency's expenses for carrying out the duties and responsibilities of the Director and the Agency, including supervising such covered persons, taking into account such other sums available to the Agency.

(iii) REGISTRATION FEE MINIMUMS.—Registration fees imposed on a nondepository covered person under this paragraph shall, at a minimum, be imposed on such covered person at the time the person registers (or periodically renews any such registration) with the Agency, in accordance with regulations prescribed by the Director.

(C) NONDEPOSITORY COVERED PERSON ASSESSMENT NOT LESS THAN FOR DEPOSITORY COVERED PERSONS.—Assessment rates levied by the Director under this section on a nondepository institution covered persons shall be no less than assessments levied by the Agency under this section on a depository institution covered person with similar characteristics.

(D) OFFSETTING COLLECTIONS.—Fees assessed under this paragraph—

(i) shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts; and

(ii) shall be deposited and credited as offsetting collections to the account providing appropriations to the Agency.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and the laws and authorities transferred under subtitles F and H, there are authorized to be appropriated to the Director $200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

(2) APPORTIONMENT.—Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(3) OTHER AVAILABLE FUNDS TAKEN INTO ACCOUNT.—Sums appropriated under this subsection shall take into account such other sums available to the Agency under this section.

(d) CONSUMER FINANCIAL PROTECTION AGENCY DEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the ''Consumer Financial Protection Agency Depository Institution Fund'' (hereafter in this section referred to as the ''CFPA Depository Fund'').

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Depository Fund shall not be used in the supervision and examination of nondepository institution covered persons.

(2) ALL TRANSFERRED FUNDS DEPOSITED.—All amounts transferred to the Agency under subsection (a) shall be deposited into the CFPA Depository Fund.

(3) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall deposit all amounts received from assessments under subsection (b)(3) in the CFPA Depository Fund.

(e) CONSUMER FINANCIAL PROTECTION AGENCY NONDEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund called the Consumer Financial Protection Agency Nondepository Institution Fund (hereafter in this section referred to as the ''CFPA Nondepository Fund'').

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Nondepository Fund shall not be used for the supervision and examination of depository institution covered persons.

(2) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall deposit all amounts received from assessments under subsection (b)(4) in the CFPA Nondepository Fund.

(f) GENERAL PROVISIONS RELATING TO FUNDS.—

(1) MAINTENANCE OF FUNDS.—

(A) AGENCY FUNDS MAINTAINED BY TREASURY.—The Consumer Financial Protection Agency Depository Institution Fund established under subsection (d) and the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e) shall each be—

(i) maintained and administered by the Secretary; and

(ii) maintained separately and not commingled.

(B) AGENCY'S AUTHORITY.—Any provision of this title forbidding the commingling or use of the CFPA Depository Fund and the CFPA Nondepository Fund shall not be construed as limiting or impairing the authority of the Agency to use the same facilities and resources in the course of conducting supervisory and regulatory functions with respect to depository institutions and nondepository institutions, or to integrate such functions.

(C) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Agency shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (B) and shall allocate, in the manner provided in subparagraph (D), any such costs and expenses incurred by the Agency—

(I) with respect to depository institution covered persons, to the CFPA Depository Fund; and

(II) with respect to nondepository covered persons, to the CFPA Nondepository fund.

(D) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Agency shall be allocated—

(i) fully to the CFPA Depository Fund if the expense was incurred directly as a result of the Agency's responsibilities solely with respect to depository institution covered persons;

(ii) fully to the CFPA Nondepository Fund, if the expense was incurred directly as a result of the Agency's responsibilities solely with respect to nondepository covered persons;

(iii) between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of depository institution covered persons, and nondepository covered persons; and

(iv) if the Director is unable to make a complete allocation under clause (i), (ii), or (iii), between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative proportion that, as of the end of the preceding year—

(I) the aggregate assets of all depository institution covered persons bears to the aggregate assets of all covered persons; and

(II) the aggregate assets of all nondepository covered persons bears to the aggregate assets of all covered persons.

(E) AGENCY FUND.—The ''Agency fund'' means the Consumer Financial Protection Agency Depository Institution Fund established under subsection (d), and, the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e), and the Consumer Financial Protection Agency Civil Penalty Fund established under subsection (g).

(2) INVESTMENT.—

(A) AMOUNTS IN FUNDS MAY BE INVESTED.—The Director may request the Secretary to invest the portion of any Agency fund that, in the Director's judgment, is not required to meet the current needs of such fund.

(B) ELIGIBLE INVESTMENTS.—Investments pursuant to subparagraph (A) shall be made by the Secretary 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 Agency fund involved, as determined by the Director.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the respective Agency Fund shall be credited to and form a part of the respective Agency Fund.

(3) USE OF FUNDS.—

(A) DEPOSITORY INSTITUTION FUND.—Funds obtained by, transferred to, or credited to the Consumer Financial Protection Agency Depository Institution Fund shall be immediately available to the Agency, and remain available until expended, to pay the expenses of the Agency in carrying out the duties and responsibilities of the Director and the Agency, including the payment of compensation of the Director and officers and employees of the Agency.

(B) NONDEPOSITORY INSTITUTION FUND.—Funds obtained by, transferred to, or credited to the Consumer Financial Protection Agency Nondepository Institution Fund shall be available to the Agency to the extent provided in advance in appropriation Acts, and may remain available until expended, to pay the expenses of the Agency in carrying out the duties and responsibilities of the Director and the Agency, including the payment of compensation of the Director and officers and employees of the Agency.

(g) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the ''Consumer Financial Protection Agency Civil Penalty Fund'' (hereafter in this section referred to as the ''Civil Penalty Fund'').

(2) DEPOSITS.—If the Agency obtains a civil penalty against any person in any judicial or administrative action under this title, any law or authority transferred under subtitles F and H, or any enumerated consumer law, the Agency shall deposit into the Civil Penalty Fund the amount of the penalty collected.

(3) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Director, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under this title, the law and authorities transferred under subtitles F and H, or any enumerated consumer law.

SEC. 4112. AMENDMENTS RELATING TO OTHER ADMINISTRATIVE PROVISIONS.

(a) ACT OF OCTOBER 28, 1974.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Consumer Financial Protection Agency,'' after ''Federal Deposit Insurance Corporation,''.

(b) PAPERWORK REDUCTION ACT.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) by inserting ''the Consumer Financial Protection Agency,'' after ''the Securities and Exchange Commission,''.

SEC. 4113. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this title.

Subtitle B—General Powers of the Director and Agency

SEC. 4201. MANDATE AND OBJECTIVES.

(a) MANDATE.—The Director shall seek to promote transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that, with respect to consumer financial products or services—

(1) consumers have and can use the information they need to make responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have equal access to responsible financial services.

SEC. 4202. AUTHORITIES.

(a) IN GENERAL.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the authorities transferred in subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Director may prescribe regulations and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to prevent evasions of this title, any such authority, and any such law.

(2) STANDARDS FOR RULEMAKING.—In prescribing a regulation under this title or pursuant to the authorities transferred under subtitles F and H or the enumerated consumer laws, the Director shall—

(A) consider the potential benefits and costs to consumers and covered persons, including the potential reduction of consumers' access to consumer financial products or services, resulting from such regulation; and

(B) consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Director, by regulation or order, may conditionally or unconditionally exempt any covered person, service provider, or any consumer financial product or service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any regulation under any such provision or law, as the Director deems 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 by regulation or order as permitted in subparagraph (A), the Director shall as appropriate take into consideration the following:

(i) The total assets of the covered person.

(ii) The volume of transactions involving consumer financial products or services in which the covered person engages.

(iii) The extent to which the covered person engages in 1 or more financial activities.

(iv) Existing laws or regulations which are applicable to the consumer financial product or service and the extent to which such laws or regulations provide consumers with adequate protections.

(C) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, amending, or affecting any authority under sections 304(a), 304(i), 305(a), and 306(b) of the Home Mortgage Disclosure Act of 1975 and sections 703(a)(1), 703(a)(2), 703(a)(3), 705(f), and 705(g) of the Equal Credit Opportunity Act for determining whether a covered person should be provided an exemption.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—Except as provided under section 4203, the Director may on a periodic basis examine a covered person or service provider, with respect to any consumer financial product or service, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws,

and any regulations prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) EXAMINATION PROGRAM.—The Director shall exercise any authority of the Director under paragraph (1) in a manner designed to ensure that such authorities are exercised with respect to covered persons or service providers, without regard to charter or corporate form, based on the Director's assessment of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable, the following factors:

(A) The asset size of the covered persons.

(B) The volume of transactions involving consumer financial products or services in which the covered persons engage.

(C) The risks to consumers created by the provision of such consumer financial products or services.

(D) In the case of State-chartered institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—The Director shall coordinate the Agency's supervisory activities with the supervisory activities conducted by the Federal banking agencies and the State bank supervisors, including establishing their respective schedules for examining covered persons and requirements regarding reports to be submitted by covered persons.

(4) REPORTS.—The Director may require reports from a covered person for purposes of ensuring compliance with the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(5) CONTENT OF REPORTS.—The reports authorized in paragraph (4) may include such information as necessary to keep the Agency informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Agency has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.

(6) USE OF EXISTING REPORTS.—In general, the Agency shall, to the fullest extent possible, use—

(A) reports that a covered person, or any affiliate thereof, or any service provider to such covered person or affiliate, has provided or been required to provide to a Federal or State agency; and

(B) information that has been reported publicly.

(7) ACCESS BY THE AGENCY TO REPORTS OF OTHER REGULATORS.—

(A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Agency shall have access to any report of examination or financial condition, including a report containing data regarding consumer complaints, made by a Federal banking agency or other Federal agency having supervision of a covered person, or a service provider, (other than returns and return information described in section 6103 of the Internal Revenue Code of 1986) and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO AGENCY.—In addition to the reports described in subparagraph (A), a Federal banking agency may, in its discretion, furnish to the Agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by such agency under authority of any Federal law.

(8) ACCESS BY OTHER REGULATORS TO REPORTS OF THE AGENCY.—

(A) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the Agency with respect to the covered person or service provider, and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in paragraph (A), the Agency may, in the discretion of the Agency, furnish to a Federal banking agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by the Agency under authority of any Federal law.

(9) PRESERVATION OF AUTHORITY.—No provision in paragraph (3) shall be construed as preventing the Agency from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law. No provision of this title shall be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph (4), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(10) REPORTS OF TAX LAW NONCOMPLIANCE.—The Director shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(11) DELEGATION.—

(A) IN GENERAL.—The Director may delegate the examination authorities of the Agency under this title to any appropriate agency, as defined in section 4203, for any insured depository institution or insured credit union that is not subject to section 4203 upon a petition by an appropriate agency.

(B) STANDARD FOR DELEGATION.—The Director shall provide such delegation if, in the Director's sole discretion, the Director determines that—

(i) the delegation is consistent with the public interest;

(ii) the appropriate agency is capable of enforcing compliance with this title, and with any regulation prescribed under this title; and

(iii) such capability is comparable to or superior to the capability of the Agency, in terms of expertise, demonstrated commitment, and overall effectiveness, in enforcing such compliance.

(C) EFFECT OF DELEGATION.—The insured depository institution or insured credit union shall be subject to the examination process described in section 4203(b).

(D) NO EFFECT ON ENFORCEMENT.—The Director's delegation authority under this paragraph shall not apply to the Director's enforcement responsibilities under subsection (e).

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law other than section 4203 and subsections (f) and (h) of this section, to the extent that a Federal law authorizes the Director and another Federal agency to prescribe regulations, issue guidance, conduct examinations, or require reports under that law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which authorities were transferred under subtitles F and H, and any regulations prescribed under this title or pursuant to any such authority, the Director shall have the exclusive authority to prescribe regulations, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law and with respect to any activity regulated under any enumerated consumer law.

(e) PRIMARY ENFORCEMENT AUTHORITY.—(1) THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Agency and another Federal agency to enforce a provision of a law, the Agency shall have primary enforcement authority to enforce the provision of that Federal law with respect to any person in accordance with this subsection.

(2) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) NOTICE. If the Federal Trade Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, either the Agency or the Federal Trade Commission shall serve written notice to the other of any enforcement action prior to initiating such an enforcement action, except that if the agency or commission filing the action determines that prior notice is not feasible, that agency or commission may provide notice immediately upon initiating such enforcement action.

(B) INTERVENTION BY EITHER ENTITY.—Upon receiving any notice under subparagraph (A) with respect to an enforcement action, the Agency or Federal Trade Commission may intervene in such enforcement action, and upon intervening—

(i) be heard on all matters arising in such enforcement action; and

(ii) file petitions for appeal in such enforcement action.

(C) PENDENCY OF ACTION.—Whenever a civil action has been instituted by or on behalf of the Agency or the Federal Trade Commission for any violation of any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the other entity may not, during the pendency of that action, institute a civil action unde such law or regulation against any defendant named in the complaint in such pending action for any violation alleged in the complaint.

(D) AGREEMENTS BETWEEN ENTITIES.—

(i) NEGOTIATIONS AUTHORIZED.—The Agency and the Federal Trade Commission may negotiate an agreement to establish procedures to ensure that the enforcement actions of the 2 agencies are appropriately coordinated.

(ii) SCORE OF NEGOTIATED AGREEMENT.—The terms of any agreement negotiated pursuant to clause (i) may modify or supersede the provisions of subparagraphs (A), (B), and (C).

(3) COORDINATION WITH OTHER FEDERAL AGENCY.—

(A) REFERRAL.—Any Federal agency (other than the Federal Trade Commission) that is authorized to enforce a Federal law described in paragraph (1) may recommend in writing to the Director that the Agency initiate an enforcement proceeding to the extent the Agency is authorized by that Federal law or by this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Agency does not, before the end of the 120-day period beginning on the date on which the Director receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the other agency referred to in subparagraph (A) may initiate an enforcement proceeding as permitted by that Federal law.

(4) INSTITUTIONS SUBJECT TO SPECIAL EXAMINATION AND ENFORCEMENT PROCEDURES.—

This subsection shall not apply to institutions subject to section 4203.

(f) PRESERVATION OF OTHER AUTHORITY.—

(1) ATTORNEY GENERAL.—No provision of this title shall be construed as affecting any authority of the Attorney General.

(2) SECRETARY OF THE TREASURY.—No provision of this title shall be construed as affecting any authority of the Secretary of the Treasury, including with respect to prescribing regulations, initiating enforcement proceedings, or taking other actions with respect to a person providing tax planning or tax preparation services.

(3) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(g) EFFECT ON OTHER AUTHORITY.—No provision of this section or section 4203 shall be construed as modifying or limiting the authority of any appropriate Federal banking agency or the Director or Agency to interpret, or take enforcement action under, any law or regulation the interpretation or enforcement of which is committed to the banking agency or the Director or Agency, which shall include, in the case of the Director and the Agency, this title, the enumerated consumer laws, and the regulations prescribed under this title or such laws.

(h) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—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 other laws other than the enumerated consumer laws.

(i) PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL BANKS, THRIFTS, AND CREDIT UNIONS.

(a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SECTION.—

(1) INSTITUTIONS COVERED.—This section shall apply to—

(A) any insured depository institution with total assets of $10,000,000,000 or less; or

(B) any insured credit union with total assets of $1,500,000,000 or less.

(2) APPROPRIATE AGENCY.—For purposes of this title, the term ''appropriate agency'' means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency as such 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.

(b) EXAMINATIONS.—

(1) IN GENERAL.—The appropriate agency shall on a periodic basis examine, or require reports from, an institution referred to in subsection (a) for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) AGENCY ROLE IN EXAMINATIONS.—

(A) The appropriate agency shall provide all reports, records, and documentation related to the examination process to the Agency on a timely and ongoing basis.

(B) The Director and Agency may, at its discretion, include an examiner on any examination conducted under paragraph (1). The appropriate agency shall involve such Agency 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.

(c) ENFORCEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of this title other than this subsection, the appropriate agency shall have primary authority to enforce violations identified at institutions referred to in subsection (a) of any of the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H.

(2) COORDINATION WITH APPROPRIATE AGENCY.—

(A) REFERRAL.—

(i) IN GENERAL.—The Agency 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 AGENCY.—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 Agency may initiate an enforcement proceeding as permitted by Federal law.

(d) ACTIONS ARISING OUT OF CONSUMER COMPLAINT SYSTEM.—Notwithstanding any provision of this section, if through the consumer complaint system administered by the Agency under section 4105(c)(3), the Director has reasonable cause to believe that an institution referred to in subsection (a) demonstrates noncompliance with any provision of this title, the enumerated consumer laws, or any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, the Director may directly investigate such institution for such noncompliance and take any action permitted under subtitle E that the Director deems appropriate.

(e) REMOVAL OF APPROPRIATE AGENCY FOR PARTICULAR INSTITUTION.—

(1) HEIGHTENED SUPERVISION.—The Director—

(A) may provide notice to an appropriate agency that the Director is considering issuing a removal order under paragraph (2); and

(B) shall have an Agency examiner participate in the examination process under subsection (b) for at least 1 examination cycle.

(2) REMOVAL BY ORDER.—If, after the completion of at least 1 examination cycle following the provision of notice to an appropriate agency under paragraph (1), the Director determines in writing that the appropriate agency has failed to adequately conduct consumer compliance examinations or bring appropriate enforcement actions against an institution referred to in subsection (a), the Director may order the removal of the appropriate agency from its responsibilities under this section for such institution.

(3) AGENCY AUTHORITY UPON REMOVAL.—Upon removal pursuant to paragraph (2), the Agency shall examine and enforce against such institution as if the institution were subject to section 4202.

(4) EFFECTIVE DATE.—An order under paragraph (2) shall take effect 30 days after a determination by the Secretary of the Treasury pursuant to paragraphs (5) and (6).

(5) AUTOMATIC APPEAL.—An order issued by the Director pursuant to paragraph (2) shall be automatically appealed to the Secretary.

(6) DECISION BY THE SECRETARY OF THE TREASURY.—

(A) DETERMINATION.—The order issued pursuant to paragraph (2) shall be deemed affirmed unless the Secretary of the Treasury denies the determination of the Director within 120 days of the issuance of the order pursuant to paragraph (2).

(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as prohibiting the Secretary of the Treasury from making a determination to either affirm or deny an order issued pursuant to paragraph (2) prior to the passage of the time period in subparagraph (A).

(7) REGULATIONS.—By the transfer date, the Secretary shall issue regulations that establish the standards the Director shall apply in making a determination to remove an appropriate agency and the process, procedures, and standards for an appeal. Such standards shall require the Director to consider at least the following in issuing an order removing an appropriate agency for an institution referred to in subsection (a)(1):

(A) Reports of examination of such institution.

(B) Any enforcement actions taken by an appropriate agency against such institution and the results of those actions.

(C) Consumer complaints issued against such institution.

(D) Actions taken by State attorneys general and private rights of action against such institution.

(f) POLICIES AND PROCEDURES.—Within 180 days after the designated transfer date, the Agency and the appropriate agency shall develop policies and procedures for implementing this section.

(g) ASSESSMENTS.—

(1) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in subsection (a).

(2) RULE OF CONSTRUCTION.—No provision of this section shall be construed as preventing the appropriate agency from assessing fees on an institution referred to in paragraph (1) to meet the appropriate agency's expenses for carrying out such examination and supervision responsibilities pursuant to this section.

SEC. 4204. SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.

(a) EXAMINATIONS.—A Federal banking agency and the Agency shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the Agency, respectively—

(1) coordinate the scheduling of examinations of the insured depository institution, and credit union, or other covered person;

(2) conduct simultaneous examinations of each insured depository institution, credit union or other covered person, unless such institution requests examinations to be conducted separately;

(3) 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

(4) prior to issuing a final report of examination or taking supervisory action, an agency shall take into consideration concerns, if any, raised in the comments made by the other agency.

(b) COORDINATION WITH STATE BANK SUPERVISORS.—The Agency shall pursue arrangements and agreements with State bank supervisors to coordinate examinations consistent with subsection (a).

(c) RESOLUTION OF CONFLICT IN SUPERVISION.—

(1) REQUEST OF DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—If the proposed material supervisory determinations of the Agency

and a Federal banking agency are conflicting, an insured depository institution, credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) LIMITATION.—A request of an insured depository institution, credit union, or other covered person shall not be used to appeal a supervisory rating or determination by the Agency or a Federal banking agency.

(2) JOINT STATEMENT.—The agencies receiving a request from an insured depository institution, credit union, or covered person under paragraph (1) shall provide a joint statement resolving the conflict under such subparagraph before the end of the 30-day period beginning on the date the agencies receive such request.

(d) APPEALS TO GOVERNING PANEL.—

(1) IN GENERAL.—If the agencies receiving a request from an insured depository institution, credit union, or covered person under subsection (c)(1) do not issue a joint statement under subsection (c)(2), or if either agency takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, the insured depository institution, credit union, or other covered person may institute an appeal to a governing panel under this subsection.

(2) TIMETABLE.—Any appeal under paragraph (1) with regard to a failure of agencies to issue a joint statement shall be filed before the end of the 30-day period beginning at the end of the 30-day period during which such joint statement was due under subsection (c)(2).

(e) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this section shall be composed of—

(1) 2 individuals—

(A) 1 of whom is a representative from the Agency;

(B) 1 of whom is a representative of the Federal banking agency which received the request to which the appeal relates; and

(C) neither of whom—

(i) have participated in the material supervisory determinations under appeal; and

(ii) report directly or indirectly to the individual who made the supervisory determinations under appeal; and

(2) 1 individual who is a representative from—

(A) the Federal banking agency that heads the Financial Institution Examination Council; or

(B) if the Financial Institutions Examination Council is headed by a Federal banking agency that is a party to the appeal, the Federal banking agency that is next scheduled to head the Financial Institutions Examination Council.

(f) CONDUCT OF APPEAL.—

(1) CONTENT OF FILING APPEAL.—The insured depository institution, credit union, or other covered person which institutes an appeal under subsection (d)(1) shall include in the filing of such appeal all the facts and legal arguments pertaining to the matter appealed.

(2) APPEARANCE.—The insured depository institution, credit union, or other covered person which institutes an appeal under this section may appear before the governing panel in person or by telephone, through counsel, employees, or representatives of, or for, such institution, credit union, or other covered person.

(3) REQUESTS FOR ADDITIONAL INFORMATION.—Any governing panel convened under this section may request the insured depository institution, credit union, or other covered person, the Agency, or the Federal banking agency to produce additional information relevant to the appeal.

(4) FINAL WRITTEN DETERMINATIONS .—Any governing panel convened under this section, by a majority vote of the members of the panel, shall provide a final determination, in writing, within 30 days of the filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(5) PUBLIC INFORMATION.—A redacted copy of any determination by a governing panel convened under this section shall be made public upon the issuance of such determination.

(g) PROHIBITION AGAINST RETALIATION.—The Director and the Federal banking agencies shall prescribe regulations to provide safeguards from retaliation against any insured depository institution, credit union, or other covered person which institutes an appeal under this section, as well as against any officer or and employee of any such institution, credit union, or other person.

(h) MATERIAL SUPERVISORY DETERMINATION DEFINED.—For purposes of this section, the term ''material supervisory determination''—

(1) includes any action relating to any supervision or examinations; and

(2) does not include—

(A) a determination by any Federal banking agency 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 or section 212 of the Federal Credit Union Act, as the case may be; or

(B) any regulation or guidance, or order of general applicability.

SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND DIRECTOR.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

(2) NO EXCLUSION FOR CERTAIN PRIVATE EDUCATION LOANS.—Paragraph (1) shall not apply to any private education loan (as defined in section 140(a) of the Truth in Lending Act) provided by a private educational lender (as defined in such section), including a covered educational institution (as defined in such section).

(3) EXCEPTION FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(4) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any other agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant, retailer, or seller of nonfinancial services to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services.

(5) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided, and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

(b) EXCLUSION FOR PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Securities and Exchange Commission or 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 the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Securities and Exchange Commission shall consult and coordinate with the Director 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 Agency under this title or under any other law.

(c) 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 Director and the Agency 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 Director 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 Agency under this title or under any other law.

(d) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as

provided in paragraphs (2) and (3), the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) PRESERVATION OF CERTAIN AUTHORITIES.—Nothing in this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this title with respect to the provision by a covered person of a product or service, not otherwise subject to this title, for or on behalf of a person regulated by a State insurance regulator, in connection with a financial activity.

(e) EXCLUSION FOR PERSONS REGULATED BY THE FEDERAL HOUSING FINANCE AGENCY.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Federal Housing Finance Agency to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Federal Housing Finance Agency. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Federal Housing Agency. For purposes of this subsection, the term ''person regulated by the Federal Housing Finance Agency'' means any Federal home loan bank, and any joint office of 1 or more Federal home loan banks.

(f) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—No provision of this title shall be constructed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, institute enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Director and Agency shall have no authority to exercise any power to enforce this title, compel registration, or to order assessments with respect to a person regulated by the Farm Credit Administration. For purposes of this subsection, the term ''person regulated by the Farm Credit Administration'' means any Farm Credit System Institution.

(g) EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) AUTHORITY RETAINED BY 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 FINANCIAL ACTIVITIES.—For the purposes of this title, a person shall not be treated as having engaged in a financial activity, as defined in section 4002(19), 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) REGULATORY COORDINATION.—In the case of regulations promulgated under this title that address any financial activity specifically pertaining to the administration and maintenance of a specified plan or arrangement, the Director shall coordinate with the Secretary of Labor and the Secretary of Treasury, as appropriate.

(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) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, 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 customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a state board of accountancy or a federal authority, or other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided by the person separate and apart from such customary and usual accounting activities and are not offered or provided 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.—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent 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 a financial activity described in any subparagraph of section 4002(19);

(B) any person described in paragraph (1)(B) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 4002(19); or

(C) any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(i) EXCLUSION FOR REAL ESTATE LICENSEES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is licensed or registered as a real estate broker, real estate agent, in accordance with State law, but only 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 providing financing with respect to any such transaction);

(D) engages in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; or

(E) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C), or (D).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(j) EXCLUSION FOR AUTO DEALERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over—

(A) 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; or

(B) a person that—

(i) is controlled by, or is under common control with, one or more motor vehicle dealers; and

(ii) primarily engages in the extension of, or arranging for the extension of, retail credit or retail leases involving motor vehicles, where 90 percent of such extension, or arranging for such extension, is made with respect to customers of one or more motor vehicle dealers that control such person or with which such person is under common control.

(2) CERTAIN FUNCTIONS EXCEPTED.—The provisions of paragraph (1) shall not apply to any person to the extent that person—

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

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

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

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

(3) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this subsection 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 prior to the enactment of this title.

(4) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding subtitle F or any other provision of law under this title, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Agency to the extent such functions are with respect to a person described under paragraph (1).

(5) DEFINITIONS.—For purposes of this subsection:

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

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

(k) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Director or the Agency 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.

(l) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person to the extent such person—

(A) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(B) 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

(C) offers to engage in any activity described in subparagraphs (A) or (B).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection:

(A) MANUFACTURED HOME.—The term ''manufactured home'' has the meaning given such term 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 two 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.

(m) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), nothing in this title shall apply with respect to an activity engaged in by an attorney, or engaged in under the direction of an attorney, as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Paragraph (1) shall not be construed to limit the exercise by the Director and the Agency of any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, regarding any activity that is a financial activity described in any subparagraph of section 4002(19) and is not engaged in as—

(i) part of the practice of law; or

(ii) incidental to the practice of law, to the extent that such activity is provided exclusively within the scope of the attorney-client relationship and is not otherwise provided by or under the direction of the attorney to any consumer who is not receiving legal advice or services from the attorney in connection with such activity.

(B) CONSTRUCTION.—Paragraph (1) shall not be construed to limit the authority of the Director and the Agency with respect to any activity to the extent that such activity is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitles F or H.

(3) EXCEPTION.—Notwithstanding paragraph (1), an individual who provides legal advice or services related to preventing a foreclosure shall be subject to this title unless such individual provides foreclosure prevention services in connection with—

(A) the preparation and filing of a bankruptcy petition; or

(B) court proceedings to avoid a foreclosure.

SEC. 4206. COLLECTION OF INFORMATION; CONFIDENTIALITY REGULATIONS.

(a) COLLECTION OF INFORMATION.—

(1) IN GENERAL.—In conducting research on the provision of consumer financial products or services, the Director shall have the power to gather information from time to time regarding the organization, business conduct, and practices of covered persons or service providers.

(2) SPECIFIC AUTHORITY.—In order to gather such information, the Director shall have the power—

(A) to gather and compile information;

(B) to require persons to file with the Agency, in such form and within such reasonable period of time as the Director may prescribe, by regulation or order, annual or special reports, or answers in writing to specific questions, furnishing information the Director may require; and

(C) to make public such information obtained by it under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) CONFIDENTIALITY REGULATIONS.—The Director shall prescribe regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of any authority of the Agency or Director under this title and the enumerated consumer laws and the authorities transferred under subtitles F and H.

(c) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Agency, or requiring covered persons to publicly report information, the Director and the Agency shall take steps to ensure that proprietary, personal or confidential consumer information that are protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law are not made public under this title.

SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT REGULATIONS; REPORTS.

(a) MONITORING.—

(1) IN GENERAL.—The Agency shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) MEANS OF MONITORING.—Such monitoring may be conducted by examinations of covered persons or service providers, analysis of reports obtained from covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons, service providers, and consumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating the resources of the Agency to perform the monitoring required by this section, the Director 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) consumers' understanding of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the 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 provision of a consumer financial product or service;

(E) extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The Agency shall publish at least 1 report of significant findings of the monitoring required by paragraph (1) in each calendar year, beginning in the calendar year that is 1 year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

(1) IN GENERAL.—The Agency shall conduct an assessment of each significant regulation prescribed or order issued by the Director under this title, under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the regulation in meeting the purposes and objectives of this title and the specific goals stated by the Director.

(2) BASIS FOR ASSESSMENT.—The assessment shall reflect available evidence and any data that the Agency reasonably may collect.

(3) REPORTS.—The Agency shall publish a report of an assessment under this subsection not later than 3 years after the effective date of the regulation or order, unless the Director determines that 3 years is not sufficient time to study or review the impact of the regulation, but in no event shall the Agency publish a report of such assessment more than 5 years after the effective date of the regulation or order.

(4) PUBLIC COMMENTED REQUIRED.—Before publishing a report of its assessment, the Agency shall invite, with sufficient time allotted, public comment on, and may hold public hearings on, recommendations for modifying, expanding, or eliminating the newly adopted significant regulation or order.

(c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the Agency may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 4208. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.

(a) IN GENERAL.—The Director, by regulation, may prohibit or impose conditions or limitations on the use of any 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 Director finds that such a prohibition or imposition of conditions or limitations are in the public interest and for the protection of consumers.

(b) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Director 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 Director.

SEC. 4209. REGISTRATION AND SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) RISK-BASED PROGRAMS.—

(1) IN GENERAL.—The Agency shall develop risk-based programs to supervise covered persons that are not credit unions, depository institutions, or persons excluded under section 4205 by prescribing registration requirements, reporting requirements, and examination standards and procedures.

(2) BASIS FOR PROGRAMS.—The risk-based supervisory programs established pursuant to paragraph (1) shall be based on—

(A) relevant registration and reporting information about such covered persons, as determined by the Agency; and

(B) the Agency's assessment of risks posed to consumers in the relevant geographic markets and markets for consumer financial products and services.

(b) REGISTRATION.—

(1) IN GENERAL.—The Director shall prescribe regulations regarding registration requirements for covered persons that are not credit unions or depository institutions.

(2) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this subsection, the

Agency shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) EXCEPTION FOR RELATED PERSONS.—The Agency shall not impose requirements regarding the registration of a related person.

(4) REGISTRATION INFORMATION.—Subject to regulations prescribed by the Director, the Agency shall publicly disclose the registration information about a covered person which is not a bank holding company, credit union, or depository institution for the purposes of facilitating the ability of consumers to identify the covered person as registered with the Agency.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The Agency may require reports from covered persons that are not credit unions or depository institutions, or service providers thereto, for the purposes of facilitating supervision of such covered persons or service providers.

(2) CONSISTENCY OF REPORTING REQUIREMENTS AND RISK-BASED STANDARDS.—The Agency shall impose reporting requirements under this subsection that are consistent with the risk-based standards developed and implemented under this section and the registration information pertaining to the relevant types or classes of covered persons.

(3) CONTENTS OF REPORTS.—Reporting requirements imposed under this paragraph may include information regarding—

(A) the nature of the covered person's business;

(B) the covered person's name, legal form, ownership and management structure, and related persons;

(C) the covered person's locations of operation;

(D) the covered person's types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the Agency, including any requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(4) CONSULTATION WITH THE FEDERAL TRADE COMMISSION.—In developing and implementing report requirements under this subsection, the Agency shall consult with the Federal Trade Commission, where appropriate.

(5) EXCEPTION FOR RELATED PERSONS.—Other than reports permitted under paragraph (3)(F) or in connection with a supervisory action or examination or pursuant to the powers granted in subtitle E, the Agency shall not impose requirements regarding reports of any related person.

(d) EXAMINATIONS.—

(1) EXAMINATIONS REQUIRED.—The Agency shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 4202(c).

(2) EXAMINATION STANDARDS AND PROCEDURES.—The Director shall establish risk-based standards and procedures for conducting examinations of covered persons required to be examined under paragraph (1), including the frequency and scope of such examinations, except that the Agency shall conduct examinations of such covered persons that are determined to pose the highest risk to consumers based on factors determined by the Director, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.—To the extent permitted by Federal law, the Agency may obtain from the Secretary of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding compliance with a reporting or registration requirement under the subchapter II of chapter 53 of title 31, United States Code, for the purposes of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the Agency under this title.

SEC. 4210. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle C—Specific Authorities

SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Agency may take any action authorized under subtitle E to prevent a person 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) REGULATIONS.—

(1) IN GENERAL.—The Director may prescribe regulations 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.

(2) INCLUDES PREVENTION MEASURES.—Regulations prescribed under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

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

(2) ESTABLISHED PUBLIC POLICY AS FACTOR.—In determining whether an act or practice is unfair, the Agency may consider established public policies as evidence to be considered with all other evidence.

(d) CONSULTATION.—In prescribing any regulation under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 4302. DISCLOSURES.

(a) IN GENERAL.—The Director may prescribe regulations to ensure the timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) COORDINATION WITH OTHER LAWS.—In prescribing regulations under subsection (a), the Director shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden.

(c) COMPLIANCE.—

(1) MODEL DISCLOSURES.—The Agency may provide model disclosures to facilitate compliance with the requirements of regulations prescribed under this section.

(2) PER SE COMPLIANCE.—Compliance by a covered person with the model disclosures issued by the Agency under this subsection shall per se constitute compliance with the disclosure requirements of this section.

(3) ADDITIONAL GUIDANCE.—The Agency may issue exemptions, no action letters, and other guidance to promote compliance with disclosures requirements of regulations prescribed under this section.

(d) COMBINED MORTGAGE LOAN DISCLOSURE.—Within 1 year after the designated transfer date, the Director shall propose for public comment regulations and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Director determines that any proposal issued by the Board of Governors and the Department of Housing and Urban Development carries out the same purpose.

SEC. 4303. SALES PRACTICES.

The Director may prescribe regulations and issue orders and guidance regarding the manner, settings, and circumstances for the provision of any consumer financial products or services to ensure that the risks, costs, and benefits of the products or services, both initially and over the term of the products or services, are fully and accurately represented to consumers.

SEC. 4304. PILOT DISCLOSURES.

(a) PILOT DISCLOSURES.—The Agency shall establish standards and procedures for approval of pilot disclosures to be provided or made available by a covered person to consumers in connection with the provision of a consumer financial product or service, or the offering of a consumer financial product or service.

(b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

(2) registration, licensing, or certification;

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

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

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

(b) AGENCY AUTHORITY TO PRESCRIBE STANDARDS.—

(1) IN GENERAL.—The Director may prescribe regulations establishing minimum standards under this section for any class of

covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a State bank supervisor , or for any service provider.

(2) REGISTRATION AND LICENSING STANDARDS.—In addition to prescribing standards for the purposes described in subsection (a), the Director may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.

(3) ENFORCEMENT OF STANDARDS.—The Director may enforce under subtitle E compliance with standards adopted by the Director or a State pursuant to this section for covered persons or service providers operating in that State.

(c) CONSULTATION.—In prescribing minimum standards under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 4306. DUTIES.

(a) IN GENERAL.—

(1) REGULATIONS ENSURING FAIR DEALING WITH CONSUMERS.—The Director shall prescribe regulations imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Director deems appropriate or necessary to ensure fair dealing with consumers.

(2) CONSIDERATIONS FOR DUTIES.—In prescribing such regulations, the Director shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that the person, employee, agent, or contractor is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the consumer with advice with respect to any aspect of the transaction;

(C) the consumer's reliance on or use of any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Director considers appropriate.

(3) DUTIES RELATING TO COMPENSATION PRACTICES.—

(A) IN GENERAL.—The Director may prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.

(B) NO COMPENSATION CAPS.—The Director may not prescribe a limit on the total dollar amount of compensation paid to any person.

(C) DISPARITY TREATMENT PROHIBITED.—The Director may not prescribe regulations that directly or indirectly disparately treat, or are interpreted to disparately treat, or disparately impact any entity that employs covered persons.

(4) REQUIREMENT TO INCLUDE DISCLAIMER ON PUBLIC STATEMENTS.—The Director shall ensure that the Agency's website, and any statement made by the Director or the Agency to the public, includes a disclaimer stating that the Agency does not endorse any particular financial product or service and consumers are expected to exercise due diligence in deciding what financial products and services are appropriate for them.

(b) ADMINISTRATIVE PROCEEDINGS.—

(1) IN GENERAL.—Any regulation prescribed by the Director under this section shall be enforceable only by the Agency through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law.

(2) EXCLUSIVITY OF REMEDY.—No action may be commenced in any court to enforce any requirement of a regulation prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a regulation prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such regulation.

(3) RULE OF CONSTRUCTION.—The Agency, the Attorney General, and any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a regulation prescribed by the Director under this section.

(c) EXCLUSIONS.—This section shall not be construed as authorizing the Director to prescribe regulations applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.

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

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

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

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

(3) any information required to be kept confidential by any other law (including section 6103 of the Internal Revenue Code of 1986); or

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

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

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

(e) CONSULTATION.—The Director shall, when prescribing any regulation under this section, consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Commissioner of Internal Revenue to ensure that the regulations—

(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. 4308. PROHIBITED ACTS.

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee, or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable regulation prescribed or order issued by the Director or to engage in any unfair, deceptive, or abusive act or practice, except that no person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse to pay any fee or assessment imposed by the Agency under this title, to fail or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or to fail or refuse to make reports or provide information to the Agency, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulation prescribed or order issued by the Director this title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4301, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).

SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.

(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and by regulation prescribed by the Director.

(2) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, a remittance transfer provider shall—

(A) disclose clearly and conspicuously, in writing and in a form that the consumer may keep, to each consumer who requests information regarding the fees or exchange rate for a remittance transfer, prior to the consumer making any payment in connection with the transfer—

(i) the total amount in United States dollars that will be required to be paid by the consumer in connection with the remittance transfer;

(ii) the amount of currency that the designated recipient of the remittance transfer will receive, using the values of the currency into which the funds will be exchanged;

(iii) the fee charged by the remittance transfer provider for the remittance transfer;

(iv) any exchange rate to be used by the remittance transfer provider for the remittance transfer, unless the exchange rate is not fixed on send;

(v) the amount of time for which the information specified in this subparagraph (A) will be in effect;

(vi) the expected time interval within which the funds being transferred will be made available to the recipient; and

(vii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(B) at the time at which the consumer makes payment in connection with the remittance transfer, a receipt in writing disclosing clearly and conspicuously—

(i) the information described in subparagraph (A);

(ii) the expected time interval within which the funds being transferred will be made available to the recipient, which shall be not more than ten days after the date the consumer makes payment in connection with the remittance transfer unless otherwise prohibited by applicable State or Federal law or the law of another country, or as may be specified by the consumer so long as the consumer has the choice to order that the funds be made available to the recipient not more than ten days after the consumer makes payment in connection with the remittance transfer;

(iii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(iv) the name and telephone number or address of the designated recipient, if provided to the remittance transfer provider by the consumer;

(v) information about the rights of the consumer under this section to cancel the remittance transfer, to resolve errors and to receive refunds;

(vi) appropriate contact information for the remittance transfer provider;

(vii) a transaction reference number unique to that remittance transfer; and

(viii) information as to when the exchange rate will be calculated (for example, when the funds are received by the recipient), if the customer has been notified that the exchange rate is not fixed on send;

(C) at the time at which the consumer initiates the remittance transfer, offer to provide in writing, prior to making any payment in connection with the transfer, the information listed in subparagraph (A); and

(D) in the case of an exchange rate not fixed on send, the remittance provider shall also disclose, at the time at which the consumer initiates the remittance transfer, the range, using the high and low rates, for the prior 30 day period, that the consumer would have received if a representative amount had been exchanged by the remittance transfer provider, as well as a clear and conspicuous notice that the actual exchange rate may vary.

If the actual rate used for the transfer is known to the remittance provider, either because such rate was set by the remittance provider itself or because the remittance provider receives confirmation of the actual exchange rate used, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient or the remittance transfer received, using the values of the currency into which the funds were exchanged. The Director shall within 2 years after the date of the enactment of the Consumer Financial Protection Agency Act of 2009 prescribe consumer disclosures for transfers with rates not fixed on send that are functionally equivalent to those applicable to remittances where the exchange rate is specified by the remittance transfer provider at the time the consumer initiates the remittance transfer. To the greatest extent possible, the Director shall ensure that functional equivalence will enable remittance transfer providers to comply with all requirements in this title and provide consumers with information sufficient to compare services providers, to time their use of the product, to discover errors in transmission and to seek remedies.

(3) EXEMPTION.—Notwithstanding requirements under paragraph (2)(A)(ii), (2)(A)(iv), or (2)(B)(i), no such disclosure is required—

(A) because of the requirements of another law, including the law of another country;

(B) because the transfer is being routed through the Director a México offered by the Federal reserve banks; or

(C) because of any other circumstance deemed permissible by regulation of the Director; If the actual rate used for the transfer is known to the remittance provider, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged.

(4) PROVISION OF TOLL-FREE NUMBER AND WEB ACCESS.—

(A) In addition to providing the disclosures required by this section to a consumer at a remittance transfer provider location, a remittance transfer provider shall provide a toll-free telephone number or local number, and an Internet website that a consumer can access for which access no remittance transfer provider may assess a charge, to obtain the information required by paragraph (2)(A) for remittance transfers offered by that remittance transfer provider or information about the status of a remittance transfer for which a consumer has made payment.

(B) A remittance transfer provider that on an aggregate basis originates 30,000 or fewer transfers on a calendar year basis (or such other amount as may be prescribed by the Director) is not required to offer the web access prescribed in subparagraph (A), but is required to provide a toll-free telephone number or local number as prescribed in subparagraph (A).

(5) ALTERNATIVE METHODS OF DISCLOSURE.—Subject to subsection (e)(2), a remittance transfer provider may—

(A) if the transaction is conducted entirely by telephone (which shall include, but not be limited to, a mobile telephone) satisfy the requirements of paragraph (2)(A) orally or, at the option of the consumer, electronically through a message sent to the consumer through any electronic means (including, but not limited to, an electronic mail address or a mobile telephone) as designated by the consumer;

(B) satisfy the requirements of paragraph (2)(A) electronically if the transfer is initiated by the consumer electronically through the remittance transfer provider's website or through any other electronic means; and

(C) satisfy the requirements of paragraph (2)(B) by mailing (or transmitting electronically if the transfer is initiated electronically by the consumer through the remittance transfer provider's website or the consumer otherwise consents in accordance with the provisions of section 101 of the Electronic Signatures in Global and National Commerce Act) the information required under such paragraph to the consumer not later than one business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone (or electronically) and the consumer requests a written receipt.

(b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

(1) IN GENERAL.—The disclosures required under subsections (a)(2)(A) and (a)(2)(B)(i) shall be made in English and—

(A) at each remittance transfer provider location, shall be made in the same languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market its remittance transfers business, either orally or in writing, at that location, if other than English, provided that such languages are those for which the Director has issued model disclosures as provided in subsection (g); or

(B) on a remittance transfer provider's website, shall at a minimum be made in any other language for which the Director has issued model disclosures as provided in subsection (g) if the remittance transfer provider, or any of its agents, advertises, solicits, or markets its remittance transfers business in such language.

(2) DISPUTES CONCERNING TERMS.—If a disclosure is required by this section to be in English and another language, the English version of the disclosure shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the remittance transfer provider or its agent and the remittance transfer provider or its agent shall be liable for any damages caused by these discrepancies.

(c) REMITTANCE TRANSFER CANCELLATIONS, REFUNDS, AND ERRORS.—

(1) CANCELLATIONS.—

(A) After receiving the receipt required under subsection (a)(2)(B), a consumer may cancel the currency transaction—

(i) before leaving the premises of the remittance transfer provider where the consumer received the receipt, and

(ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

(D) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(2) REFUNDS.—

(A) If a remittance transfer provider receives written notice from the consumer within ten days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

(i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;

(ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);

(iii) provide such other remedy, as determined appropriate by rule of the Director for the protection of consumers; or

(iv) demonstrate to the consumer that the proceeds of the remittance transfer were made available to the recipient of the remittance provider.

(B) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(3) ERROR RESOLUTION.—

(A) IN GENERAL.—If a remittance transfer provider receives written notice from the consumer within 60 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this paragraph.

(B) REMEDIES.—Not later than 120 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall—

(i) as applicable to the error and as designated by the consumer—

(I) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with the remittance transfer that was not properly transmitted;

(II) make available to the designated recipient, without additional cost to the designated recipient or to the consumer, the amount appropriate to resolve the error;

(III) provide such other remedy, as determined appropriate by regulation of the Director for the protection of consumers; or

(ii) demonstrate to the consumer that there was no error.

(4) REGULATIONS.—The Director, in order to protect consumers, shall establish, by regulation, clear and appropriate standards for remittance transfer providers with respect to error resolution, cancellation and refunds.

(d) ENFORCEMENT AUTHORITY.—The Director shall have the sole authority to enforce the provisions of this section, and any regulations established pursuant to this section.

(e) APPLICABILITY OF OTHER PROVISIONS OF LAW.—

(1) APPLICABILITY OF TITLE 18 AND TITLE 31 PROVISIONS.—A remittance transfer provider that is a money transmitting business as defined in section 5330 of title 31, United States Code, may provide remittance transfers only if such provider is in compliance with the requirements of section 5330 of title 31, United States Code, and section 1960 of title 18, United States Code, as applicable.

(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, or chapter 2 of title I of Public Law 91–508, or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) 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 regulation prescribed under such subparagraph.

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

(1) DEPOSITORY INSTITUTION.—the term ''depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes a credit union.

(2) NOT FIXED ON SEND.—The term ''not fixed on send'' when referring to an exchange rate used in a remittance transfer means an exchange rate that is not set by the remittance transfer provider at the time the consumer initiates the remittance transfer.

(3) REMITTANCE TRANSFER.—The term ''remittance transfer'' means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act) transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903 of the Electronic Fund Transfer Act.

(4) REMITTANCE TRANSFER PROVIDER.—The term ''remittance transfer provider'' means any person or depository institution, or agent thereof, that originates remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or depository institution.

(g) MODEL DISCLOSURES.—

(1) PUBLICATION.—Notwithstanding any provisions of this title, the Director shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this section and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) LANGUAGES TO BE USED IN MODEL DISCLOSURES.—The Director shall make these disclosures available within 1 year of the effective date of this title—

(A) in English, and

(B) the ten most frequently spoken languages in the United States, other than English, used by consumers initiating remittance transfers, as may be determined by the Director.

(3) USE OF AUTOMATED EQUIPMENT.—In establishing model forms under this subsection, the Director shall consider the use by lessors of data processing or similar automated equipment.

(4) USE OPTIONAL.—A remittance transfer provider may utilize a model disclosure form established by the Director under this subsection for purposes of compliance with this section, at the discretion of the remittance transfer provider.

(5) EFFECT OF USE.—Any remittance transfer provider that properly uses the material aspects of any model disclosure form established by the Director under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(h) REGULATION AND EXEMPTION AUTHORITY.—Notwithstanding any other provisions of this title, the Director, in the sole discretion of the Director, in consultation with relevant Federal and State government agencies may by regulation exempt from one or more requirements of this section, any category of remittance transfer provider if the Director determines that under applicable Federal or State law that such category of remittance transfer provider is subject to requirements substantially similar to those imposed under this section or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(i) APPLICABILITY OF STATE LAW.—

(1) This section does not annul, alter, affect, or exempt any person subject to the provisions of this section from complying with other applicable Federal law and the laws of any State relating to remittance transfers and remittance transfer providers, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

(2) Notwithstanding any other provisions of this title, the Director may determine whether such inconsistencies exist. A State law is not inconsistent with this section if the protection such law affords any consumer is greater than the protection afforded by this section. If the Director determines that a State requirement is inconsistent, remittance transfer providers shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This section does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(3) This section does not annul, alter, or affect the laws of any State relating to the licensing or registration, supervision or examination of remittance transfer providers.

(4) Nothing in this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(j) FEDERAL CREDIT UNION ACT AMENDMENT.—Paragraph (12)(A) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)(A)) is amended by inserting ''and remittance transfers, as defined in section 4309 of the Consumer Financial Protection Agency Act of 2009'' after ''and domestic electronic fund transfers''.

(k) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors of the Federal Reserve System 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 volume and dollar amount of remittance transfers to those countries;

(B) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(C) the feasibility of such an expansion.

(2) REPORT TO THE CONGRESS.—Before the end of the 180-day period beginning on the date of the enactment of this title, and on April 30 biennially thereafter, the Board of Governors of the Federal Reserve System shall submit a report to the Director, 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 section.

(l) REGULATORY GUIDANCE ON REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—The Director shall provide guidelines to all remittance transfer providers regarding—

(A) the offering of low-cost remittance transfers;

(B) the availability of agency services to remittance transfer providers;

(C) compliance with the provisions of this title; and

(D) specific options that allow remittance transfer providers to take advantage of automated clearing systems, including the FedACH International Services offered by the Board of Governors of the Federal Reserve System and the Federal reserve banks, to transmit remittances at low cost.

(2) CONTENT OF GUIDELINES.—Guidelines provided to remittance transfer providers under this section shall include—

(A) information as to the methods of providing remittance transfer services;

(B) the potential economic opportunities in providing low-cost remittance transfers; and

(C) the potential value to depository institutions of broadening their financial bases to include persons that use remittance transfers.

(3) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

(m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of the enactment of this title, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which a consumer's remittance history could be used to enhance a consumer's credit score;

(2) the current legal and business model barriers and impediments that impede the use of a consumer's remittance history to enhance the consumer's credit score; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in section s 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by subsection (a)).

(n) EFFECTIVE DATE.—This section shall apply with respect to remittance transfers made after the end of the 180-day period beginning on the date of the enactment of this title.

SEC. 4310. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF FINANCIAL PRODUCTS OR SERVICES.

The Director may not prescribe any regulation, issue any order or guidance, or take any other action, including any enforcement action, the effect of which would be to require a covered person to offer to any consumer a specific financial product or service.

SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act 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 section 1501 et seq. of the SAFE Mortgage Licensing Act of 2008; and

(B) subject to State or Federal 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.

Subtitle D—Preservation of State Law

SEC. 4401. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the 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 such statute, regulation, order, or interpretation affords 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 Agency 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 4803, 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.

SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Any State attorney general 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 or State court having jurisdiction of the defendant, to secure monetary or equitable relief for violation of any provisions of this title or regulations issued thereunder.

(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 Agency, or the Agency's designee.

(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 Agency immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this section 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 or Agency or another Federal agency.

(2) AGENCY RESPONSE.—In any action described in paragraph (1), the Agency 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 limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of 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. 4403. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, and established by the Agency, 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. 4404. 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 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 meaning as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—National banks shall generally comply with State laws. State laws are preempted only if—

''(A) application of a State 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 Comptroller of the Currency determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as national bank to engage in the business of banking; or

''(C) the State law is preempted by Federal law other than this Act.

''(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any national bank subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

''(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

''(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Comptroller of the Currency regarding the meaning or interpretation of the National Bank Act or other Federal laws.

''(c) SUBSTANTIAL EVIDENCE.—No regulation 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 that the provision prevents or significantly interferes with the national bank's exercise of a power explicitly granted by the Congress.

''(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe regulation pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Consumer Financial Protection Agency, 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.—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 timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244 (12 U.S.C. 43(a)–(b)).

''(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 to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.''.

(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.''.

SEC. 4405. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 4404) is amended by adding at the end the following new subsections:

''(g) VISITORIAL POWERS.—

''(1) RULE OF CONSTRUCTION.—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory 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 any action in any court of appropriate jurisdiction—

''(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

''(B) to enforce any applicable Federal or State law, as authorized by such law; or

''(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

''(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

''(h) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.''.

SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (h) (as added by section 4405) the following new subsection:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

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

''(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

''(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.''.

SEC. 4407. 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) STATE CONSUMER FINANCIAL LAW DEFINED.—For purposes of this section, the term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against Federal savings associations and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for Federal savings associations to engage in), or any account related thereto, with respect to a consumer.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—Federal savings associations shall generally comply with State laws. State laws are preempted only if—

''(A) application of a state law would have a discriminatory effect on Federal savings associations in comparison with the effect of the law on a bank chartered by that State;

''(B) the Director of the Office of Thrift Supervision determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as a Federal savings associations to engage in the business of banking; or

''(C) the State law is preempted by Federal law other than this Act.

''(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any Federal savings associations subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

''(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

''(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State

law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Director of the Office of Thrift Supervision regarding the meaning or interpretation of the National Bank Act or other Federal laws.

''(c) OTHER FEDERAL LAW.—Notwithstanding any other provision of law, the Director of the Office of Thrift Supervision may not prescribe any regulation pursuant to subsection (b)(1)(B) until such Director, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a Federal savings association, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

''(d) SUBSTANTIAL EVIDENCE.—No regulation prescribed by the Director of the Office of Thrift Supervision issued under subsection (b)(1)(B) shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a Federal savings association, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents or significantly interferes with the Federal savings association's exercise of a power explicitly granted by the Congress.

''(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision 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 timely propose to continue, amend or rescind it, as may be appropriate, in accordance 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)).

''(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this Act, a State consumer financial law shall apply to a subsidiary or affiliate of a Federal savings association to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law and consistent with Federal 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 clarified.''.

SEC. 4408. VISITORIAL STANDARDS.

Section 6 of the Home Owners' Loan Act (as added by section 4407 of this title) is amended by adding at the end the following new subsections:

''(g) 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 require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

''(B) to enforce any applicable Federal or State law, as authorized by such law; or

''(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

''(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

''(h) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.''.

SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act is amended by adding after subsection (h) (as added by section 4408) the following new subsection:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

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

''(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

''(2) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.''.

SEC. 4410. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 4501. DEFINITIONS.

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

(1) AGENCY INVESTIGATION.—The term ''Agency investigation'' means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title or under the authorities transferred under subtitles F and H.

(2) AGENCY INVESTIGATOR.—The term ''Agency investigator'' means any attorney or investigator employed by the Agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any regulation prescribed or order issued under this title or pursuant to any such authority by the Director.

(3) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the Agency.

(4) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilations stored in any medium.

(5) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or of any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Agency or, where appropriate, an Agency representative may engage in joint investigations and requests for information.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General, or both.''

(b) SUBPOENAS.—

(1) IN GENERAL.—The Agency or an Agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, an appropriate United States district court may upon application by the Agency or an Agency investigator and after notice to such person, issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Agency may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, 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 Agency;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material 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 Agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—

(A) Any civil investigative demand may be served by any Agency investigator at any place within the territorial jurisdiction of any court of the United States.

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

(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 its principal office or place of business.

(9) PROOF OF SERVICE.—

(A) 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) 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) PROCEDURE.—

(i) OATH AND RECORDATION.—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

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

(iii) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, the attorney for such person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Agency is engaged in a joint investigation, 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 Agency 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) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

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

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

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

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

(E) TRANSCRIPTS.—

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

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

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

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

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

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

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

(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.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the Director.

(2) DISCLOSURE TO CONGRESS.—No regulation established by the Director regarding the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall be intended to prevent disclosure to either House of the Congress or to an appropriate committee of the Congress, except that the Director may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the Agency and has 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 such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Agency, through such officers or attorneys as the Director 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 Agency investigator named in the demand, such person may file with the Agency a petition for an order by the Agency modifying or setting aside the demand.

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

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

(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 such custodian by this section or regulation prescribed by the Director.

(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 into effect the provisions of this section.

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

SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.

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

(1) the provisions of this title, including any regulations prescribed by the Director under this title; and

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

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) NOTICE OF CHARGES.—If, in the opinion of the Agency, any covered person or service provider is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the person a notice of charges with respect to such violation.

(B) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(C) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Agency at the request of any party so served.

(D) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(E) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Agency shall find that any violation specified in the notice of charges has been established, the Agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(F) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Agency or a reviewing court.

(3) DECISION AND APPEAL.—

(A) PLACE OF AND PROCEDURES FOR HEARING.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(B) TIME LIMIT FOR DECISION.—After such hearing, and within 90 days after the Agency has notified the parties that the case has been submitted to it for final decision, the Agency shall—

(i) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(ii) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(C) MODIFICATION OF ORDER GENERALLY.—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (4), and thereafter until the record in the proceeding has been filed as so provided, the Agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(D) MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.—Upon such filing of the record, the Agency may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—

(A) IN GENERAL.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Agency be modified, terminated, or set aside.

(B) TRANSMITTAL OF COPY TO THE AGENCY.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the Agency, and thereupon the Agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code.

(C) JURISDICTION OF COURT.—Upon the filing of a petition under subparagraph (A), 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 Agency.

(D) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code.

(E) FINALITY.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 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 Agency.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) IN GENERAL.—Whenever the Agency 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 of such violation, 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 Agency 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.

(B) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this subtitle.

(C) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the 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 a person's books and records are so incomplete or inaccurate that the Agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall take effect 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 Agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office 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) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

SEC. 4504. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency may commence a civil action against such person to impose a civil penalty and to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the Agency is a party.

(c) COMPROMISE OF ACTIONS.—The Agency 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 this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation thereunder, the Agency shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Agency may represent itself in its own name before the Supreme Court of the United States, if—

(1) the Agency 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

(2) the Attorney General concurs with such request or fails to take action within 60 days of the Agency's request.

(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 this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

(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 the discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

SEC. 4505. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Agency, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a regulation prescribed or order issued under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Such relief may include—

(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;

(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 under 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 Agency, a State attorney general, or a State bank supervisor to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency, State attorney general, or State bank supervisor may recover the costs incurred by such Agency, attorney general, or supervisor in connection with prosecuting such action if the Agency, State attorney general, or State bank supervisors (as the case may be) is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates, through any act or omission, any provision of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title shall forfeit and pay a civil penalty pursuant to this subsection determined as follows:

(A) FIRST TIER.—For any violation of any law, regulation, final order or condition imposed in writing by the Agency, or for any failure to pay any fee or assessment imposed by the Agency (including any fee or assessment for which a related person may be liable), a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any violation of a regulation prescribed under section 4306 or for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall 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 this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.

(2) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (1), the Agency 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.

(3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). 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.

(4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director, unless—

(A) the Agency 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 Agency.

SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.

Whenever the Agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Agency shall transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. No provision of this section shall be construed as affecting any other authority of the Agency to disclose information.

SEC. 4507. 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 employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) has provided information to the Agency or to any other State, local, or Federal Government authority or law enforcement official information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(3) has filed or instituted, or has caused to be filed or instituted, any proceeding under any enumerated consumer law or any law for which authorities were transferred by subtitles F and H; or

(4) has 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, regulation, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Agency.

(b) COVERED EMPLOYEE DEFINED.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the provision of a financial product or service to a consumer.

(c) TIMETABLES.—

(1) FILING COMPLAINT.—Any individual who believes that such individual has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, before the end of the 180-day period beginning on the date on which such violation occurs, file (or have any person file on behalf of such individual) a complaint with the Secretary of Labor (hereafter in this subsection referred to as the ''Secretary'', notwithstanding section 4002(34)) alleging such discharge or discrimination and identifying the person responsible for such act.

(2) SECRETARY'S ACTION ON RECEIPT OF COMPLAINT.—Upon receipt of a complaint by any individual under paragraph (1), the Secretary shall notify, in writing, the person named in the complaint who is alleged to have committed the violation of—

(A) the filing of the complaint;

(B) the allegations contained in the complaint;

(C) the substance of the evidence supporting the complaint; and

(D) the opportunities that will be afforded to such person under paragraph (3).

(3) INVESTIGATION, HEARING, AND ORDERS.—

(A) FINDINGS.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the individual filing the complaint and the person named in the complaint who is alleged to have committed the violation an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(B) PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B).

(C) OBJECTIONS TO FINDINGS OR PRELIMINARY ORDER.—Not later than 30 days after the date of notification of findings under subparagraph (A), 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.

(D) OBJECTIONS DO NOT CONSTITUTE A STAY.—The filing of objections under subparagraph (C) shall not operate to stay any reinstatement remedy contained in the preliminary order.

(E) EXPEDITIOUS HEARING.—Any hearing requested under subparagraph (C) shall be conducted expeditiously.

(F) FINALITY OF ORDER.—If a hearing is not requested under subparagraph (C) with respect to any findings of the Secretary under subparagraph (A) within the 30-day period described in subparagraph (C), the preliminary order shall be deemed a final order that is not subject to judicial review.

(4) STANDARDS FOR DETERMINATION.—

(A) PRIMA FACIE EVIDENCE OF CONTRIBUTION.—The Secretary shall dismiss a complaint filed under paragraph (1) and shall not conduct an investigation otherwise required under paragraph (3)(A) unless the individual filing the complaint makes a prima facie showing that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) PROHIBITION ON INVESTIGATION IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (3) 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) CONTRIBUTING FACTOR REQUIREMENT.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) PROHIBITION ON FINAL ORDER IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Relief may not be ordered under paragraph (3) 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.

(5) FINAL ORDER.—

(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (3), the Secretary shall issue a final order providing the relief prescribed by this subsection or denying the complaint.

(B) SETTLEMENT AGREEMENT.—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, the complainant, and the person alleged to have committed the violation.

(C) CONTENTS OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to such individual's former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with such individual's employment; and

(iii) to provide compensatory damages to the complainant.

(D) COSTS AND ATTORNEYS FEES.—If an order is issued under this paragraph, the Secretary, 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 attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(E) FRIVOLOUS OR BAD FAITH COMPLAINTS.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(6) DE NOVO ACTION ON CLAIM.—

(A) ACTION AT LAW OR EQUITY.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant who filed such complaint may bring an action at law or equity for de novo review in the appropriate district court of the United States.

(B) JURY TRIAL.—At the request of either party to an action brought under subparagraph (A), such action shall be tried by the court with a jury.

(C) STANDARDS FOR DETERMINATION.—The standards for determination established under paragraph (4) shall apply in any action under this paragraph.

(D) RELIEF.—The court shall have jurisdiction to grant all relief, including injunctive relief and compensatory damages , that necessary to make the complainant who sought de novo review whole, including—

(i) reinstatement with the same seniority status that the complainant 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's fees.

(E) NOT REVIEWABLE.—The decision of the court shall be final without further review.

(7) JUDICIAL REVIEW OF FINAL ORDER.—

(A) IN GENERAL.—Unless a complainant brings a de novo action under paragraph (6), any person adversely affected or aggrieved by a final order issued under paragraph (5) may obtain 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.

(B) STATUTE OF LIMITATION .—Any petition for review of a final order under subsection shall be filed not later than 60 days after the date of the issuance of the final order by the Secretary.

(C) STANDARDS FOR REVIEW.—The standards for review established under chapter 7 of title 5, United States Code, shall apply in any review of a final order under this paragraph.

(D) EFFECT OF PROCEEDINGS AS STAY.—The commencement of proceedings under this paragraph shall not operate as a stay of the final order of the Secretary under review, unless so ordered by the court.

(E) LIMITATION ON EFFECT OF OTHER PROCEEDINGS.—Except as provided in paragraph (6) and this paragraph, an order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(8) ENFORCEMENT OF ORDERS BY SECRETARY.—

(A) IN GENERAL.—Whenever any person has failed to comply with an order issued under paragraph (5), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.

(B) RELIEF.—In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(9) ENFORCEMENT OF ORDER BY AGGRIEVED PARTY .—

(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (5) may commence a civil action against the person to whom such order was issued to require compliance with such order.

(B) RELIEF.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(d) ACTION IN NATURE OF MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Notwithstanding any law and 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 any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Notwithstanding any law and except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable and to the extent the agreement 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)(2) unless the Director determines by regulation that such provision is inconsistent with the purposes of this title.

SEC. 4508. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), 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 Director.

(B) BOARD OF GOVERNORS' AUTHORITY.—The Director 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 Director.

(B) COMPTROLLER'S AUTHORITY.—The Director 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 Director.

(B) DIRECTOR'S AUTHORITY.—The Director 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 Director.

(B) CORPORATION'S AUTHORITY.—The Director 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), the consumer financial protection functions of the Federal Trade Commission that are contained within the enumerated consumer laws are transferred to the Agency, except as provided in section 4202(e). This transfer shall not be subject to the provisions of Section 3503 of title 5, United States code.

(B) FEDERAL TRADE COMMISSION AUTHORITY.—The Agency shall have all powers and duties that were vested in the Fedeal Trade Commission that were contained within the enumerated statutes, except as provided in section 4202(e), on the day before the designated transfer date.

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Director.

(B) NATIONAL CREDIT UNION ADMINISTRATION'S AUTHORITY.—The Director 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) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 are transferred to the Director.

(B) SECRETARY OF HUD'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date

(b) TRANSFERS OF FUNCTIONS SUBJECT TO BACKSTOP ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement proceedings under the circumstances described in section 4202(e)(3).

(c) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(d) CONSUMER FINANCIAL PROTECTION FUNCTIONS DEFINED.—For purposes of this subtitle, 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 provision of consumer financial products or services, including the authority to assess and collect fees for those purposes, except that such term shall not include any such function relating to an agency's responsibilities under the Community Reinvestment Act of 1977.

(e) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the designated transfer date.

SEC. 4602. DESIGNATED TRANSFER DATE.

The designated transfer date shall be 180 days after the date of enactment of this title.

SEC. 4603. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(1) shall 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 Director 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 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 Director by this title, except that the Director 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 4601(a)(4) shall 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 Director 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 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 Director by this title, except that the Director 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.—Section 4601(a)(5) shall 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 Deposit Insurance Corporation transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(5) shall 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 Director 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 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 Director by this title before the designated transfer date, except that the Director 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) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(3) 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—

(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 Director by this title; and

(B) that 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 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 Director by this title before the designated transfer date, except that the Director 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) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of Housing and Urban Development, 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 Housing and Urban Development under the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 transferred to the Director by this title; and

(B) that 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 Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of Housing and Urban Development transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Secretary of Housing and Urban Development (or such Department) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, REGULATIONS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and regulations that have been issued, made, prescribed, or allowed to become effective by the Board of Governors (or any Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, 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 regulations, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, by any court of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the designated transfer date, the Director—

(1) shall, after 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, and the Secretary of Housing and Urban Development identify the regulations continued under subsection (g) that will be enforced by the Director; and

(2) shall publish a list of such regulations in the Federal Register.

(j) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Director.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development 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 take effect as a regulation of the Director according to its terms.

SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Board of Governors shall—

(i) jointly determine the number of employees of the Board necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Director 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 Agency in a manner that the Director and the Board of Governors, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Agency 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 Director 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 Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Agency in a manner that the Director and the Board of Directors of the Corporation, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified

under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director 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 Director 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 Agency in a manner that the Director and the National Credit Union Administration Board, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(4) CERTAIN HUD EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Secretary 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 financial protection functions of the Secretary of Housing and Urban Development that are transferred to the Director 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 Agency in a manner that the Director and the Secretary of Housing and Urban Development, in their 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 Agency for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Director 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 to such subparagraph) 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 such employee's position assignment not later than 120 days after the effective date of the employee's 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 Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Agency with the same status and tenure as he or she 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 employees transferring to the Agency 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 Agency shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Agency examining the same types of institutions as the transferred examiners examined before such examiners were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 5-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date shall not, during the 5-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside such transferred employee's local locality pay area as defined by the Director of the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Director to—

(A) separate an employee for cause or for unacceptable performance;

(B) 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) reassign a supervisory employee outside such employee's locality pay area as defined by the Director of the Office of Personnel Management when the Director determines that the reassignment is necessary for the efficient operation of the Agency.

(g) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 1-year period beginning on the designated transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Agency to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Agency.

(4) PAY INCREASES PERMITTED.—Paragraph (1) shall not be construed as limiting the authority of the Agency to increase a transferred employee's pay.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Agency 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 Director of 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 Agency shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Director of 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 Director of 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 Agency 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 Agency determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Agency 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 Agency 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 such employee's existing retirement plan as long as the employee remains employed by the Agency.

(ii) EMPLOYER'S CONTRIBUTION.—The Director 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 the date of the employee's transfer to the Agency may, during the period beginning 6 months after the designated transfer date and ending 1 year 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) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for Agency 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 Director shall deposit into the account established under clause (i) the employer contributions that the Agency makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Director 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, the following definitions shall apply:

(i) EXISTING RETIREMENT PLAN.—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.

(ii) FEDERAL EMPLOYEE RETIREMENT PLAN.—The term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapters 83 and 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'S CONTRIBUTION.—The Director 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 Director decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision 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; and

(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 Director decides not to continue participation in any long-term care insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision 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'S CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Director 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 Director and the Director of 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.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a health benefits plan administered by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors, the Secretary of Housing and Urban Development, or a Federal reserve bank, 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 the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision 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 Agency, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Director 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 Director and the Director of 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 section, enrollment in a life insurance plan administered by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or a Federal reserve bank 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 designated transfer date, the Director shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Director—

(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 Secretary of Housing and Urban Development, 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 those employees' 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, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, 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 Director shall work with the Director of the Office of Personnel Management and other entities with expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 4605. 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 the enactment of this title.

SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Director under this subtitle until the appointment of the Director in accordance with section 4102.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury may provide administrative services necessary to support the Agency before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of carrying out the authorities granted in this section, there are appropriated to the Secretary of the Treasury such sums as are necessary. Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(iv) any other data deemed appropriate by the Director.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency, or to a Federal banking agency, in accordance with regulations prescribed by the Director.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Director.

(d) AGENCY USE.—The Director—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Director shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Director shall prescribe regulations regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

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

(1) AGENCY.—The term ''Agency'' means the Consumer Financial Protection Agency.

(2) CREDIT UNION.—The term ''credit union'' means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(3) DEPOSIT ACCOUNT.—The term ''deposit account'' includes any checking account, savings account, credit union share account, and other type of account as defined by the Director.

(4) DIRECTOR.—The term ''Director'' means the Director of the Agency.

(5) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term ''Federal banking agencies'' means all of those agencies.

(6) FINANCIAL INSTITUTION.—The term ''financial institution''—

(A) has the meaning given to the term ''insured depository institution'' in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 4702. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

''§ 704B. Small business loan data collection

''(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women- and minority-owned small businesses.

''(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

''(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

''(2) maintain a record of the responses to such inquiry separate from the application and accompanying information.

''(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

''(d) NO ACCESS BY UNDERWRITERS.—

''(1) IN GENERAL.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

''(2) EXCEPTION.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution will provide notice to the applicant of the access of the underwriter to this information, along with notice that the financial institution may not discriminate on this basis of this information.

''(e) FORM AND MANNER OF INFORMATION.—

''(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Agency, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

''(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

''(A) The number of the application and the date the application was received.

''(B) The type and purpose of the loan or other credit being applied for.

''(C) The amount of the credit or credit limit applied for and the amount of the credit transaction or the credit limit approved for such applicant.

''(D) The type of action taken with respect to such application and the date of such action.

''(E) The census tract in which is located the principal place of business of the small business loan applicant.

''(F) The gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application.

''(G) The race, sex, and ethnicity of the principal owners of the business.

''(H) Any additional data the Agency determines would aid in fulfilling the purposes of this section.

''(3) INCLUSION OF PERSONALLY IDENTIFIABLE INFORMATION PROHIBITED.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

''(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Agency may, in

the discretion of the Agency, delete or modify data collected under this section which is or will be available to the public if the Agency determines that the deletion or modification of the data would advance a compelling privacy interest.

''(f) AVAILABILITY OF INFORMATION.—

''(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency.

''(2) AVAILABILITY OF INFORMATION.—

''(A) IN GENERAL.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Agency.

''(B) ANNUAL DISCLOSURE TO THE PUBLIC.—In addition to the availability by request under subparagraph (A) of data compiled and maintained under this section, the Agency shall annually provide such data to the public.

''(C) PROCEDURES.—The procedures for disclosing data compiled and maintained under this section to the public shall be determined by the Agency by regulation.

''(3) COMPILATION OF AGGREGATE DATA.—

''(A) IN GENERAL.—The Agency may, in the discretion of the Agency, compile for the Agency's own use compilations of aggregate data.

''(B) PUBLIC AVAILABILITY OF AGGREGATE DATA.—The Agency may, in the discretion of the Agency, make public compilations of aggregate data in such manner as the Agency may determine to be appropriate.

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

''(1) FINANCIAL INSTITUTION.—The term 'financial institution' means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

''(2) MINORITY-OWNED BUSINESS.—The term 'minority-owned business' means a business—

''(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

''(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

''(3) WOMEN-OWNED BUSINESS.—The term 'women-owned business' means a business—

''(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

''(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

''(4) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

''(5) SMALL BUSINESS LOAN.—The term 'small business loan' shall be defined by the Agency, which may take into account—

''(A) the gross revenues of the borrower;

''(B) the total number of employees of the borrower;

''(C) the industry in which the borrower has its primary operations; and

''(D) the size of the loan.

''(h) AGENCY ACTION.—

''(1) IN GENERAL.—The Agency shall prescribe such regulations and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

''(2) EXCEPTIONS.—The Agency, by regulation or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of institutions from the requirements of this section as the Agency determines to be necessary or appropriate to carry out the purposes and objectives of this section.

''(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) by striking ''or'' after the semicolon at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting ''; or''; and

(3) by inserting after paragraph (4), the following new paragraph:

''(5) to make an inquiry under section 704B in accordance with the requirements of such section.''.

(c) CLERICAL AMENDMENT.—The table of sections for the Equal Credit Opportunity Act is amended by inserting after the item relating to section 704A the following new item:

''704B. Small business loan data collection.''.

(d) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 4703. ANNUAL FINANCIAL AUTOPSY.

(a) STUDY REQUIRED.—Not later than March 31 of each calendar year, the Director shall—

(1) conduct a scientific sampling of foreclosures and bankruptcies during the previous calendar year in each State or territory of the United States; and

(2) identify any underlying causes of such bankruptcies or foreclosures, including any specific financial products or services that have been the cause of substantial numbers of such bankruptcies or foreclosures.

(b) REPORT.—After the completion of each study required under subsection (a), the Director shall submit a report to the Congress containing—

(1) any conclusions made by the Director in carrying out such study;

(2) any specific financial products or services that the Director has identified to have caused a substantial number of bankruptcies or foreclosures, as well as which companies or individuals provided such financial products or services; and

(3) any recommendations the Director has for legislation that would reduce the underlying causes of bankruptcies and foreclosures identified in such study.

Subtitle H—Conforming Amendments

SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.

(a) ESTABLISHMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Consumer Financial Protection Agency,'' before ''the Consumer Product Safety Commission,''.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) APPLICABILITY.—Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:

''(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) SECTION 803(1).—Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C).

(b) SECTION 804(a).—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) in paragraphs (1), (2), and (3), by inserting ''on or before the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009'' after ''transactions made'' each place such term appears;

(2) in paragraph (2), by striking ''and'' at the end;

(3) in paragraph (3), by striking the period at the end and inserting ''; and''; and

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

''(4) with respect to transactions made after the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Agency for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under laws other than this section.''.

(c) SECTION 804.—Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

''(c) EFFECT OF STATE LAW.—

''(1) IN GENERAL.—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.

''(2) RULE OF CONSTRUCTION.—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

(2) by adding at the end the following new subsection:

''(d) DUTIES OF CONSUMER FINANCIAL PROTECTION AGENCY.—The Consumer Financial Protection Agency shall—

''(1) review the regulations identified by the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision (as those regulations exist on the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009) as applicable under paragraphs (1), (2), and (3) of subsection (a);

''(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of section 4201 of the Consumer Financial Protection Agency Act of 2009; and

''(3) prescribe regulations under subsection (a)(4) after the designated transfer date, as determined under such Act.''.

(d) EFFECTIVE DATE AND SCOPE OF APPLICATION.—

(1) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

(2) SCOPE OF APPLICATION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 which is entered into on or before the designated transfer date.

SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) TRUTH IN LENDING ACT.—

(1) SECTION 103.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by striking subsection (b) and inserting the following new subsection:

''(b) AGENCY DEFINITIONS.—

''(1) BOARD.—The term 'Board' means the 'Board of Governors of the Federal Reserve System'.

''(2) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) UNIVERSAL AMENDMENT RELATING TO BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking ''Board'' each place such term appears, including in chapters 4 and 5 relating to credit billing and consumer leases, and inserting ''Agency''.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(a) (as amended by paragraph (4)) and 140(d).

(3) SECTION 105.—Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by striking the first sentence and inserting the following: ''The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.''.

(4) SECTION 108.—Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

''(a) ENFORCING AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced as follows:

''(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

''(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

''(C) depository institution insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

''(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

''(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.

''(3) Under the Federal Credit Union Act, by the head of the agency responsible for chartering and regulating Federal credit unions.

''(4) Under 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) Under 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.

''(6) Under 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 new subsection:

''(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 section 4202 of the Consumer Financial Protection Agency Act of 2009, 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 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 in the Federal Trade Commission Act.''.

(5) UNIVERSAL AMENDMENT RELATING TO THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking ''Federal Trade Commission'' each place such term appears and inserting ''Agency''.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(c) (as amended by paragraph (4)) and 129(m) (as amended by paragraph (7)).

(6) SECTION 127.—Subparagraph (C) of section 127(b)(11) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)) is amended to read as follows:

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Agency, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5 percent minimum monthly payment on a balance of $300 at an interest rate of 17 percent would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Agency at this toll-free number: _____ [the blank space to be filled in by the creditor].' A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).''.

(7) SECTION 129.—Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows:

''(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 Agency pursuant to subsection (l)(2) of this section shall be treated as a violation of a regulation promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''.

(b) FAIR CREDIT REPORTING ACT.—

(1) SECTION 603.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following new subsection:

''(w) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) UNIVERSAL AMENDMENTS RELATING TO THE FEDERAL TRADE COMMISSION.—Other than in connection with the amendment made by paragraph (7)(A), the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by striking ''Federal Trade Commission'' each place such term appears and inserting ''Agency'';

(B) by striking ''Commission'' each place such term appears (other than in connection with the term amended in subparagraph (A)) and inserting ''Agency''; and

(C) by striking ''Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each place such term appears in sections 605(h)(2) and 623(a)(8)(A) and inserting ''Agency shall''.

(3) SECTION 603.—Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Agency''.

(4) SECTION 604.—Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended—

(A) by striking subparagraph (C) of paragraph (3) and inserting the following new subparagraph:

''(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Agency (with respect to any covered person subject to the jurisdiction of such agency under paragraph (2) of section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).''; and

(B) by striking paragraph (5) and inserting the following new paragraph:

''(5) REGULATIONS REQUIRED.—The Agency 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.''.

(5) SECTION 611.—Section 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is amended to read as follows:

''(2) EXCLUSION.—Complaints received or obtained by the Agency pursuant to its investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be subject to paragraph (1).''.

(6) SECTION 615.—Section 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681m(h)(6)(A)) is amended to read as follows:

''(A) RULES REQUIRED.—The Agency shall prescribe rules.''.

(7) SECTION 621.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

''(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

''(1) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act 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) hereof. 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 and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of such Act with respect to any consumer reporting agency or person 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 in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (subject to section 4202 of the Consumer Financial Protection Agency Act of 2009), 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 thereof were part of this title.

''(2) CIVIL MONEY PENALTIES.—

''(A) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the 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) FACTORS IN DETERMINING 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 prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

''(3) EXCEPTION.—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 or the Agency, as the case may be, 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.'';

(B) by striking subsection (b) and inserting the following new subsection:

''(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, 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 subsection (d) of section 615 shall be enforced as follows:

''(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

''(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System;

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

''(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

''(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act.

''(3) Under the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union.

''(4) Under 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.

''(5) Under 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.

''(6) Under 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.

''(7) Under the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission.

''(8) Under the Federal securities law and any other laws subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person subject to the jurisdiction of the Securities and Exchange Commission.

Any term used in paragraph (1) that is not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to such term in section 1(b) of the International Banking Act of 1978.'';

(C) by striking subsection (e) and inserting the following new subsection:

''(e) REGULATORY AUTHORITY.—The Agency shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to a covered person described in subsection (b).''; and

(D) in the heading of subsection (g) by striking ''FTC''.

(8) SECTION 623.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended—

(A) by amending subparagraph (a)(7)(D) to read as follows:

''(D) MODEL DISCLOSURE.—

''(i) DUTY OF AGENCY TO PREPARE.—The Agency shall prescribe a brief model disclosure 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 shall be construed as requiring a financial institution to use any such model form prescribed by the Agency.

''(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Agency, or the financial institution uses any such model form and rearranges its format.''.

(B) by amending subsection (e) to read as follows:

''(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

''(1) GUIDELINES.—The Agency shall, with respect to the entities that are subject to its enforcement authority 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 or implementing the guidelines established pursuant to subparagraph (A).

''(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Agency 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.''

(c) EQUAL CREDIT OPPORTUNITY ACT.—

(1) SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(2) SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

''(c) The term 'Agency' means the Consumer Financial Protection Agency.''.

(3) SECTION 703.—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—

(A) by striking subsection (b);

(B) in subsection (a)—

(i) by striking ''(1)''; and

(ii) by redesignating paragraphs (2), (3), (4), and (5) as subsections (b), (c), (d), and (e), respectively;

(C) in subsection (c) (as so redesignated)—

(i) by striking ''paragraph (2)'' and inserting ''subsection (b)''; and

(ii) by striking ''such paragraph'' and inserting ''such subsection'';

(D) in subsection (d) (as so redesignated)—

(i) by striking ''subsection'' and inserting ''section''

(ii) by striking ''Act'' and inserting ''title''; and

(iii) by striking ''this paragraph'' and inserting ''this subsection''; and

(E) by striking ''Board'' each place such term appears in such section and inserting ''Agency''.

(4) SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency'' and inserting ''head of the agency responsible for chartering and regulating national banks'';

(iii) in paragraph (1)(B), by striking ''and'' after the semicolon;

(iv) in paragraph (1)(C), by inserting ''and'' after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

''(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;''; and

(vi) by amending paragraph (2) to read as follows:

''(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.'';

(B) by striking subsection (c) and inserting the following new subsection:

''(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 section 4202 of the Consumer Financial Protection Agency Act of 2009, 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 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 in the Federal Trade Commission Act, including the power to enforce any regulation prescribed by the Director 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 ''Agency''.

(5) SECTION 704a.—Section 704A(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691c–1(a)(1)) is amended in by striking ''Board'' and inserting ''Agency''.

(6) SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15 U.S.C. 1691d) is amended—

(A) in subsection (f), by striking ''Board'' each place such term appears and inserting ''Agency''; and

(B) in subsection (g), by striking ''Board'' and inserting ''Agency''.

(7) SECTION 706.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended—

(A) in subsection (e)—

(i) by striking ''Board'' each place such term appears and inserting ''Agency''; and

(ii) by striking ''Federal Reserve System'' and inserting ''Consumer Financial Protection Agency'';

(B) in subsection (f), by striking ''two years'' each place such term appears and inserting ''5 years'';

(C) in subsection (g)—

(i) by striking ''The agencies having'', in the 1st sentence, and inserting ''The Agency and the agencies having''

(ii) by striking ''Each agency referred'', in the 2nd sentence, and inserting ''The Agency and each agency referred'';

(iii) by striking ''Each such agency'', in the 3rd sentence, and inserting ''The Agency and each such agency''; and

(iv) by striking ''whenever the agency'' in the 3rd sentence, and inserting ''whenever the Agency or an agency having responsibility for administrative enforcement under section 704''; and

(D) in subsection (k)—

(i) by striking ''Whenever an agency'' and inserting ''Whenever the Agency or an agency''; and

(ii) by striking ''the agency shall notify'' and inserting ''the Agency, or an agency referred to in any such paragraph, as the case may be, shall notify''.

(8) SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(d) FAIR DEBT COLLECTION PRACTICES ACT.—

(1) SECTION 803.—Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended—

(A) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (2), (3), (4), (5), (6), (7), (8), and (9), respectively; and

(B) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

''(1) The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(e)) is amended by striking ''Commission'' and inserting ''Agency''.

(3) SECTION 814.—Section 814 of the Fair Debt Collection Practices Act (15 U.S.C. 1692l) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

''(a) FEDERAL TRADE COMMISSION.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, 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 Commission under the Federal Trade Commission Act are available to the 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 in 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.'';

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking ''Compliance'' and inserting ''ENFORCEMENT BY OTHER AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance''.

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency;'' and inserting ''head of the agency responsible for chartering and regulating national banks;'';

(iii) in paragraph (1)(B), by striking ''and'' after the semicolon;

(iv) in paragraph (1)(C), by inserting ''and'' after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

''(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;''; and

(vi) by striking paragraph (2) and inserting the following new paragraph:

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;''; and

(C) by striking subsection (d) and inserting the following new subsection:.

''(d) REGULATIONS.—The Agency may prescribe regulations with respect to the collection of debts by any debt collector.''.

(4) SECTION 815.—Section 815 (15 U.S.C. 1692m) is amended—

(A) in the section heading, by striking ''**Commission**'' and inserting ''**Agency**''; and

(B) by striking ''Commission'' each place such term appears and inserting ''Agency''.

(5) SECTION 817.—Section 817 (15 U.S.C. 1692o) is amended by striking ''Commission'' each place such term appears and inserting ''Agency''.

(e) ELECTRONIC FUND TRANSFER ACT.—

(1) SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(A) by striking paragraph (3) and inserting the following new paragraph:

''(3) the term 'Agency' means the Consumer Financial Protection Agency;''; and

(B) in paragraph (6), by striking ''Board'' and inserting ''Agency''.

(2) SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(3) SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(4) SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking ''Board'' and inserting ''Agency''.

(5) SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693e(b)) is amended by striking ''Board'' and inserting ''Agency''.

(6) SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking ''Board'' and inserting ''Agency''.

(7) SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking ''Board'' and inserting ''Agency''.

(8) SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3) is amended by striking ''Board'' and inserting ''Agency''.

(9) SECTION 915.—Section 915(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693m(d)) is amended—

(A) by striking ''Board'' each place such term appears and inserting ''Agency''; and

(B) by striking ''Federal Reserve System'' and inserting ''Consumer Financial Protection Agency''.

(10) SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency'' and inserting ''head of the agency responsible for chartering and regulating national banks''; and

(iii) by striking paragraph (2) and inserting:

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;''; and

(B) by striking subsection (c) and inserting the following new subsection:

''(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 section 4202 of the Consumer Financial Protection Agency Act of 2009, 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 Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.''.

(11) SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(12) SECTION 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(13) SECTION 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693r) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(f) AMENDMENTS TO HOEPA RELATING TO THE TRUTH IN LENDING ACT.—Section 158 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 nt.) (relating to hearings on home equity lending) is amended—

(1) in subsection (a), by striking ''Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board,'' and inserting ''Consumer Financial Protection Agency, in consultation with the Advisory Board to the Agency''; and

(2) in subsection (b), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Consumer Financial Protection Agency''.

(g) AMENDMENT TO THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 nt.) is amended by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and'' and inserting ''The Consumer Financial Protection Agency, with respect to a person subject to the enforcement authority of the Agency, the Commodity Futures Trading Commission, and''.

SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) SECTION 605.—Section 605(f)(1) of the Expedited Funds Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting '', in consultation with the Director of the Consumer Financial Protection Agency,''after ''Board''.

(b) SECTION 609.—Section 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4008(a)) is amended by inserting '', in consultation with the Director of the Consumer Financial Protection Agency,''after ''Board''.

SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) SECTION 8.—Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), as amended by section 1111(b)(2), is further amended by adding at the end the following new paragraph:

''(7) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in section 4202(e)(2) of the Consumer Financial Protection Agency Act of 2009, by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.''.

(b) SECTION 43.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) in subsection (c), by striking ''Federal Trade Commission'' and inserting ''Agency'';

(2) in subsection (d), by striking ''Federal Trade Commission'' and inserting ''Agency'';

(3) in subsection (e)—

(A) in paragraph (2)(B), by striking ''Federal Trade Commission'' and inserting ''Agency''; and

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

''(5) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(c) SECTION 43(f).—Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(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 Agency Act of 2009 by the Agency with respect to any person (and without regard to the provision of a consumer financial product or service).''; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following new subparagraph:

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Agency has instituted an enforcement action for a violation of this section, no appropriate State supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Agency for any violation of this section that is alleged in that complaint.''.

SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) SECTION 504.—Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Consumer Financial Protection Agency and''; and

(2) by striking '', and the Federal Trade Commission''.

(b) SECTION 505.—

(1) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(A) in the matter preceding paragraph (1), by striking ''This subtitle and the regulations prescribed thereunder shall be enforced by'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations prescribed under this title shall be enforced by the Consumer Financial Protection Agency,''; and

(B) by inserting after paragraph (7) the following new paragraph:

''(8) Under the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency in the case of financial institutions and other covered persons and service providers subject to the jurisdiction of the Agency under that Act, but not with respect to the standards under section 501.''.

(2) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting '', other than the Consumer Financial Protection Agency,'' after ''described in subsection (a)''.

SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) SECTION 303.—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (2), (3), (4), (5), (6), and (7), respectively; and

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

''(1) The term 'Agency' means the Consumer Financial Protection Agency.''.

(b) UNIVERSAL AMENDMENT RELATING TO AGENCY.—Except as provided in subsections (c), (d), (e), and (f), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–11) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(c) SECTION 304.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) in subsection (b)—

(A) by striking ''and'' after the semicolon at the end of paragraph (3);

(B) by striking ''and gender'' in paragraph (4), and inserting ''age, and gender'';

(C) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(D) by inserting after paragraph (4) the following new paragraphs:

''(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

''(A) the total points and fees payable at origination in connection with the mortgage as determined by the Agency, taking into account section 103(aa)(4) of the Truth in Lending Act (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 Agency may require; and

''(6) the number and dollar amount of mortgage loans and completed applications grouped according to the following measurements:

''(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 Agency may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

''(G) as the Agency may determine to be appropriate, a universal loan identifier;

''(H) as the Agency 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 Agency may prescribe, except that the Agency 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 Agency may require.'';

(2) by striking subsection (h) and inserting the following new subsection:

''(h) SUBMISSION TO AGENCIES.—

''(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Agency or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Agency. Institutions will not be required to report new data required under section 4808(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date that regulations prescribed by the Agency are prescribed in final form.

''(2) REGULATIONS.—Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Agency, in cooperation with other appropriate regulators, including—

''(A) the head of the agency responsible for chartering and regulating national banks for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

''(B) the Federal Deposit Insurance Corporation for depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks;

''(C) the Director of the Office of Thrift Supervision for Federal savings associations and savings and loan holding companies;

''(D) the National Credit Union Administration Board for credit unions; and

''(E) the Secretary of Housing and Urban Development for other lending institutions not regulated by an agency referred to in subparagraphs (A), (B), (C), or (D),

shall develop regulations prescribing 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.

''(3) REQUIRED DISCLOSURES.—The regulations prescribed under paragraph (2) shall require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans.

''(4) ADDITIONAL DATA OR EXPLANATIONS.—Any reporting institution may submit in writing to the Agency or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.'';

(3) in subsection (i), by striking ''subsection (b)(4)'' and inserting ''paragraphs (4), (5), and (6) of subsection (b)'';

(4) in subsection (j)—

(A) by striking ''(as'' where such term appears in paragraph (1) and inserting ''(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise'';

(B) by striking ''in the format in which such information is maintained by the institution'' where such term appears in paragraph (2)(A), and inserting ''in such formats as the Agency may require''; and

(C) by striking paragraph (3) and inserting the following new paragraph:

''(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 Agency may require.''; and

(5) by striking paragraph (2) of subsection (m) and inserting the following new paragraph:

''(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 Agency may require.''.

(d) SECTION 305.—Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

''(b) POWERS OF CERTAIN OTHER AGENCIES.—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) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

''(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

''(C) depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

''(D) Federal savings associations, and savings and loan holding companies, by the Director of the Office of Thrift Supervision;

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;

''(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

''(4) other lending institutions, by the Secretary of Housing and Urban Development. 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 meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101). 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 meaning given to them in section 1(b) of the International Banking Act of 1978.''; and

(2) by inserting at the end of section 305 the following new subsection:

''(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Agency may exercise its authorities under the Consumer Financial Protection Agency Act of 2009 to exercise principal authority to examine and enforce compliance by any person with the requirements under this title.''.

(e) SECTION 306.—Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended to read as follows:

''(b) The Agency may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision of any state if the Agency determines that, under the law of such State or subdivision, that institution is subject to requirements 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 head of the agency responsible for chartering and regulating national banks under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.''.

(f) SECTION 307.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is amended to read as follows:

''SEC. 307. RESEARCH AND IMPROVED METHODS.

''(a) ENHANCED COMPLIANCE IN ECONOMICAL MANNER.—

''(1) IN GENERAL.—The Director of the Consumer Financial Protection Agency, 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 Consumer Financial Protection Agency 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 APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

''(3) AUTHORITY OF AGENCY.—The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) RECOMMENDATIONS TO THE CONGRESS.—The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.''.

SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009.

(a) Section 626(a) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking by paragraph (1) and inserting the following new paragraph: ''(1) The Director of the Consumer Financial Protection Agency shall have authority to prescribe regulations 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 regulation prescribed under this subsection shall be treated as a violation of a regulation prohibiting unfair, deceptive, or abusive acts or

practices under the Consumer Financial Protection Agency Act of 2009.'';

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by striking paragraph (4) and inserting the following new paragraph:

''(2) The Director of the Consumer Financial Protection Agency shall enforce the regulations 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 Agency Act of 2009 were incorporated into and made part of this section.''.

(b) Section 626(b) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended by striking ''primary Federal regulator'' each place it appears and inserting ''Consumer Financial Protection Agency''.

SEC. 4810. 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 the matter preceding paragraph (1) of subsection (a), by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(2) in subsection (a)(2), by striking ''and'' after the semicolon at the end;

(3) in subsection (a)(3), by striking the period at the end and inserting ''; and'';

(4) by inserting after subsection (a)(3), the following new paragraph:

''(4) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency.''; and.

(5) in subsection (b)(2), by inserting '', subject to section 4202 of the Consumer Financial Protection Agency Act of 2009'' before the period at the end.

SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) SECTION 3.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

(1) in paragraph (7), by striking ''and'' after the semicolon at the end;

(2) in paragraph (8), by striking the period at the end and inserting ''; and''; and

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

''(9) the term 'Agency' means the Consumer Financial Protection Agency.''.

(b) SECTION 4.—Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: ''The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(2) by striking ''Secretary'' each place such term appears and inserting ''Agency''; and

(3) by striking ''form'' each place such term appears and inserting ''forms''.

(c) SECTION 5.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) by striking ''Secretary'' each place such term appears, and inserting ''Agency''; and

(2) by striking the first sentence of subsection (a), and inserting ''The Agency shall prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) 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.''.

(d) SECTION 6.—Section 6(j)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3)) is amended—

(1) by striking ''Secretary'' and inserting ''Director of the Agency''; and

(2) by striking ''by regulations that shall take effect not later than April 20, 1991,'' and inserting ''by regulation,''.

(e) SECTION 7.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended by striking ''Secretary'' and inserting ''the Director of the Agency''.

(f) SECTION 8.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended—

(1) in subsection (c)(5), by striking ''prescribed by the Secretary'' and inserting ''prescribed by the Director of the Agency''; and

(2) in subsection (d)(4)—

(A) by striking ''The Secretary,'' and inserting ''The Agency, the Secretary,''; and

(B) by adding at the end the following new sentence: ''However, to the extent that a Federal law authorizes the Agency and other Federal and State agencies to enforce or administer the law, the Agency shall have primary authority to enforce or administer that Federal law in accordance with section 4202 of the Consumer Financial Protection Agency Act of 2009.''.

(g) SECTION 10.—Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d)) is amended by striking ''Secretary'' and inserting ''Agency''.

(h) SECTION 16.—Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by inserting ''the Agency,'' before ''the Secretary''.

(i) SECTION 18.—Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended by striking ''Secretary'' each place such term appears and inserting ''Agency''.

(j) SECTION 19.—Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended—

(1) in the section heading, by striking ''SECRETARY'' and inserting ''AGENCY''; and

(2) by striking ''Secretary'' each place such term appears and inserting ''Agency''.

SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) 'financial institution' means any bank, savings association, card issuer as defined in section 103(n) of the Truth in Lending Act, credit union, or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;''; and

(2) in paragraph (7), by inserting after subparagraph (A) the following new subparagraph:

''(B) the Consumer Financial Protection Agency;''.

(b) AMENDMENTS TO SECTION 1112.—Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted''.

(c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

''(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) SECTION 1503.—Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended—

(1) by striking paragraph (9);

(2) by redesignating paragraph (1) as paragraph (4), and transferring paragraph (4) (as so redesignated) and inserting such paragraph after paragraph (3) (as added by paragraph (5));

(3) by redesignating paragraphs (3), (4), (5), (6), (7), (8), (10), (11), and (12) as paragraphs (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting before paragraph (2) the following new paragraph:

''(1) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''; and

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

''(3) DIRECTOR.—The term 'Director' means the Director of the Agency.''.

(b) UNIVERSAL AMENDMENTS RELATING TO AGENCY.—The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking ''Federal banking agencies'' each place such term appears (other than in subsection (a)(4) (as so redesignated by subsection (a), relating to the definition of Federal banking agencies) or in connection with a reference that is specifically amended by another provision of this section) and inserting ''Agency''; and

(2) by striking ''Secretary'' each place such term appears (other than in connection with a reference that is specifically amended by another provision of this section) and inserting ''Director''.

(c) SECTION 1507.—Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5106) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) IN GENERAL.—The Agency shall develop and maintain a system for registering employees of any 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 July 30, 2010.''; and

(B) by striking ''appropriate Federal banking agency and the Farm Credit Administration'' in paragraph (2) and inserting ''Agency''; and

(2) in subsection (b), by striking ''Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration'' each place such term appears and inserting ''Agency''.

(d) SECTION 1508.—

(1) IN GENERAL.—Section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended by adding at the end the following new subsection—

''(f) REGULATIONS.—

''(1) IN GENERAL.—The Agency may prescribe 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) FACTORS TAKEN INTO ACCOUNT.—Such regulations 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 consumers' access to affordable and sustainable mortgage loans.''.

(2) CLERICAL AMENDMENT.—The heading for section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 is amended by striking ''**SECRETARY OF HOUSING AND URBAN DEVELOPMENT**'' and inserting ''**CONSUMER FINANCIAL PROTECTION AGENCY**''.

(e) SECTION 1510.—Section 1510 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

''SEC. 1510. FEES.

''The Agency 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.''.

(f) SECTION 1513.—Section 1513 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows:

''SEC. 1513. LIABILITY PROVISIONS.

''The Agency, 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 by 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.''.

(g) SECTION 1514.—The heading for section 1514 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is amended by striking ''**UNDER HUD BACKUP LICENSING SYSTEM**'' and inserting ''**BY THE AGENCY**''.

SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) SECTION 263.—Section 263 of the Truth in Savings Act (12 U.S.C. 4302) is amended in subsection (b) by striking ''Board'' each place such term appears and inserting ''Agency''.

(b) SECTION 265.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(c) SECTION 266.—Section 266(e) of the Truth in Savings Act is amended (12 U.S.C. 4305) by striking ''Board'' and inserting ''Agency''.

(d) SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(e) SECTION 270.—Section 270 of the Truth in Savings Act (12 U.S.C. 4309) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(B) by striking subparagraph (A) of paragraph (1) and inserting the following new subparagraph:

''(A) by the head of the agency responsible for chartering and regulating national banks for national banks, and Federal branches and Federal agencies of foreign banks;''; and

(C) by adding at the end, the following new paragraph:

''(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''BOARD'' and insert ''AGENCY''; and

(B) by striking ''Board'' and inserting ''Agency''.

(f) SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking ''Board'' and inserting ''Agency''; and

(2) in subsection (b), by striking ''regulation prescribed by the Board'' each place such term appears and inserting ''regulation prescribed by the Agency''.

(g) SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking ''Board'' and inserting ''Agency''.

(h) SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended—

(1) in paragraph (2) by striking ''Board'' and inserting ''Agency''; and

(2) by striking paragraph (4) and inserting the following new paragraph:

''(4) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b), by inserting after the 2nd sentence ''In prescribing a regulation under this Act that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Agency Act, including any enumerated consumer law thereunder, the Commission shall consult with the Consumer Financial Protection Agency regarding the consistency of a proposed regulation with standards, purposes, or objectives administered by the Consumer Financial Protection Agency.''; and

(2) in subsection (c), by adding at the end ''Any violation of any regulation prescribed under subsection (a) committed by a person subject to the Consumer Financial Protection Agency Act shall be treated as a violation of a regulation under section 4301 of the Consumer Financial Protection Agency 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—

(1) in the subsection heading, by inserting after ''COMMISSION'' the following: ''OR THE CONSUMER FINANCIAL PROTECTION AGENCY''; and

(2) by inserting after ''Commission'' each place such term appears ''or the Consumer Financial Protection Agency''.

(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 such term appears ''or the Consumer Financial Protection Agency''.

(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 new subsection:

''(d) ENFORCEMENT BY CONSUMER FINANCIAL PROTECTION AGENCY.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, this Act shall be enforced by the Consumer Financial Protection Agency under subtitle E of the Consumer Financial Protection Agency Act.''.

SEC. 4816. 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—

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

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

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) the Director of the Consumer Financial Protection Agency; and''.

SEC. 4817. EFFECTIVE DATE.

The amendments made by sections 4803 through 4815 shall take effect on the designated transfer date.

Subtitle I—Improvements to the Federal Trade Commission Act

SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting ''this Act or'' after ''violates'' the first place such term appears; and

(2) by inserting ''a violation of this Act or is'' before ''prohibited''.

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

''(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)''.

(c) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended—

(1) by amending subsection (b) to read as follows:

''(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5;

(2)(A) in subsection (d), by striking all that precedes paragraph (3);

(B) by striking subsections (c), (f), (i), and (j); and

(C) by redesignating subsections (e), (g) and (h) as subsections (d), (e) and (f);

(3) by redesignating paragraph (3) of subsection (d) as subsection (c);

(4) in subsection (c) (as redesignated), by inserting ''prescribed'' after ''rule''; and

(5) in subsection (d) (as redesignated)—

(A) in paragraph (1)(A) by striking ''promulgated'' and inserting ''prescribed'';

(B) in paragraph (1)(B), by striking ''the transcript required by subsection (c)(5),'';

(C) in paragraph (3), by striking ''error)'' all that follows and inserting ''error).''; and

(D) in paragraph (5), by striking subparagraph (C).

(d) Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking ''; or'' and inserting a semicolon; and

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

''(F) to obtain a civil penalty authorized under any provision of law enforced by the Commission.''.

(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l) is amended in the first sentence by inserting ''the Commission or'' after ''brought by''.

TITLE V—CAPITAL MARKETS

Subtitle A—Private Fund Investment Advisers Registration Act

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the ''Private Fund Investment Advisers Registration Act of 2009''.

SEC. 5002. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraphs:

''(29) PRIVATE FUND.—The term 'private fund' means an issuer that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act.

''(30) FOREIGN PRIVATE FUND ADVISER.—The term 'foreign private fund adviser' means an investment adviser who—

''(A) has no place of business in the United States;

''(B) during the preceding 12 months has had—

''(i) fewer than 15 clients in the United States; and

''(ii) assets under management attributable to clients in the United States of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and

''(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any 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 (15 U.S.C. 80a-53) and has not withdrawn such election.''.

SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE FUND ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) in paragraph (1), by inserting '', except an investment adviser who acts as an investment adviser to any private fund,'' after ''any investment adviser'';

(2) by amending paragraph (3) to read as follows:

''(3) any investment adviser that is a foreign private fund adviser;'';

(3) in paragraph (5), by striking ''or'' at the end;

(4) in paragraph (6)—

(A) in subparagraph (A), by striking ''or'';

(B) in subparagraph (B), by striking the period at the end and adding ''; or''; and

(C) by adding at the end the following new subparagraph:

''(C) a private fund; or''; and

(5) by adding at the end the following:

''(7) any investment adviser who solely advises—

''(A) small business investment companies licensed under the Small Business Investment Act of 1958;

''(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or

''(C) applicants, related to one or more licensed small business investment companies covered in subparagraph (A), that have applied for another license, which application remains pending.''.

SEC. 5004. COLLECTION OF SYSTEMIC RISK DATA.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

''(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

''(1) IN GENERAL.—The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and file with the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk as the Commission determines in consultation with the Board of Governors of the Federal Reserve System. The Commission is authorized to provide or make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, those reports or records or the information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.

''(2) REQUIRED INFORMATION.—The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser—

''(A) the amount of assets under management;

''(B) the use of leverage (including off-balance sheet leverage);

''(C) counterparty credit risk exposures;

''(D) trading and investment positions;

''(E) trading practices; and

''(F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

''(3) OPTIONAL INFORMATION.—The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, taking into account the public interest and potential to contribute to systemic risk, may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.

''(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

''(5) EXAMINATION OF RECORDS.—

''(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

''(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

''(6) INFORMATION SHARING.—The Commission shall make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or such other entity, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection shall be kept confidential in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).

''(7) DISCLOSURES OF CERTAIN PRIVATE FUND INFORMATION.—An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

''(8) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize 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 or any self-regulatory organization requesting the report or 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 paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.''.

SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).

SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following new subsection:

''(l) EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.—The Commission shall identify and define the term 'venture capital fund' and shall provide an adviser to such a fund an exemption from the registration requirements under this section (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.''.

SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), as amended by section 5006, is further amended by adding at the end the following new subsections:

''(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

''(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such private funds has assets under management in the United States of less than $150,000,000.

''(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

''(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.''.

SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended—

(1) by amending subsection (a) to read as follows:

''(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may—

''(1) classify persons and matters within its jurisdiction based upon, but not limited to—

''(A) size;

''(B) scope;

''(C) business model;

''(D) compensation scheme; or

''(E) potential to create or increase systemic risk;

''(2) prescribe different requirements for different classes of persons or matters; and

''(3) ascribe different meanings to terms (including the term 'client', except the Commission shall not ascribe a meaning to the term 'client' 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) used in different sections of this title as the Commission determines necessary to effect the purposes of this title.''; and

(2) by adding at the end the following new subsection:

''(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(l) and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).''.

SEC. 5009. GAO STUDY.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirements and ongoing reporting requirements under this subtitle and the amendments made by this subtitle.

(b) REPORT TO THE CONGRESS.—Not later than the end of the 2-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a).

SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.

(a) EFFECTIVE DATE.—This subtitle, and the amendments made by this subtitle, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this title.

(b) TRANSITION PERIOD.—The Securities and Exchange Commission shall prescribe rules and regulations to permit an investment adviser who will be required to register with the Securities and Exchange Commission by reason of this subtitle with the option of registering with the Securities and Exchange Commission before the date described under subsection (a).

SEC. 5011. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following: ''With respect to any factor used by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, not later than one year after the date of the enactment of the Private Fund Investment Advisers Registration Act of 2009, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of $1,000 shall be rounded to the nearest multiple of $1,000.''.

Subtitle B—Accountability and Transparency in Rating Agencies Act

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the ''Accountability and Transparency in Rating Agencies Act of 2009''.

SEC. 6002. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

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'';

(B) in paragraph (2)(A), by striking ''furnished to'' and inserting ''filed with''; and

(C) in paragraph (2)(B)(i)(II), by striking ''furnished to'' and inserting ''filed with'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking ''furnished'' and inserting ''filed'' and by striking ''furnishing'' and inserting ''filing'';

(B) in paragraph (1)(B), by striking ''furnishing'' and inserting ''filing''; and

(C) in the first sentence of paragraph (2), by striking ''furnish to'' and inserting ''file with'';

(3) in subsection (c)—

(A) paragraph (2)—

(i) in the second sentence by inserting ''including the requirements of this section,'' after ''Notwithstanding any other provision of law,''; and

(ii) by inserting before the period at the end of the last sentence '', provided that this paragraph does not afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provision of the securities laws'';

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

''(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

''(A) IN GENERAL.—The Commission shall examine credit ratings issued by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization to review whether—

''(i) the nationally recognized statistical rating organization has established and documented a system of internal controls, due diligence and implementation of methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule;

''(ii) the nationally recognized statistical rating organization adheres to such system; and

''(iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its credit ratings, methodologies, and procedures are consistent with such system.

''(B) MANNER AND FREQUENCY.—The Commission shall conduct reviews required by this paragraph no less frequently than annually in a manner to be determined by the Commission.

''(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under paragraph (3).

''(5) DISCLOSURES WITH RESPECT TO STRUCTURED SECURITIES.—

''(A) REGULATIONS REQUIRED.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall, with respect to the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings for structured securities—

''(i) specify the information required to be disclosed to such rating organizations by the sponsor, issuers, and underwriters of such structured securities on the collateral underlying such structured securities; and

''(ii) establish and implement procedures to collect and disclose information about the processes used by such sponsor, issuers, and underwriters to assess the accuracy and integrity of their data and fraud detection.

''(B) DEFINITION.—For purposes of this paragraph, the Commission shall, by rule or regulation, define the term 'structured securities' as appropriate in the public interest and for the protection of investors.

''(6) HISTORICAL DEFAULT RATE DISCLOSURES.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall require each nationally recognized statistical rating organization to establish and maintain, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by such organization.''

(4) in subsection (d)—

(A) in the heading, by inserting ''FINE,'' after ''CENSURE,'';

(B) by striking ''shall censure'' and all that follows through ''revocation'' and inserting the following: ''shall censure, fine in accordance with section 21B(a), place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization (or with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, fine in

accordance with section 21B(a), place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with a nationally recognized statistical rating organization), if the Commission finds, on the record after notice and opportunity for hearing, that such censure, fine, placing of limitations, bar, suspension, or revocation'';

(C) in paragraph (2), by striking ''furnished to'' and inserting ''filed with'';

(D) in paragraph (4)—

(i) by striking ''furnish'' and inserting ''file'';

(ii) by striking ''or'' at the end;

(E) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) has failed reasonably to supervise another person who commits a violation of the securities laws, the rules or regulations thereunder, or any rules of the Municipal Securities Rulemaking Board if such other person is subject to his or her supervision, except that no person shall be deemed to have failed reasonably to supervise any other person under this paragraph, if—

''(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

''(B) such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

''(7) fails to conduct sufficient surveillance to ensure that credit ratings remain current and reliable, as applicable.'';

(5) in subsection (e)—

(A) by striking paragraph (1); and

(B) in paragraph (2), by striking ''(2) COMMISSION AUTHORITY.—'' and moving the text of such paragraph to follow the heading of subsection (e);

(6) by amending subsection (h) to read as follows:

''(h) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

''(1) BOARD OF DIRECTORS.—

''(A) IN GENERAL.—Each nationally recognized statistical rating organization or its ultimate holding company shall have a board of directors.

''(B) INDEPENDENT DIRECTORS.—At least ⅓ of such board, but no less than 2 of the members of the board of directors, shall be independent directors. In order to be considered independent for purposes of this subsection, a director of a nationally recognized statistical rating organization may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

''(i) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

''(ii) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof.

''(C) COMPENSATION AND TERM.—The compensation of the independent directors shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period not exceeding 5 years and shall not be renewable.

''(D) DUTIES.—In addition to the overall responsibility of the board of directors, the board shall oversee—

''(i) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

''(ii) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

''(iii) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

''(iv) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

''(2) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.

''(3) COMMISSION RULES.—The Commission shall issue rules to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including rules regarding—

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

''(B) conflicts of interest relating to business relationships, ownership interests, and affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

''(C) conflicts of interest relating to any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person who underwrites securities, money market instruments, or other instruments that are the subject of a credit rating;

''(D) a requirement that each nationally recognized statistical rating organization disclose on such organization's website a consolidated report at the end of each fiscal year that shows—

''(i) the percent of net revenue earned by the nationally recognized statistical rating organization or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, for that fiscal year for providing services and products other than credit rating services to each person who paid for a credit rating; and

''(ii) the relative standing of each person who paid for a credit rating that was outstanding as of the end of the fiscal year in terms of the amount of net revenue earned by the nationally recognized statistical rating organization attributable to each such person and classified by the highest 5, 10, 25, and 50 percentiles and lowest 50 and 25 percentiles;

''(E) the establishment of a system of payment for credit ratings issued by each nationally recognized statistical rating organization that requires that payments are structured in a manner designed to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of credit ratings over time, as applicable, and that incentives for reliable credit ratings are in place;

''(F) a requirement that a nationally recognized statistical rating organization disclose with the publication of a credit rating the type and number of credit ratings it has provided to the person being rated or affiliates of such person, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and

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

''(4) LOOK-BACK REQUIREMENT.—

''(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

''(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

''(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

''(B) REVIEW BY COMMISSION.—

''(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

''(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

''(I) not less frequently than annually; and

''(II) whenever such policies are materially modified or amended.

''(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

''(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

''(i) was a senior officer of such organization;

''(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

''(iii) supervised an employee described in clause (ii).

''(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.'';

(7) by amending subsection (j) to read as follows:

''(j) DESIGNATION OF COMPLIANCE OFFICER.—

''(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

''(2) DUTIES.—The compliance officer shall—

''(A) report directly to the board of the nationally recognized statistical rating organization;

''(B) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of such compliance) may compromise the integrity of the credit rating process;

''(C) review compliance with the internal control system with respect to the procedures and methodologies for determining credit ratings, including qualitative methodologies and quantitative inputs used in the rating process, and assess the risk that such internal control system is reasonably designed to ensure the integrity and quality of the credit rating process;

''(D) in consultation with the board of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

''(E) be responsible for administering the policies and procedures required to be established pursuant to this section;

''(F) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(G) establish procedures—

''(i) for the receipt, retention, and treatment of complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures required under this section;

''(ii) for the receipt, retention, and treatment of confidential, anonymous complaints by employees, obligors, issuers, and investors;

''(iii) for the remediation of non-compliance issues found during compliance office reviews, the reviews required under paragraph (7), internal or external audit findings, self-reported errors, or through validated complaints; and

''(iv) designed so that ratings that the nationally recognized statistical rating organization disseminates reflect consideration of all information in a manner generally consistent with the nationally recognized statistical rating organization's published rating methodology, including information which is provided, received, or otherwise obtained from obligor, issuer and non-issuer sources, such as investors, the media, and other interested or informed parties.

''(3) LIMITATIONS.—The compliance officer shall not, while serving in that capacity—

''(A) determine credit ratings;

''(B) participate in the establishment of the procedures and methodologies or the qualitative methodologies and quantitative inputs used to determine credit ratings;

''(C) perform marketing or sales functions; or

''(D) participate in establishing compensation levels, other than for employees working for the compliance officer.

''(4) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the nationally recognized statistical rating organization with the securities laws and such organization's internal policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the nationally recognized statistical rating organization that are required to be filed with the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(5) COMPENSATION.—The compensation of the compliance officer shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.'';

(8) in subsection (k)—

(A) by striking '', on a confidential basis,'';

(B) by striking ''furnish to'' and inserting ''file with'';

(C) by striking ''Each nationally'' and inserting the following:

''(1) IN GENERAL.—Each nationally''; and

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

''(2) EXCEPTION.—The Commission may treat as confidential any information provided by a nationally recognized statistical rating organization under this section consistent with applicable Federal laws or Commission rules.'';

(9) in subsection (l)(2)(A)(i), by striking ''furnished'' and inserting ''filed'';

(10) by amending subsection (p) to read as follows:

''(p) ESTABLISHMENT OF SEC OFFICE.—

''(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations.

''(2) STAFFING.—The office of the Commission established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section.

''(3) RULEMAKING AUTHORITY.—The Commission shall—

''(A) establish, by rule, fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

''(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations.''; and

(11) by adding after subsection (p) the following new subsections:

''(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

''(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require each nationally recognized statistical rating organization to publicly disclose information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the performance of ratings and allowing investors to compare performance of ratings by different nationally recognized statistical rating organizations.

''(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

''(A) are comparable among nationally recognized statistical rating organizations, so that investors can compare rating performance across rating organizations;

''(B) are clear and informative for a wide range of investor sophistication;

''(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission;

''(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by investors; and

''(E) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

''(r) CREDIT RATINGS METHODOLOGIES.—

''(1) IN GENERAL.—The Commission shall prescribe rules, in the public interest and for the protection of investors, that require each nationally recognized statistical rating organization to establish, maintain, and enforce written procedures and methodologies and an internal control system with respect to such procedures and methodologies that are reasonably designed to—

''(A) ensure that credit ratings are determined using procedures and methodologies, including qualitative methodologies and quantitative inputs that are determined in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

''(B) ensure that when major changes to credit rating procedures and methodologies, including to qualitative methodologies and quantitative inputs, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;

''(C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating;

''(D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in current credit ratings being subject to rating actions; and

''(E) use credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors.

''(2) RATING CLARITY AND CONSISTENCY.—

''(A) COMMISSION OBLIGATION.—Subject to subparagraphs (B) and (C), the Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures reasonably designed—

''(i) with respect to credit ratings of securities and money market instruments, to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of such securities and instruments;

''(ii) to define clearly any credit rating symbol used by that organization; and

''(iii) to apply such credit rating symbol in a consistent manner for all types of securities and money market instruments.

''(B) ADDITIONAL CREDIT FACTORS.—Nothing in subparagraph (A)—

''(i) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance;

''(ii) prohibits a nationally recognized statistical rating organization from considering

credit factors that are unique to municipal securities; or

''(iii) prohibits a nationally recognized statistical rating organization from using an additional symbol with respect to the ratings described in subparagraph (A)(i) for the purpose of distinguishing the ratings of a certain type of security or money market instrument from ratings of any other types of securities or money market instruments.

''(C) COMPLEMENTARY RATINGS.—The Commission shall not impose any requirement under subparagraph (A) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in subparagraph (A)(i) and that are created to measure a discrete aspect of the security's or instrument's risk.

''(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

''(1) IN GENERAL.—The Commission shall require, by rule, a nationally recognized statistical rating organization to include with the publication of each credit rating regardless of whether the credit rating is made readily accessible for free or a reasonable fee a form that discloses information about the assumptions underlying the procedures and methodologies used, and the data relied on, to determine the credit rating in the format prescribed in paragraph (2) and containing the information described in paragraph (3).

''(2) FORMAT.—The Commission shall prescribe a form for use under paragraph (1) that—

''(A) is designed in a user-friendly and helpful manner for investors to understand the information contained in the report;

''(B) requires the nationally recognized statistical rating organization to provide the content, as required by paragraph (3), in a manner that is directly comparable across securities; and

''(C) the nationally recognized statistical rating organization certifies the information on the form as true and accurate.

''(3) CONTENT.—The Commission shall prescribe a form that requires a nationally recognized statistical rating organization to disclose —

''(A) the main assumptions included in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating certain structured products;

''(B) the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the nationally recognized statistical rating organization is not commenting on, such as liquidity, market, and other risks;

''(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;

''(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

''(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;

''(F) a statement containing an overall assessment of the quality of information available and considered in producing a credit rating for a security in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

''(G) an explanation or measure of the potential volatility for the credit rating, including any factors that might lead to a change in the credit rating, and the extent of the change that might be anticipated under different conditions;

''(H) information on the content of the credit rating, including—

''(i) the expected default probability; and

''(ii) the loss given default;

''(I) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

''(i) 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; and

''(ii) an analysis, using concrete examples, on how each of the 5 assumptions identified under clause (i) impacts a rating.

''(J) where applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

''(K) such additional information as may be required by the Commission.

''(4) DUE DILIGENCE SERVICES.—

''(A) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization or an issuer, underwriter, or sponsor in connection with the issuance of a credit rating, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization written certification of such due diligence, which shall be subject to review by the Commission, and the issuer, underwriter, or sponsor shall provide any reports issued by the provider of such due diligence services to the nationally recognized statistical rating organization.

''(B) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide a reliable rating.

''(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization to disclose to persons who have access to the credit ratings of the nationally recognized statistical rating organization regardless of whether they are made readily accessible for free or a reasonable fee the certification described in subparagraph (A) with the publication of the applicable credit rating in a manner that may permit the persons to determine the adequacy and level of due diligence services provided by the third party.

''(t) PROHIBITED ACTIVITIES.—Beginning 180 days from the date of enactment of the Accountability, Reliability, and Transparency in Rating Agencies Act, it shall be unlawful for a nationally recognized statistical rating organization, or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, that provides a credit rating for an issuer, underwriter, or placement agent of a security to provide any non-rating service, including—

''(1) risk management advisory services;

''(2) advice or consultation relating to any merger, sales, or disposition of assets of the issuer;

''(3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance; and

''(4) such further activities or services as the Commission may determine as necessary or appropriate in the public interest or for the protection of investors.''.

SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.

(a) IN GENERAL.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended by inserting before the period at the end of the following: '', and in the case of an action brought under this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient for purposes of pleading any required state of mind for purposes of such action that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization knowingly or recklessly violated the securities laws''.

(b) PLEADING STANDARD.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) amended to read as follows:

''(m) APPLICATION OF ENFORCEMENT PROVISIONS; PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—Statements made by nationally recognized statistical rating organizations shall not be deemed forward looking statements for purposes of section 21E. In any private right of action commenced against a nationally recognized statistical rating organization under this title, the same pleading standards with respect to knowledge and recklessness shall apply to the nationally recognized statistical rating organization as would apply to any other person in the same or a similar private right of action against such person.''.

SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.

The Securities and Exchange Commission shall adopt rules under authority of the Securities Act of 1933 (15 U.S.C. 77a, et seq.) to require issuers to disclose preliminary credit ratings received from nationally recognized statistical rating agencies on structured products and all forms of corporate debt.

SEC. 6005. CHANGE TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking ''nationally recognized statistical rating'' each place it appears and inserting ''nationally registered statistical rating''.

SEC. 6006. TIMELINE FOR REGULATIONS.

Unless otherwise specified in this subtitle, the Securities and Exchange Commission shall adopt rules and regulations, as required by the amendments made by this subtitle, not later than 365 days after the date of enactment.

SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

SEC. 6008. ADVISORY BOARD.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall establish an advisory board to be known as the Credit Ratings Agency Advisory Board (in this section referred to as ''the Board'').

(b) APPOINTMENT AND TERMS OF SERVICE.—The Board shall consist of 7 members appointed by the Commission, no more than 2 of whom may be former employees of a credit rating agency. Members of the Board shall be prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the role that credit ratings play to a broad range of investors. Terms of service shall be staggered as determined by the Commission.

(c) DUTIES.—The Board shall—

(1) advise the Commission concerning the rules and regulations required by the amendments made by this subtitle;

(2) ensure that the Commission properly and fully executes its oversight functions and responsibilities with the respect to nationally recognized statistical rating organizations and individual participants; and

(3) issue an annual report to Congress detailing its work and recommending any additional Congressional actions necessary to aid the Commission and such additional reports from time to time as appropriate when it feels that the Commission is not properly executing its oversight functions.

SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

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

(1) in section 28(d)—

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

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

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

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

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

(2) in section 28(e)—

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

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

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

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

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking ''**BY RATING ORGANIZATION**''; and

(2) by striking ''that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

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

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

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

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

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

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

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

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

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

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

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

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

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this subtitle.

SEC. 6010. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—

(1) REVIEW.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument, and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) REPORT.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(3), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General shall transmit to Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE EDGAR SYSTEM.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall revise its rules in section 240.17g-2(a) and (d) of title 17, Code of Federal Regulations, to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on the website of a nationally recognized statistical rating organization also be provided to the Commission in a format consistent with publication by the Commission on the EDGAR system.

SEC. 6012. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 6013. STUDIES.

(a) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of—

(A) the implementation of this subtitle and the amendments made by this subtitle by the Securities and Exchange Commission;

(B) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements; and

(C) the effect of liability in private actions arising under the Securities Exchange Act of 1934;

(D) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation; and

(E) alternative methodologies to assess credit risk, including market-based measures.

(2) REPORT.—Not later than 30 months after the date of enactment of this subtitle, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).

(b) SEC STUDY ON ASSIGNING CREDIT RATING AGENCIES ON A ROTATING BASIS.—The Securities and Exchange Commission shall undertake a study on creating a system whereby nationally recognized statistical rating organizations are assigned on a rotating basis to issuers and obligors seeking a credit rating. Not later than 1 year after the date of enactment of this subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study.

(c) SEC STUDY ON EFFECT OF NEW REQUIREMENTS ON NRSRO REGISTRATION.—The Securities and Exchange Commission shall conduct a study on the effect of the amendments made by section 2 on credit rating agencies seeking to register as nationally recognized statistical rating organizations, including whether the new requirements in such amendments deter credit rating agencies from registering as nationally recognized statistical rating organizations. Not later than 1 year after the date of enactment of this subtitle, the Commission shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the findings of such study.

(d) STUDY OF CREDIT RATINGS OF DIFFERENT CLASSES OF BONDS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine—

(A) whether there are fundamental differences in the treatment of different classes of bonds by such rating organizations that cause some classes of bonds to suffer from undue discrimination;

(B) if there are such differences, what are the causes of such differences and how can they be alleviated;

(C) whether there are factors other than risk of loss that are appropriate for the credit ratings agencies to consider when rating bonds, and do those factors vary across different sectors

(D) the types of financing arrangement used by municipal issuers

(E) the differing legal and regulatory regimes governing disclosures for corporate bonds and municipal bonds;

(F) the extent to which retail investors could be disadvantaged by a single ratings scale; and

(G) practices, policies, and methodologies by the nationally recognized statistical rating organizations with respect to rating municipal bonds.

(2) REPORT.—Within 6 months after the date of enactment of this subtitle, the Securities and Exchange Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Development of the Senate. Such report shall include as assessment of each of the issues and subjects described in subparagraphs (A) through (G) of paragraph (1).

(e) SEC STUDY ON MEANINGFUL MULTI DIGIT RATING SYMBOLS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study on the feasibility and desirability of implementing a standardized rating system whereby ratings symbols contain multiple characters, each representing a range of default probabilities and loss expectations under standardized and increasingly severe levels of market stress. The study shall optimize the definitions of the symbols to maximize their overall usefulness for users of credit ratings.

(2) INITIAL EXAMPLE FOR GUIDANCE.—An example to provide initial guidance for the study is a ratings symbol consisting of three digits, each of which corresponds to default probabilities under different levels of market stress as follows:

(A) The first digit represents the default probability under ''normal'' market stress, characterized by normal economic fluctuations in addition to a 5 percent decline in asset value and 2 percent increase in unemployment.

(B) The second digit represents the default probability under more severe market stress, characterized a 20 percent decline in asset value and 5 percent increase in unemployment.

(C) The third digit represents the default probability under extreme market stress, characterized by a 50 percent decline in asset value and 10 percent increase in unemployment.

(3) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Commission shall transmit to Congress a report of the study conducted pursuant to paragraph (1), including recommendations on whether the system similar to that described in paragraph (2) should be implemented and, if so, any necessary legislation required to implement such a system.

(f) SEC STUDY ON RATINGS STANDARDIZATION.—

(1) IN GENERAL.—The Securities and Exchange 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 shall 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 subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study and the recommendations of the Commission.

Subtitle C—Investor Protection Act

SEC. 7001. SHORT TITLE.

This subtitle may be cited as the ''Investor Protection Act of 2009''.

PART 1—DISCLOSURE

SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

''SEC. 4D. INVESTOR ADVISORY COMMITTEE.

''(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory Committee (in this section referred to as the 'Committee') to advise and consult with the Commission on—

''(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

''(2) initiatives to protect investor interest; and

''(3) initiatives to promote investor confidence in the integrity of the marketplace.

''(b) MEMBERSHIP.—

''(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

''(A) represent the interests of individual investors;

''(B) represent the interests of institutional investors; and

''(C) use a wide range of investment approaches.

''(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be considered employees or agents of the Commission solely because of membership on the Committee.

''(c) MEETINGS.—The Committee shall meet from time to time at the call of the Commission, but, at a minimum, shall meet at least twice each year.

''(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Committee who are not full-time employees of the United States shall—

''(1) be entitled to receive compensation at a rate fixed by the Commission while attending meetings of the Committee, including travel time; and

''(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

''(e) COMMITTEE FINDINGS.—Nothing in this section requires the Commission to accept, agree, or act upon the findings or recommendations of the Committee.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary for the activities of the Committee.''.

SEC. 7102. CLARIFICATION OF THE COMMISSION'S AUTHORITY TO ENGAGE IN CONSUMER TESTING.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

''(e) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.''.

(b) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and inserting after subsection (a) the following:

''(b) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.''.

(c) AMENDMENT TO INVESTMENT COMPANY ACT OF 1940.—Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–38) is amended by adding at the end the following new subsection:

''(d) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.''.

(d) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) (as amended by section 5008(2)) is further amended by adding at the end the following new subsection:

''(f) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.''.

SEC. 7103. 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 section 1951(c)) is further amended by adding at the end the following new subsections:

''(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 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.

''(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.''.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by section 7102(d), is further amended by adding at the end the following new subsections:

''(g) 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 section 206(1) and (2) 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.

''(h) 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:

''(o) 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:

''(i) 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.''.

SEC. 7104. COMMISSION STUDY ON DISCLOSURE TO RETAIL CUSTOMERS BEFORE PURCHASE OF PRODUCTS OR SERVICES.

(a) STUDY REQUIRED.—Prior to proposing any rules or regulations pursuant to subsection (b)(1) regarding the manner in which investment products or services are sold or provided in the United States to retail customers or the information that must be provided to retail customers prior to the purchase of such products or services, and within 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall publish a study that examines—

(1) the nature of a ''retail customer'', taking into consideration the definition in section 15(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103 of this subtitle;

(2) the range of products and services sold or provided to retail customers, and the sellers or providers of such products and services, that are within the Commission's jurisdiction;

(3) how such products and services are sold or provided to retail customers, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or provision of services;

(4) information that retail customers should receive prior to purchasing each product or service, and the appropriate person or entity to provide such information; and

(5) ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to the purchase of such products or services and how such information is provided.

(b) RULEMAKING.—

(1) Notwithstanding any other provision of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), following completion of the study required by subsection (a), the Commission is authorized to promulgate rules to require that the appropriate persons or entities provide designated documents or information to retail customers prior to the purchase of identified investment products or services. Any such rules shall—

(A) take into account the findings of the study conducted pursuant to subsection (a);

(B) take into consideration, to the extent possible, the need for such documents and information to be consistent and comparable across investment products or services sold or provided to retail customers; and

(C) reduce, to the extent possible, disruptions to the purchase process for investment

products and services sold or provided to retail customers, by means such as permitting required disclosures to be made via the Internet.

(2) Notwithstanding paragraph (1), the Commission is authorized to promulgate rules in connection with—

(A) the implementation of section 7103; and

(B) disclosure to retail customers other than in connection with the purchase of investment products or services.

SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after ''within ten days after such acquisition'' the following: ''or within such shorter time as the Commission may establish by rule''; and

(B) by striking ''send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and'';

(2) in subsection (d)(2)—

(A) by striking ''in the statements to the issuer and the exchange, and''; and

(B) by striking ''shall be transmitted to the issuer and the exchange and'';

(3) in subsection (g)(1), by striking ''shall send to the issuer of the security and''; and

(4) in subsection (g)(2)—

(A) by striking ''sent to the issuer and''; and

(B) by striking ''shall be transmitted to the issuer and''.

(b) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking ''(and, if such security is registered on a national securities exchange, also with the exchange)''; and

(2) in paragraph (2)(B), by inserting after ''officer'' the following: '', or within such shorter time as the Commission may establish by rule''.

SEC. 7106. REVISION TO RECORDKEEPING RULES.

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) in subsection (a)(1), by adding at the end the following: ''Each person with custody or use of a registered investment company's securities, deposits, or credits shall maintain and preserve all records that relate to the person's custody or use of the registered investment company's securities, deposits, or credits for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.''; and

(2) in subsection (b), by adding at the end the following new paragraph:

''(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), records of persons with custody or use of a registered investment company's securities, deposits, or credits, 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.—Persons 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 the Commission with a detailed listing, in writing, of the registered investment company's securities, deposits, or credits within such person's custody or use.''.

(b) 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 with custody or use of a client's securities, deposits, or credits, 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.—Persons 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 client's securities, deposits, or credits within such person's custody or use.''.

SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISOR EXAMINATIONS.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on the regulation and oversight of financial planning. The study shall consider—

(1) the unique role of financial planners in providing comprehensive advice in investment planning, income tax planning, education planning, retirement planning, estate planning, risk management, and other areas with respect to the management of financial resources; and

(2) any gaps in the regulation of financial planners given existing State and Federal regulation of financial planning activities and the need to provide related consumer protections for such financial planning activities.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Congress a report containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including recommendations for the appropriate regulation of, or standards for, financial planners as a profession and how such regulations or standards should be established.

PART 2—ENFORCEMENT AND REMEDIES

SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE 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 7103, is further amended by adding at the end the following new subsection:

''(p) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.''.

(b) AMENDMENT TO 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 new subsection:

''(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.''.

SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SECURITIES ARBITRATION SYSTEM.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to review—

(1) the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission as compared to litigation;

(2) the percentage of recovery of the total amount of a claim in an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission; and

(3) other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the

results of the study required by subsection (a), including in such report recommendations for improvements to the arbitration system referenced in such subsection.

SEC. 7203. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 21E the following new section:

"SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

''(a) IN GENERAL.—In any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the action. Any amount payable under the preceding sentence shall be paid from the fund described in subsection (f).

''(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

''(1) DETERMINATION OF AMOUNT OF AWARD.—The determination of the amount of an award, within the limit specified in subsection (a), shall be in the sole discretion of the Commission. The Commission may take into account the significance of the whistleblower's information to the success of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission's programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

''(2) DENIAL OF AWARD.—No award under subsection (a) shall be made—

''(A) to any whistleblower who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, the Public Company Accounting Oversight Board, or a self-regulatory organization;

''(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

''(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

''(c) REPRESENTATION.—

''(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

''(2) REQUIRED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, the whistleblower must disclose his or her identity and provide such other information as the Commission may require.

''(d) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

''(e) APPEALS.—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

''(f) INVESTOR PROTECTION FUND.—

''(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Securities and Exchange Commission Investor Protection Fund' (referred to in this section as the 'Fund').

''(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for the following purposes:

''(A) Paying awards to whistleblowers as provided in subsection (a).

''(B) Funding investor education initiatives designed to help investors protect themselves against securities fraud or other violations of the securities laws, or the rules and regulations thereunder.

''(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund—

''(A) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $100,000,000;

''(B) any monetary sanction added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 that is not distributed to the victims for whom the disgorgement fund or other fund was established, unless the balance of the Fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $100,000,000; and

''(C) all income from investments made under paragraph (4).

''(4) INVESTMENTS.—

''(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

''(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury 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 Fund as determined by the Commission.

''(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

''(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit 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—

''(A) the Commission's whistleblower award program under this section, including a description of the number of awards that were granted and the types of cases in which awards were granted during the preceding fiscal year;

''(B) investor education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

''(C) the balance of the Fund at the beginning of the preceding fiscal year;

''(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

''(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

''(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

''(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

''(H) the balance of the Fund at the end of the preceding fiscal year; and

''(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

''(g) PROTECTION OF WHISTLEBLOWERS.—

''(1) PROHIBITION AGAINST RETALIATION.—

''(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

''(B) ENFORCEMENT.—

''(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

''(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

''(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 6 years after the date on which the violation of subparagraph (A) occurred, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A), but in no event after 10 years after the date on which the violation occurs.

''(C) RELIEF.—An employee, contractor, or agent prevailing in any action brought under subparagraph (B) shall be entitled to all relief necessary to make that employee, contractor, or agent whole, including reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys' fees.

''(2) CONFIDENTIALITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552), or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552. Nothing herein is intended to limit the Attorney General's ability to present such evidence to a grand jury or to share

such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

''(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

''(i) the Attorney General of the United States,

''(ii) an appropriate regulatory authority,

''(iii) a self-regulatory organization,

''(iv) the Public Company Accounting Oversight Board,

''(v) State attorneys general in connection with any criminal investigation, and

''(vi) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

''(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

''(h) PROVISION OF FALSE INFORMATION.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section.

''(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section.

''(j) DEFINITIONS.—For purposes of this section, the following terms have the following meanings:

''(1) ORIGINAL INFORMATION.—The term 'original information' means information that—

''(A) is based on the direct and independent knowledge or analysis of a whistleblower;

''(B) is not known to the Commission from any other source, unless the whistleblower is the initial source of the information; and

''(C) is not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the initial source of the information that resulted in the judicial or administrative hearing, governmental report, hearing, audit, or investigation, or the news media's report on the allegations.

''(2) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means any monies, including but not limited to penalties, disgorgement, and interest, ordered to be paid, and any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

''(3) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

''(4) WHISTLEBLOWER.—The term 'whistleblower' means an individual, or two or more individuals acting jointly, who submit information to the Commission as provided in this section.''.

(b) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934, as added by subsection (a). Such office shall report annually to Congress on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002'':

(1) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(2) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(3) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 21(d)(3)(C)(i) (15 U.S.C. 78u(d)(3)(C)(i)), by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002'';

(2) in section 21A(d)(1) (15 U.S.C. 78u–1(d)(1))—

(A) by striking ''(subject to subsection (e))''; and

(B) by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002''; and

(3) in section 21A, by striking subsection (e) and redesignating subsections (f) and (g) as subsection (e) and (f), respectively.

SEC. 7205. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTIONS.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, no later than 270 days after the date of enactment of this subtitle.

(b) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, shall not lose its status as original information, as defined in subsection (i)(1) of such section, solely because the whistleblower submitted such information prior to the effective date of such regulations, provided such information was submitted after the date of enactment of this subtitle, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this part, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of this subtitle.

SEC. 7206. COLLATERAL BARS.

(a) SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking ''12 months, or bar such person from being associated with a broker or dealer,'' and inserting ''12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(b) SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking ''twelve months or bar any such person from being associated with a municipal securities dealer,'' and inserting ''12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(c) SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking ''twelve months or bar any such person from being associated with the transfer agent,'' and inserting ''12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating organization,''.

(d) SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking ''twelve months or bar any such person from being associated with an investment adviser,'' and inserting ''12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking ''Every person who'' and inserting ''(a) CONTROLLING PERSONS.—Every person who''; and

(2) 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.''.

(c) 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.''.

SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF 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 subsections:

''(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.

''(g) ENFORCEMENT BY NATIONAL SECURITIES ASSOCIATIONS.—The Commission may permit or require a national securities association registered under the Securities Exchange Act of 1934 to enforce compliance by its members and persons associated with its members with the provisions of this Act, the rules and regulations thereunder, and to adopt such rules (subject to any rule or order of the Commission pursuant to the Securities Exchange Act of 1934) as the association may deem necessary and in the public interest to further the purposes of this Act.''.

SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D (as added by section 7101) the following new section:

''SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

''(a) ENFORCEMENT INVESTIGATIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

''(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the head of any division or office within the Commission or his designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

''(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded without findings or that the staff requests the entity undertake corrective action.

''(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection or regarding the staff requests the entity undertake corrective action cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.''.

SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

''(A) such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding paragraph (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 paragraphs (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 substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking ''(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding'' and inserting the following:

''(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

''(1) IN GENERAL.—In any proceeding'';

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively, and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

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

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking ''(1) AUTHORITY OF COMMISSION.—In any proceeding'' and inserting the following:

''(1) AUTHORITY OF COMMISSION.—

''(A) IN GENERAL.—In any proceeding'';

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively, and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

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

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking ''(1) AUTHORITY OF COMMISSION.—In any proceeding'' and inserting the following:

''(1) AUTHORITY OF COMMISSION.—

''(A) IN GENERAL.—In any proceeding'';

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively, and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

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

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

SEC. 7212. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking ''any member or employee'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member or employee''.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking ''or seeking to become associated,'' and inserting ''seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'';

(2) in subsection (c)(2)(A), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''; and

(3) in subsection (c)(2)(B), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''.

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting '', or, as to any act or practice, or omission to act, while associated with a member, formerly associated'' after ''member or a person associated''.

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting ''or, as to any act or practice, or omission to act, while a participant, was a participant,'' after ''in which such person is a participant,''.

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking ''any officer or director'' and inserting ''any person who is, or at the time of the alleged misconduct was, an officer or director''; and

(2) by striking ''such officer or director'' and inserting ''such person''.

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking ''a person serving or acting'' and inserting ''a person who is, or at the time of the alleged misconduct was, serving or acting''; and

(2) by striking ''such person so serves or acts'' and inserting ''such person so serves or acts, or at the time of the alleged misconduct, so served or acted''.

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

''(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

''(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with a registered public accounting firm; and

''(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

''(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

''(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.''.

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking ''or a person associated with such a firm'' and inserting '', a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm''.

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking ''the supervisory personnel'' and inserting ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person''; and

(2) in subparagraph (B)—

(A) by striking ''No associated person'' and inserting ''No current or former supervisory person''; and

(B) by striking ''any other person'' and inserting ''any associated person''.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking ''any member'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member''.

SEC. 7213. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) in subsection (e), as redesignated, by striking ''as provided in subsection (e)'' and inserting ''as provided in subsection (f)''; and

(3) by inserting after subsection (c) the following new subsection:

''(d) 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) any foreign securities authority;

''(C) the Public Company Accounting Oversight Board;

''(D) any self-regulatory organization;

''(E) any foreign law enforcement authority; or

''(F) any State securities or law enforcement authority.

''(2) NON-DISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—Except as provided in subsection (f), 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) NON-WAIVER 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 WITH RESPECT TO CERTAIN ACTIONS.—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, foreign, or State 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.

''(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.''.

SEC. 7214. EXPANDED ACCESS TO GRAND JURY INFORMATION.

Subsection (b) of section 3322 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking ''matters occurring before a grand jury'' and inserting ''grand jury information obtained'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) in paragraph (3) (as so redesignated), by inserting ''or (2)'' after ''(1)''; and

(4) by inserting after paragraph (1), the following new paragraph:

''(2) Upon motion of an attorney for the government, a court may direct disclosure of grand jury information obtained during an investigation of a securities law violation to identified personnel of the Securities and Exchange Commission—

''(A) for use in relation to any matter within the jurisdiction of the Commission; or

''(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).''.

SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

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. 7216. EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

(a) 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 jurisdiction of the district courts of the United States and the United States courts of any Territory described under subsection (a) includes violations of section 17(a), and all suits in equity and actions at law under that section, 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.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(2) by inserting at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of the antifraud provisions of this title, and all suits in equity and actions at law under those provisions, 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.''.

(c) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(1) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(2) by inserting at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of section 206, and all suits in equity and actions at law under that section, 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.''.

SEC. 7217. FIDELITY BONDING.

Section 17(g) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(g)) is amended to read as follows:

''(g) FIDELITY BONDING.—

''(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), in such form and amount as the Commission may prescribe by rule, regulation, or order for the protection of investors.

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) MANAGEMENT COMPANY.—The term 'management company' has the meaning given such term under section 4 of the Investment Company Act of 1940.

''(B) OFFICER OR EMPLOYEE.—The term 'officer or employee' means—

''(i) any officer or employee of the management company; and;

''(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

''(C) OTHER DEFINITIONS.—The terms 'affiliated company' and 'investment adviser' shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.''.

SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.

(a) SECURITIES EXCHANGE ACT OF 1934 AMENDMENTS.—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 new paragraph:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) of this section 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.''.

(b) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), as amended by section 7106(a)(2), is further amended by adding at the end the following new paragraph:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in paragraph (1) 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.''.

(c) INVESTMENT ADVISERS ACT OF 1940 AMENDMENTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4), as amended by section 7106(b), is further amended by adding at the end the following new subsection:

''(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.''.

SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.

Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended to read as follows:

''(1) IN GENERAL.—All records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, 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.''.

SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.

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),''.

SEC. 7221. 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 it 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''.

SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON 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 authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set procedures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer's board of directors.''.

PART 3—COMMISSION FUNDING AND ORGANIZATION

SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

''(1) for fiscal year 2010, $1,115,000,000;

''(2) for fiscal year 2011, $1,300,000,000;

''(3) for fiscal year 2012, $1,500,000,000;

''(4) for fiscal year 2013, $1,750,000,000;

''(5) for fiscal year 2014, $2,000,000,000; and

''(6) for fiscal year 2015, $2,250,000,000.''.

SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) (as amended by sections 5006 and 5007) is further amended by adding at the end the following new subsection:

''(o) ANNUAL ASSESSMENT.—

''(1) IN GENERAL.—The Commission shall, in accordance with this subsection, promulgate rules pursuant to which it may collect from investment advisers required to register with the Commission under this title, fees designed to help recover the cost of inspections and examinations of registered investment advisers conducted by the Commission pursuant to this title.

''(2) FEE PAYMENT REQUIRED.—An investment adviser shall, at the time of registration with the Commission, and each fiscal year thereafter during which such adviser is so registered, pay to the Commission a fair and reasonable fee determined by the Commission. In determining such fee, the Commission shall consider objective factors such as—

''(A) the investment adviser's size;

''(B) the number of clients of the investment adviser;

''(C) the types of clients of the investment adviser; and

''(D) such other relevant factors as the Commission determines to be appropriate.

''(3) AMOUNT AND USE OF FEES.—

''(A) MINIMUM AGGREGATE AMOUNT.—The aggregate amount of fees determined by the Commission under this subsection for any fiscal year shall be greater than the amount the Commission spent on inspections and examinations of registered investment advisers during the 2009 fiscal year.

''(B) EXCESS FEES.—The Commission may retain any excess fees collected under this subsection during a fiscal year for application towards the costs of inspections and examinations of investment advisers in future fiscal years.

''(4) REVIEW AND ADJUSTMENT OF FEES.—The Commission may review fee rates established pursuant to this section before the end of any fiscal year and make any appropriate adjustments prior to collecting any such fee in the following fiscal year.

''(5) PENALTY FEE.—The Commission shall prescribe by rule or regulation an additional fee to be assessed as a penalty for late payment of fees required by this subsection.

''(6) JUDICIAL REVIEW.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.''.

SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) in subsection (e)(2), by striking ''September 30'' and inserting ''September 25'';

(2) in subsection (g), by striking ''April 30'' and inserting ''August 31''; and

(3) in subsection (j)(2)—

(A) by striking ''5 months'' and inserting ''4 months''; and

(B) by striking ''(including fees collected during such 5-month period and assessments collected under subsection (d))'' and inserting ''(including fees estimated to be collected under subsections (b) and (c) prior to the effective date of the uniform adjusted rate and assessments estimated to be collected under subsection (d))''.

SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the ''SEC'') shall hire an independent consultant of high caliber and with 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 SEC, as well as the SEC's relationship with the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC's oversight.

(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 SEC;

(B) improving communications between SEC offices and divisions;

(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 SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC's hiring authorities, workplace policies, and personal practices, 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 SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC's mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1);

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to enable the SEC and other entities on which it reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

SEC. 7305. CAPITAL MARKETS SAFETY BOARD.

There is established within the Securities and Exchange Commission an office to be known as the Capital Markets Safety Board whose purpose shall be to conduct investigations, at the direction of the Commission, of failed institutions registered with the Commission, to determine what caused such institutions to fail. Upon the conclusion of an investigation, the Board shall make available on the Commission's website a report of its findings, including recommendations regarding how others can avoid similar mistakes. No information that may compromise an ongoing Federal investigation shall be made available in any such report.

SEC. 7306. REPORT ON IMPLEMENTATION OF ''POST-MADOFF REFORMS''.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this subtitle, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the implementation of reforms outlined by the Commission in the wake of the discovery of fraud by Bernie Madoff.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include an analysis of—

(1) how many of the post-Madoff reforms have been implemented and to what extent; and

(2) whether there is overlap between any of the Commission's reform proposals and those recommended by the Inspector General of the Commission.

(c) PUBLICATION OF REPORT.—The Commission and the Committees referred to in subsection (a) shall publish the report required by such subsection on their Web sites.

SEC. 7307. JOINT ADVISORY COMMITTEE.

The Securities and Exchange Commission and the Commodities Futures Trading Commission may jointly form and operate a joint advisory committee composed of members of each Commission and industry experts and participants. The purposes of such an advisory committee include—

(1) considering and developing solutions to emerging and ongoing issues of common interest in the futures and securities markets;

(2) identifying emerging regulatory risks and assess and quantify their implications for investors and other market participants, and provide recommendations for solutions;

(3) serving as a vehicle for discussion and communication on regulatory issues of mutual concerns affecting each Commission, the regulated markets, and the industry generally; and

(4) reporting regularly to each Commission and to Congress on its activities.

PART 4—ADDITIONAL COMMISSION REFORMS

SEC. 7401. REGULATION OF SECURITIES LENDING.

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following new subsection:

''(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.''.

SEC. 7402. 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''.

SEC. 7403. FINGERPRINTING.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) by striking ''and registered clearing agency,'' and inserting ''registered clearing agency, registered securities information processor, national securities exchange, and national securities association''; and

(2) by striking ''or clearing agency,'' and inserting ''clearing agency, securities information processor, national securities exchange, or national securities association,''.

SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking ''an exchange required thereby'' and inserting ''a self-regulatory organization,''.

SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended—

(1) by striking '', unless exempt from registration pursuant to section 203(b),'' and inserting ''registered or required to be registered with the Commission'';

(2) by striking ''make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to''; and

(3) by striking ''to'' after ''in any way''.

SEC. 7406. CONFORMING AMENDMENTS FOR THE REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking ''the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),''; and

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

''(7) DEFINITION.—For purposes of this subsection, the term 'emergency' means—

''(A) a major market disturbance characterized by or constituting—

''(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

''(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

''(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

''(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

''(ii) the transmission or processing of securities transactions.''.

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking ''section 18(c) of the Public Utility Holding Company Act of 1935,''.

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by amending paragraph (17) to read as follows:

''(17) The terms 'Securities Act of 1933' and 'Securities Exchange Act of 1934' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.'';

(2) in section 308 (15 U.S.C. 77hhh), by striking ''Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' each place it appears and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934'';

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk) by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''; and

(6) in section 326 (15 U.S.C. 77zzz), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking '''Public Utility Holding Company Act of 1935','';

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by amending paragraph (8) to read as follows:

''(8) [Repealed]'';

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking ''the Public Utility Holding Company Act of 1935,''; and

(4) in section 50 (15 U.S.C. 80a–49), by striking ''the Public Utility Holding Company Act of 1935,''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking '''Public Utility Holding Company Act of 1935',''.

SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL REPORTING.

(a) FINDINGS.—Congress finds the following:

(1) Transparent and clear financial reporting is integral to the continued growth and strength of our capital markets and the confidence of investors.

(2) The increasing detail and volume of accounting, auditing, and reporting guidance pose a major challenge.

(3) The complexity of accounting and auditing standards in the United States has added to the costs and effort involved in financial reporting.

(b) TESTIMONY REQUIRED ON REDUCING COMPLEXITY IN FINANCIAL REPORTING.—The Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 shall annually provide oral testimony by their respective Chairpersons or a designee of the Chairperson, beginning in 2010, and for 5 years thereafter, to the Committee on Financial Services of the House of Representatives on their efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information to investors, including—

(1) reassessing complex and outdated accounting standards;

(2) improving the understandability, consistency, and overall usability of the existing accounting and auditing literature;

(3) developing principles-based accounting standards;

(4) encouraging the use and acceptance of interactive data; and

(5) promoting disclosures in ''plain English''.

SEC. 7408. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking ''; and'' and inserting ''; or''.

SEC. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 17(i) of the Securities Exchange Act of 1934 (as amended by section 1314(2)) is amended to read as follows:

''(i) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section, or the financial or operational condition of such persons, or any information supplied to the Commission by any domestic or foreign regulatory agency or self-regulatory organization that relates to the financial or operational condition of such persons, of any associated person of such persons, or any affiliate of an investment bank holding company.

''(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination, surveillance, or risk assessment of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

''(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—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 that section.

''(4) CERTAIN INFORMATION TO BE CONFIDENTIAL.—In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(3) as confidential information for purposes of section 24(b)(2) of this title.''.

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), as amended by sections 7106(a)(2) and 7218(b)(4), is further amended by adding at the end the following new paragraph:

''(6) CONFIDENTIALITY.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section.

''(B) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, or the Public Company Accounting Oversight Board requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

''(C) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—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 that section.''.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4), as amended by sections 7106(b) and 7218(c), is further amended by adding at the end the following new subsection:

''(f) CONFIDENTIALITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section.

''(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or a self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

''(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—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 that section.''.

SEC. 7410. TECHNICAL CORRECTIONS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking ''individual;'' and inserting ''individual,'';

(2) in the matter following paragraph (5) of section 11(a), by striking ''earning statement'' and inserting ''earnings statement''.

(3) in section 18(b)(1)(C) (15 U.S.C. 77r(b)(1)(C)), by striking ''is a security'' and inserting ''a security'';

(4) in section 18(c)(2)(B)(i) (15 U.S.C. 77r(c)(2)(B)(i)), by striking ''State, or'' and inserting ''State or'';

(5) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking ''in paragraph (1) of (3)'' and inserting ''in paragraph (1) or (3)''; and

(6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking ''business entity;'' and inserting ''business entity,''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by striking ''affected'' and inserting ''effected'';

(2) in section 3(a)(55)(A) (15 U.S.C. 78c(a)(55)(A)), by striking ''section 3(a)(12) of the Securities Exchange Act of 1934'' and inserting ''section 3(a)(12) of this Act'';

(3) in section 3(g) (15 U.S.C. 78c(g)), by striking ''company, account person, or entity'' and inserting ''company, account, person, or entity'';

(4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–1(i)(1)(B)(i)), by striking ''nonaudit'' and inserting ''non-audit'';

(5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking ''earning statement'' and inserting ''earnings statement'';

(6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

(A) by striking the sentence beginning ''The order granting'' and ending ''from such membership.'' in subparagraph (B); and

(B) by inserting such sentence in the matter following such subparagraph after ''are satisfied.'';

(7) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

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

(B) by striking the sentence beginning ''The order granting'' and ending ''from such membership.'' in such subparagraph (B), as redesignated; and

(C) by inserting such sentence in the matter following such redesignated subparagraph after ''are satisfied.'';

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking ''15A(k) gives'' and inserting ''15A(k), give''; and

(9) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking ''paragraph (1) subsection'' and inserting ''Paragraph (1)''.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking ''section 2 of such Act'' and inserting ''section 2(a) of such Act'';

(2) in section 313(a)(4) (15 U.S.C. 77mmm(a)(4)) by striking ''subsection (b) of section 311'' and inserting ''section 311(b)''; and

(3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking ''(1),'' and inserting ''(1)''.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19)(B) (15 U.S.C. 80a–2(a)(19)(B)) by striking ''clause (vi)'' both places it appears in the last two sentences and inserting ''clause (vii)'';

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by inserting ''or'' after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking ''any provision of this subsection'' and inserting ''any provision of this paragraph'';

(4) in section 13(a)(3) (15 U.S.C. 80a–13(a)(3)), by inserting ''or'' after the semicolon at the end;

(5) in section 17(f)(4) (15 U.S.C. 80a–17(f)(4)), by striking ''No such member'' and inserting ''No member of a national securities exchange'';

(6) in section 17(f)(6) (15 U.S.C. 80a–17(f)(6)), by striking ''company may serve'' and inserting ''company, may serve''; and

(7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

(A) by striking ''paragraph (1) of section 205'' and inserting ''section 205(a)(1)''; and

(B) by striking ''clause (A) or (B) of that section'' and inserting ''section 205(b)(1) or (2)''.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in each of the following sections, by striking ''principal business office'' or ''principal place of business'' (whichever and wherever it appears) and inserting ''principal office and place of business'': sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–18a(c)); and

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by inserting ''or'' after the semicolon at the end.

SEC. 7411. MUNICIPAL SECURITIES.

Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than October 1, 2010, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the 'Board'), shall be composed of members which shall perform the duties set forth in this section and shall consist of—

''(A) a majority of independent public representatives, at least one of whom shall be representative of investors in municipal securities and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as 'public representatives');

''(B) at least one individual who is representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'); and

''(C) at least one individual who is 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

(2) by amending paragraph (2)(B) to read as follows:

''(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules—

''(i) shall establish requirements regarding the independence of public representatives;

''(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of broker-dealer representatives and bank representatives;

''(iii) shall establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

''(iv) shall specify the term members shall serve; and

''(v) may increase or decrease the number of members which shall constitute the whole Board, but in no case may such number be an even number.''.

SEC. 7412. INTERESTED PERSON DEFINITION.

Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clauses (v) and (vi);

(2) by inserting after clause (iv) the following new clause:

''(v) 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;'';

(3) by redesignating clause (vii) as clause (vi); and

(4) in clause (vi), as redesignated, by striking ''two completed fiscal years'' and inserting ''five completed fiscal years''.

SEC. 7413. RULEMAKING AUTHORITY TO PROTECT REDEEMING INVESTORS.

Section 22(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(e)) is amended by adding at the end the following: ''The Commission may, by rules and regulations, limit the extent to which a registered open-end investment company may own, hold, or invest in illiquid securities or other illiquid property.''.

SEC. 7414. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the

United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions have engaged in information sharing or assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION AND REPORTING COST BURDENS ON SMALLER ISSUERS.

(a) STUDY REQUIRED.—The Government Accountability Office and the Securities and Exchange Commission shall each conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7262(b)) on issuers who are not accelerated or large accelerated filers as defined by Commission Rule 12b-2. The study shall—

(1) include recommendations, administrative reforms, and legislative proposals on implementation steps that could be taken to reduce compliance burdens on these issuers; and

(2) determine the efficacy of the Securities and Exchange Commission's measures to limit the cost of compliance on smaller issuers.

(b) REPORTS REQUIRED.—On or before June 1, 2010, the Government Accountability Office and the Securities and Exchange Commission shall submit separate reports to Congress containing the findings and conclusions of the studies required under subsection (a), together with such recommendations for regulatory, legislative, or administrative action as may be appropriate.

(c) EFFECTIVE DATE CONTINGENT ON REPORTS.—Requirements under section 404(b) of the Sarbanes-Oxley Act of 2002 on issuers described under subsection (a) shall not become effective until the results of the report are delivered, but in no case before June 1, 2011.

SECTION 7416. ANALYSIS OF RULE REGARDING SMALLER REPORTING COMPANIES.

(a) FINDINGS.—Congress finds the following:

(1) Many small businesses in cutting-edge technology sectors require significant capital investment to develop new technologies related to clean energy, drug treatments for terminal diseases and food production in hunger-stricken areas of the World.

(2) Many technology companies conducting research do not meet the definition of ''smaller reporting company'' under the Securities and Exchange Commission's Rule 12b–2 due to unusually high public floats despite low or zero revenue.

(3) The Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission recommended that a company with a market capitalization of less than about $787,000,000 be considered a smallcap company and that the Commission provide exemptions from section 404(b) of the Sarbanes-Oxley Act to companies with less than $250,000,000 in annual revenues.

(b) STUDY OF USING REVENUE AS CRITERIA TO DEFINE SMALLER REPORTING COMPANY.—The Securities and Exchange Commission shall conduct a study of the inclusion of revenue as a criteria used in defining smaller reporting company as defined under the Commission's Rule 12b-2 to account for smaller public companies with public floats less than $700,000,000 and revenues less than $250,000,000. Not later than 180 days after the date of enactment of this subtitle, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a report of the findings of the study.

SEC. 7417. FINANCIAL REPORTING FORUM.

(a) ESTABLISHMENT.—There is hereby established a Financial Reporting Forum (hereinafter referred to as the ''Forum''), which shall consist of—

(1) the Chairman of the Securities Exchange Commission (hereinafter referred to as the ''SEC'');

(2) the head of the Financial Accounting Standards Board;

(3) the Chairman of the Public Company Accounting Oversight Board;

(4) the head of each appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

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

(6) the Secretary of the Treasury;

(7) a representative of a non-financial institution, appointed by the SEC;

(8) a representative of a financial institution, appointed by the SEC;

(9) a representative of auditors, appointed by the SEC; and

(10) a representative of investors, appointed by the SEC.

(b) MEETINGS.—The Forum shall meet no less often than quarterly.

(c) DUTIES.—The Forum shall meet to discuss immediate and long-term issues critical to financial reporting.

(d) REPORTING.—The Forum shall issue an annual report to the Congress detailing any determinations or findings made by the Forum during the previous year, including any legislative recommendations the Forum may have related to financial reporting matters.

SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AUTHORITIES.

Section 203A(a) 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 new paragraph:

''(2) TREATMENT OF CERTAIN MID-SIZED INVESTMENT ADVISERS.—Notwithstanding paragraph (1), an investment adviser that—

''(A) is regulated and examined, or required to be regulated and examined, by a State; and

''(B) 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,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply.''.

SEC. 7419. CUSTODIAL REQUIREMENTS.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of such Act for an investment adviser registered under the Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, subject to such exception the Commission determines in such rule are in the public interest and consistent with the protection of investors, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

SEC. 7420. OMBUDSMAN.

(a) APPOINTMENT.—Not later than 180 days after the date of the enactment of this subtitle, the Chairman of the Securities and Exchange Commission shall appoint an Ombudsman who shall report directly to the Chairman.

(b) DUTIES.—The Ombudsman appointed under subsection (a) shall—

(1) act as a liaison between the Commission and any affected person with respect to any problem such person may have in dealing with the Commission resulting from the regulatory activities of the Commission;

(2) review and make recommendations regarding Commission policies and procedures to encourage persons to present questions to the Commission regarding compliance with Federal securities laws; and

(3) maintain confidentiality of communications between such persons and the Ombudsman.

(c) LIMITATION.—In carrying out the duties under subsection (b), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this section shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office in any other agency.

(d) REPORT.—Each year, the Ombudsman shall submit a report to the Commission for inclusion in the annual report that describes

the activities and evaluates the effectiveness of the Ombudsman during the preceding year. In that report, the Ombudsman shall include solicited comments and evaluations from registrants in regards to the effectiveness of the Ombudsman.

PART 5—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID BY SIPC MEMBERS.

Section 4(d)(1)(C) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking ''$150 per annum'' and inserting the following: ''0.02 percent of the gross revenues from the securities business of such member of SIPC''.

SEC. 7502. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended by striking ''of not to exceed $1,000,000,000'' and inserting ''the lesser of $2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC''.

SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.

Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3) is amended—

(1) in subsection (a)(1), by striking ''$100,000 for each such customer'' and inserting ''the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)''; and

(2) by adding the following new subsections:

''(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term 'standard maximum cash advance amount' means $250,000, as such amount may be adjusted after March 31, 2010, as provided under subsection (e).

''(e) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—No later than April 1, 2010, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

''(A) $250,000 multiplied by,

''(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

''(2) ROUNDING.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

''(3) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

''(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

''(B) the Board of Directors of SIPC shall submit a report to the Congress containing stating the standard maximum cash advance amount.

''(4) IMPLEMENTATION PERIOD.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

''(5) INFLATION ADJUSTMENT CONSIDERATIONS.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

''(A) the overall state of the fund and the economic conditions affecting members of SIPC;

''(B) the potential problems affecting members of SIPC; and

''(C) such other factors as the Board of Directors of SIPC may determine appropriate.''.

SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PROCEEDINGS.

Section 5(b)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

(1) by striking ''SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that''; and

(2) by striking ''five hundred'' and inserting ''five thousand''.

SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.

Section 9(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(4)) is amended by inserting ''an insider,'' after ''or net profits of the debtor,''.

SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.

Section 10(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–4(a)(4)) is amended by striking ''$250,000'' and inserting ''$850,000''.

SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.

Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking ''$50,000'' and inserting ''$250,000''; and

(2) in paragraph (2), by striking ''$50,000'' and inserting ''$250,000''.

SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.

Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

''(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

''(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than $250,000 or imprisoned for not more than five years.

''(2) INTERNET SERVICE PROVIDERS.—Any Internet service provider that, on or through a system or network controlled or operated by the Internet service provider, transmits, routes, provides connections for, or stores any material containing any misrepresentation of the kind prohibited in paragraph (1) shall be liable for any damages caused thereby, including damages suffered by SIPC, if the Internet service provider—

''(A) has actual knowledge that the material contains a misrepresentation of the kind prohibited in paragraph (1), or

''(B) in the absence of actual knowledge, is aware of facts or circumstances from which it is apparent that the material contains a misrepresentation of the kind prohibited in paragraph (1), and

upon obtaining such knowledge or awareness, fails to act expeditiously to remove, or disable access to, the material.

''(3) INJUNCTIONS.—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1) or (2). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk's office.''.

SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGIN SECURITIES ACCOUNT PROTECTION.

(a) SIPC ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1)) is amended by inserting ''or options on futures contracts'' after ''claim for securities''.

(b) DEFINITIONS.—Section 16 of such Act (15 U.S.C. 78lll) is amended—

(1) by amending paragraph (2) to read as follows:

''(2) CUSTOMER.—

''(A) IN GENERAL.—The term 'customer' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer. The term 'customer' includes any person who has a claim against the debtor arising out of sales or conversions of such securities.

''(B) INCLUDED PERSONS.—The term 'customer' includes—

''(i) any person who has deposited cash with the debtor for the purpose of purchasing securities; and

''(ii) any person who has a claim against the debtor for, or a claim against the debtor arising out of sales or conversions of, cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission.

''(C) EXCLUDED PERSONS.—The term 'customer' does not include—

''(i) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC;

''(ii) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor; or

''(iii) any person to the extent such person has a claim relating to any open repurchase or open reverse repurchase agreement.

For purposes of this paragraph, the term 'repurchase agreement' means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase

the security at a specified price on a specified future date.'';

(2) in paragraph (4), by inserting after the first sentence the following new sentence: ''In the case of portfolio margining accounts of customers that are carried as securities accounts pursuant to a portfolio margining program approved by the Commission, such term shall also include futures contracts and options on futures contracts received, acquired, or held by or for the account of a debtor from or for such accounts, and the proceeds thereof.'';

(3) in paragraph (9), by inserting before ''Such term'' in the matter following subparagraph (L) the following: ''The term includes revenues earned by a broker or dealer in connection with transactions in customers' portfolio margining accounts carried as securities accounts pursuant to a portfolio margining program approved by the Commission.''; and

(4) in paragraph (11)—

(A) by amending subparagraph (A) to read as follows:

''(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

''(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

''(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; minus''; and

(B) by inserting before ''In determining'' in the matter following subparagraph (C) the following: ''A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission, or a claim for a security futures contract, shall be deemed to be a claim for the mark-to-market (variation) payments due with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash.''.

SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF RISK-BASED ASSESSMENTS FOR SIPC MEMBERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on whether the Securities Investor Protection Corporation (hereafter in this section referred to as ''SIPC'') should be required to impose assessments, on its member brokers and dealers, based on risk for the purpose of adequately maintaining the SIPC Fund.

(b) CONTENT.—The Comptroller General in conducting this study shall—

(1) identify and examine available approaches, including modeling, to measure broker and dealer operational risk;

(2) analyze whether the available approaches to measure broker and dealer operational risk can be used in managing the aggregate risk to the SIPC Fund;

(3) explore whether objective measures like the volume of assets of the SIPC member, previous enforcement and compliance actions taken by regulatory bodies against the SIPC member, or the number of years the SIPC member has been in operation, among other factors, can be used to assess the probability the fund will incur a loss with respect to the SIPC member;

(4) examine the impact that risk-based assessments could have on large and small brokers and dealers; and

(5) examine the impact that risk-based assessments could have on institutional and retail brokers and dealers.

(c) CONSULTATION.—The Comptroller General in planning and conducting this study shall consult with the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, SIPC, the Financial Industry Regulatory Authority, and any other public or private sector organization that the Comptroller General considers appropriate.

(d) REPORT REQUIRED.—Not later than one year after the date of enactment of this subtitle, the Comptroller general shall submit a report of the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

PART 6—SARBANES-OXLEY ACT AMENDMENTS

SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OVERSIGHT OF AUDITORS OF BROKERS AND DEALERS.

(a) DEFINITIONS.—(1) Title I of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

''SEC. 110. DEFINITIONS.

''For the purposes of this title, and notwithstanding section 2:

''(1) AUDIT.—The term 'audit' means an examination of the financial statements, reports, documents, procedures or controls, or notices, of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

''(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

''(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

''(B) in which a public accounting firm either—

''(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; or

''(ii) asserts that no such opinion can be expressed.

''(3) PROFESSIONAL STANDARDS.—The term 'professional standards' means—

''(A) accounting principles that are—

''(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

''(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

''(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

''(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

''(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

''(4) BROKER.—The term 'broker' means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

''(5) DEALER.—The term 'dealer' means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

''(6) SELF-REGULATORY ORGANIZATION.—The term 'self-regulatory organization' has the same meaning as in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)).''.

(2) The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 109 the following new item:

''Sec. 110. Definitions.''.

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of such Act is amended—

(1) by striking ''issuers'' each place it appears and inserting ''issuers, brokers, and dealers'';

(2) in subsection (a), by striking ''public companies'' and inserting ''companies''; and

(3) in subsection (a), by striking ''for companies the securities of which are sold to, and held by and for, public investors''.

(c) REGISTRATION WITH THE BOARD.—Section 102 of such Act is amended—

(1) in subsection (a), by striking ''Beginning 180 days after the date of the determination of the Commission under section 101(d), it'' and inserting ''It'';

(2) in subsections (a) and (b)(2)(G), by striking ''issuer'' each place it appears and inserting ''issuer, broker, or dealer''; and

(3) in subsection (b)(2)(A), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of such Act is amended—

(1) in paragraph (1), by striking ''and such ethics standards'' and inserting ''such ethics standards, and such independence standards'';

(2) in paragraph (2)(A)(iii), by striking ''describe in each audit report'' and inserting ''in each audit report for an issuer, describe''; and

(3) in paragraph (2)(B)(i), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—Section 104 of such Act is amended—

(1) in subsection (a), by striking ''issuers'' and inserting ''issuers, brokers, and dealers'';

(2) in subsection (b)(1)(A)—

(A) by striking ''audit reports'' and inserting ''audit reports on annual financial statements''; and

(B) by striking ''and'';

(3) in subsection (b)(1)(B)—

(A) by striking ''audit reports'' and inserting ''audit reports on annual financial statements''; and

(B) by striking the period at the end and inserting ''; and''; and

(4) by adding at the end of subsection (b)(1) the following new subparagraph:

''(C) with respect to each registered public accounting firm that regularly provides audit reports and is not described under subparagraph (A) or (B), on a basis to be determined by the Board, by rule, consistent with the public interest and protection of investors.''.

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of such Act is amended—

(1) in the subparagraph heading, by inserting '', BROKER, OR DEALER'' after ''ISSUER'';

(2) by striking ''any issuer'' each place it appears and inserting ''any issuer, broker, or dealer''; and

(3) by striking ''an issuer under this subsection'' and inserting ''a registered public accounting firm under this subsection''.

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106 of such Act is amended—

(1) in subsection (a)(1), by striking ''issuer'' and inserting ''issuer, broker, or dealer''; and

(2) in subsection (a)(2), by striking ''issuers'' and inserting ''issuers, brokers, or dealers''.

(h) FUNDING.—Section 109 of such Act is amended—

(1) in subsection (c)(2), by striking ''subsection (i)'' and inserting ''subsection (j)'';

(2) in subsection (d)(2), by striking ''allowing for differentiation among classes of issuers, as appropriate'' and inserting ''and among brokers and dealers in accordance with subsection (h), and allowing for differentiation among classes of issuers and brokers and dealers, as appropriate'';

(3) in subsection (d), by inserting at the end the following new paragraph:

''(3) BROKERS AND DEALERS.—The rules of the Board under paragraph (1) shall provide that the allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1) with respect to brokers and dealers shall not begin until the first day of the first full fiscal year beginning after the date of the enactment of this paragraph.'';

(4) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(5) by inserting after subsection (g) the following new subsection:

''(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

''(1) IN GENERAL.—Any amount due from brokers and dealers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer's allocation shall be in proportion to the broker or dealer's net capital compared to the total net capital of all brokers and dealer, in accordance with the rules of the Board.

''(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.''.

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following new clause:

''(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization;''.

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of such Act is amended—

(1) in subclause (III), by striking ''and'';

(2) in subclause (IV), by striking the comma and inserting ''; and''; and

(3) by inserting after subclause (IV) the following new subclause:

''(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization,''.

SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting after paragraph (16) the following:

''(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term 'foreign auditor oversight authority' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.''.

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

''(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—When in the Board's discretion it is necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm within the inspection authority, or other regulatory or law enforcement jurisdiction, of a foreign auditor oversight authority may be made available to the foreign auditor oversight authority if the foreign auditor oversight authority provides such assurances of confidentiality as the Board determines appropriate.''.

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED WITH FOREIGN COUNTERPARTS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by amending subsection (b) to read as follows:

''(b) PRODUCTION OF DOCUMENTS.—

''(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board when requested by the Commission or the Board and the foreign public accounting firm shall be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request of 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 foreign public accounting firm's audit work papers 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 its reliance 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 new subsections:

''(d) SERVICE OF REQUESTS OR PROCESS.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic firm a written irrevocable consent and power of attorney that designates the domestic firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section. Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, shall designate to the Commission or the Board an agent in the United States upon whom may be served any process, pleading, or other papers in any action brought to enforce this section or any request by the Commission or the Board under 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 a violation of this Act.

''(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provision of this section, the staff of the Commission or Board may allow foreign public accounting firms subject to this section to meet production obligations under this section though alternate means, such as through foreign counterparts of the Commission or Board.''.

SEC. 7604. CONFORMING AMENDMENT RELATED TO REGISTRATION.

Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S. Code 7212(b)(3)(A)) is amended by striking ''by the Board'' and inserting ''by the Commission or the Board''.

SEC. 7605. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by amending subsection (a) to read as follows:

''(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws or the rules and regulations thereunder, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.'';

(2) in subsection (b), by—

(A) striking ''for a disgorgement fund described in subsection (a)'' and inserting ''for a disgorgement fund or other fund described in subsection (a)''; and

(B) striking ''in the disgorgement fund'' and inserting ''in such fund''; and

(3) by striking subsection (e).

SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 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 within the meaning Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).''.

(b) STUDY.—The Securities and Exchange Commission and the Comptroller General shall jointly 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 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. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance

with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 180 days after the date of the enactment of this subtitle, the Commission and the Comptroller General shall transmit a report of such study to Congress.

SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A(a) of title 18, United States Code, is amended by inserting ''including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,'' after ''(15 U.S.C. 78o(d)),''.

SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.

Section 101 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

''(i) CONGRESSIONAL ACCESS TO INFORMATION.—Nothing in this section shall—

''(1) affect the Boards obligations, if any, to provide access to records under the Right to Financial Privacy Act; or

''(2) authorize the Board to withhold information from Congress or prevent the Board from complying with an order of a court of the United States in an action commenced by the United States or the Board.''.

SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.

(a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.), as amended by section 7601(a)(1), is further amended by adding at the end the following new section:

''SEC. 111. OMBUDSMAN.

''(a) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for the Board. The Ombudsman shall report directly to the Chairman.

''(b) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subsection (a) for the Board shall—

''(1) act as a liaison between the Board and—

''(A) any registered public accounting firm or issuer with respect to issues or disputes concerning the preparation or issuance of any audit report with respect to that issuer; and

''(B) any affected registered public accounting firm or issuer with respect to—

''(i) any problem such firm or issuer may have in dealing with the Board resulting from the regulatory activities of the Board, particularly with regard to the implementation of section 404; and

''(ii) issues caused by the relationships of registered public accounting firms and issuers generally; and

''(2) assure that safeguards exist to encourage complainants to come forward and to preserve confidentiality; and

''(3) carry out such activities, and any other activities assigned by the Board, in accordance with guidelines prescribed by the Board.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 110 (as added by section 601(a)(2)) the following new item:

''Sec. 111. Ombudsman.''.

SEC. 7610. AUDITING OVERSIGHT BOARD.

The Sarbanes-Oxley Act of 2002 is amended—

(1) in section 2(a)(5), by striking ''Public Company Accounting Oversight Board'' and inserting ''Auditing Oversight Board'';

(2) in section 101(a), by striking ''Public Company Accounting Oversight Board'' and inserting ''Auditing Oversight Board''; and

(3) in the heading of title I, by striking ''**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**'' and inserting ''**AUDITING OVERSIGHT BOARD**''.

PART 7—SENIOR INVESTMENT PROTECTION

SEC. 7701. FINDINGS.

Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

SEC. 7702. DEFINITIONS.

For purposes of this part:

(1) MISLEADING DESIGNATION.—The term ''misleading designation''—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this part referred to as the ''NASAA'') Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto, or it was issued by or obtained from any State.

(2) FINANCIAL PRODUCT.—The term ''financial product'' means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products.

(3) MISLEADING OR FRAUDULENT MARKETING.—The term ''misleading or fraudulent marketing'' means the use of a misleading designation when selling to or advising a senior about the sale of a financial product.

(4) SENIOR.—The term ''senior'' means any individual who has attained the age of 62 years or more.

(5) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLEAD BY FALSE DESIGNATIONS.

(a) GRANT PROGRAM.—The Securities and Exchange Commission (in this part referred to as the ''Commission'')—

(1) shall establish a program in accordance with this part to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this part as the Commission determines are necessary to carry out and assess the effectiveness of the program under this part.

(b) USE OF GRANT AMOUNTS.—A grant under this part may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations; and

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors.

(c) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this part may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934).

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the

date of the enactment of this subtitle, or any successor thereto.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the extent practicable, provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

(ii) that insurers and insurance producers are required to apply a standard for determining the suitability of each recommended annuity transaction, including fixed and index annuities, that is at least as protective of the interests of the consumer as rule 2821(b) of the Financial Industry Regulatory Authority (in this paragraph referred to as ''FINRA''), as in effect on the date of the enactment of this subtitle, or any successor to such rule;

(iii) that insurers and insurance producers are required to maintain a process for review of the suitability, and approval or disapproval, of each recommended annuity transaction that is at least as protective of the interests of the consumer as the principal review required under rule 2821(c) of FINRA, as in effect on the date of the enactment of this subtitle, or any successor to such rule;

(iv) that insurers and insurance producers are required to maintain processes for the supervision of direct annuity sales and insurance producer-recommended annuity sales (including procedures for the insurer to obtain and confirm consumer suitability information and for the insurer to confirm consumer understanding of the annuity transaction) that are at least as protective of the interests of the consumer as member broker and dealer supervision requirements of FINRA, as in effect on the date of the enactment of this subtitle, or any successor to such requirements;

(v) that insurers are required to verify that each insurance producer successfully completes, and each insurance producer is required to receive, training designed to ensure that the insurance producer is competent to recommend each class of annuity;

(vi) that insurers are required to verify that insurance producers receive, and insurance producers are required to receive, training regarding the features of each offered annuity product, to an extent that is at least as protective of the interests of the consumer as the FINRA firm element training requirements, as in effect on the date of the enactment of this subtitle, or any successor to such requirements;

(vii) for coordination of such rules with the rules of FINRA governing member brokers, dealers, and security representatives, to the extent appropriate, consistent with protecting the interests of consumers, for State insurance regulators to rely on, or to avoid duplication of FINRA rules; and

(viii) for exemption from such rules only if such exemption is consistent with the protection of consumers.

SEC. 7704. APPLICATIONS.

To be eligible for a grant under this part, the State or appropriate State agency shall submit to the Commission a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

SEC. 7705. LENGTH OF PARTICIPATION.

A State receiving a grant under this part shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part, $8,000,000 for each of the fiscal years 2011 through 2015.

PART 8—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (as amended by section 3204) is amended by inserting after section 15F (15 U.S.C. 78o–7) the following new section:

''SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

''(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

''(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as long as such adviser is registered in accordance with subsection (b) and is not a natural person.

''(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this section any municipal financial adviser or class of municipal financial advisers specified in such rule or order.

''(b)(1) A municipal financial adviser may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal financial adviser and any persons associated with such municipal financial adviser as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

''(A) by order grant registration, or

''(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4).

''(2) An application for registration of a municipal financial adviser to be formed or organized may be made by a municipal financial adviser to which the municipal financial adviser to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

''(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

''(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such municipal financial adviser, whether prior or subsequent to becoming such, or any person associated with such municipal financial adviser, whether prior or subsequent to becoming so associated—

''(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, 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, or has omitted to state in any such application or report any material fact which is required to be stated therein;

''(B) has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

''(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

''(ii) arises out of the conduct of the business of a municipal financial adviser, broker,

dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

''(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

''(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of a substantially equivalent foreign statute;

''(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as a municipal financial adviser, investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

''(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or is unable to comply with any such provision;

''(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph, no person shall be deemed to have failed reasonably to supervise any other person, if—

''(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

''(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

''(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

''(G) has been found by a foreign financial regulatory authority to have—

''(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that 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, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

''(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

''(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

''(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

''(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

''(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a municipal financial adviser, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

''(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

''(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

''(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

''(B) It shall be unlawful—

''(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

''(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, if such municipal financial adviser knew, or in the exercise of reasonable care should have known, of such order.

''(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

''(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

''(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

''(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction.

''(c)(1)(A) No municipal financial adviser shall make use of the mails or any means or instrumentality of interstate commerce in connection with which such municipal financial adviser engages in any fraudulent, deceptive, or manipulative act or practice or violates such rules and regulations regarding conflicts of interest or fair practices, including but not limited to rules and regulations related to political contributions, as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets.

''(B) The Commission shall, for the purposes of this paragraph as the Commission finds necessary or appropriate in the public

interest or for the protection of investors, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

''(2) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

''(d) Every registered municipal financial adviser shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such municipal financial adviser's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such municipal financial adviser or any person associated with such municipal financial adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

''(e) A municipal financial adviser and any person associated with such municipal financial adviser shall be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a municipal financial adviser. A municipal financial adviser may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser's fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are not consistent with a municipal financial adviser's fiduciary duty to its clients.''.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by section 3201(6)) is amended by adding at the end the following new paragraphs:

''(78) MUNICIPAL FINANCIAL ADVISER.—

''(A) The term 'municipal financial adviser' means a person who, for compensation, engages in the business of—

''(i) providing advice to a municipal securities issuer with respect to—

''(I) the issuance or proposed issuance of securities, including any remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;

''(II) the investment of proceeds from securities issued by such municipal securities issuer;

''(III) the hedging of any risks associated with subclauses (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

''(IV) preparation of disclosure documents in connection with the issuance, proposed issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section 240.15c2–12 of title 17, Code of Federal Regulations;

''(ii) assisting a municipal securities issuer in selecting or negotiating guaranteed investment contracts or other investment products; or

''(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

''(B) Such term does not include—

''(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

''(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

''(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. section 77b(a)(11)); or

''(iv) a State or any political subdivision thereof.

''(79) MUNICIPAL SECURITIES ISSUER.—The term 'municipal securities issuer' means—

''(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

''(B) any person who receives the proceeds generated from the issuance of municipal securities.

''(80) PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.—The term 'person associated with a municipal financial adviser' or 'associated person of a municipal financial adviser' means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15G(b) (other than paragraph (6) thereof).''.

SEC. 7802. CONFORMING AMENDMENTS.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended—

(1) in section 15(b)(4)(B)(ii) (15 U.S.C. 78o(b)(4)(B)(ii)), by inserting ''municipal finance adviser,'' after ''nationally recognized statistical rating organization,'';

(2) in section 15(b)(4)(C) (15 U.S.C. 78o(b)(4)(C)), by inserting ''municipal finance adviser,'' after ''nationally recognized statistical rating organization,''; and

(3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by inserting ''registered municipal financial adviser,'' after ''nationally recognized statistical rating organization,''.

(b) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 is amended—

(1) in section 2(a) (15 U.S.C. 80a–2(a)), by inserting at the end the following new paragraph:

''(54) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''; and

(3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''.

(c) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 is amended—

(1) in section 202(a) (15 U.S.C. 80b–2(a)), by inserting at the end the following new paragraph:

''(31) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(2) in section 203(e)(2)(B) (15 U.S.C. 80b–3(e)(2)(B)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''; and

(3) in section 203(e)(4) (15 U.S.C. 80b–3(e)(4)) is amended by inserting ''municipal finance adviser,'' after ''credit rating agency,''.

SEC. 7803. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this part shall take effect 30 days after the date of the enactment of this subtitle.

(b) EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.—Notwithstanding subsection (a), the Securities and Exchange Commission shall, within 120 days after the date of the enactment of this subtitle, publish for notice and public comment such regulations as are initially required to implement this part, and shall take final action with respect to such regulations not later than 270 days after the date of enactment of this subtitle.

(c) REGISTRATION DATE.—No person may continue to act as a municipal financial adviser, as such term is defined in section 3(a)(65) of the Securities Exchange Act of 1934 (as added by this part), after 30 days after the date the regulations described in subsection (b) become effective unless such person has been registered as required by the amendment made by section 7701 of this part.

TITLE VI—FEDERAL INSURANCE OFFICE

SEC. 8001. SHORT TITLE.

This title may be cited as the ''Federal Insurance Office Act of 2009''.

SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

''SEC. 313. FEDERAL INSURANCE OFFICE.

''(a) ESTABLISHMENT OF OFFICE.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

''(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

''(c) FUNCTIONS.—

''(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

''(A) To monitor the insurance industry to gain expertise.

''(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

''(C) To recommend to the Financial Services Oversight Council that it designate an insurer, including its affiliates, as an entity subject to stricter standards.

''(D) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

''(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

''(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

''(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

''(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

''(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

''(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

''(e) GATHERING OF INFORMATION.—

''(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

''(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term 'insurer' means any entity that is authorized to write insurance or reinsure risks and issue contracts or policies in one or more States.

''(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

''(5) CONFIDENTIALITY.—

''(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

''(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

''(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

''(D) Section 552 of title 5, United States Code, shall apply to any data or information submitted by an insurer or affiliate of an insurer.

''(f) PREEMPTION OF STATE INSURANCE MEASURES.—

''(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

''(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

''(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

''(2) DETERMINATION.—

''(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

''(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

''(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

''(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

''(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

''(v) consider the effect of preemption on—

''(I) the protection of policyholders and policy claimants;

''(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

''(III) ensuring the integrity and stability of the United States financial system; and

''(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

''(vi) consider any comments received.

The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

''(B) SCOPE OF REVIEW.—For purposes of this section, the Director's determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

''(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

''(i) notify the appropriate State of the determination and the extent of the inconsistency;

''(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

''(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

''(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

''(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

''(B) notify the appropriate State.

''(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

''(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

''(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

''(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

''(j) SAVINGS PROVISIONS.—Nothing in this section shall—

''(1) preempt any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

''(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

''(3) be construed to alter, amend, or limit the responsibility of the Consumer Financial Protection Agency;

''(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term in defined in subsection (p)); or

''(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

''(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

''(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing

in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

''(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

''(n) REPORTS TO CONGRESS.—

''(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

''(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

''(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

''(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

''(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

''(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral recognition agreement that—

''(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

''(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

''(3) DETERMINATION OF INCONSISTENCY.—The term 'determination of inconsistency' means a determination that a State insurance measure is preempted under subsection (f).

''(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term 'Federal financial regulatory agency' means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

''(5) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

''(6) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

''(7) OFFICE.—The term 'Office' means the Federal Insurance Office established by this section.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(9) STATE.—The term 'State' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

''(10) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

''(11) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

''(12) UNITED STATES INSURER.—The term 'United States insurer' means—

''(A) an insurer that is organized under the laws of a State; or

''(B) a United States branch of a non-United States insurer.

''(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

''SEC. 314. COVERED AGREEMENTS.

''(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

''(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

''(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

''(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

''(A) the nature of the agreement;

''(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

''(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

''(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

''(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

''(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.''.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking ''and'' at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting ''; and''; and

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

''(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

''Sec. 312. Terrorism and Financial Intelligence.
''Sec. 313. Federal Insurance Office.
''Sec. 314. Covered agreements.
''Sec. 315. Continuing in office.''.

SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) CONSULTATION.—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 9000. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the ''Mortgage Reform and Anti-Predatory Lending Act''.

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE CONSUMER

FINANCIAL PROTECTION AGENCY.—Subtitles A, B, C, and E and sections 9501, 9502, and 9506, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 4002(16), and come under the purview of the Consumer Financial Protection Agency for purposes of title IV, including the transfer of functions and personnel under subtitle F of title IV and the savings provisions of such subtitle.

Subtitle A—Residential Mortgage Loan Origination Standards

SEC. 9001. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

''(cc) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

''(1) COMMISSION.—Unless otherwise specified, the term 'Commission' means the Federal Trade Commission.

''(2) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board. All rule writing by the 'Federal banking agencies' as designated by the Mortgage Reform and Anti-Predatory Lending Act will be coordinated through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee.

''(3) MORTGAGE ORIGINATOR.—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 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.

''(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term 'Nationwide Mortgage Licensing System and Registry' has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

''(5) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person 'assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

''(6) 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, for purposes of sections 129B and 129C and section 128(a) (16), (17), and (18), and 128(f) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

''(7) SECRETARY.—The term 'Secretary', when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

''(8) SECURITIZATION VEHICLE.—The term 'securitization vehicle' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

''(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

''(B) holds such loans.

''(9) SECURITIZER.—The term 'securitizer' means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.

''(10) SERVICER.—The term 'servicer' has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.''.

SEC. 9002. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(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 the following new section:

''§ 129B. Residential mortgage loan origination

''(a) FINDING AND PURPOSE.—

''(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

''(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

''(b) DUTY OF CARE.—

''(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

''(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

''(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, diligently work to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and which are appropriate to the consumer's existing circumstances, based on information known by, or obtained in good faith by, the originator;

''(C) make full, complete, and timely disclosure to each such consumer in writing, the receipt and understanding of which shall be acknowledged by the signature of the mortgage originator and the consumer, of—

''(i) the comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator (and such comparative costs and benefits for each such product shall be presented side by side and the disclosures for each such product shall have equal prominence);

''(ii) the nature of the originator's relationship to the consumer (including the cost of the services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be); and

''(iii) any relevant conflicts of interest between the originator and the consumer;

''(D) certify to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction; and

''(E) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

''(2) CLARIFICATION OF EXTENT OF DUTY TO PRESENT RANGE OF PRODUCTS AND APPROPRIATE PRODUCTS.—

''(A) NO DUTY TO OFFER PRODUCTS FOR WHICH ORIGINATOR IS NOT AUTHORIZED TO TAKE AN APPLICATION.—Paragraph (1)(B) shall not be construed as requiring—

''(i) a mortgage originator to present to any consumer any specific residential mortgage loan product that is offered by a creditor which does not accept consumer referrals from, or consumer applications submitted by or through, such originator; or

''(ii) a creditor to offer products that the creditor does not offer to the general public.

''(B) APPROPRIATE LOAN PRODUCT.—For purposes of paragraph (1)(B), a residential mortgage loan shall be presumed to be appropriate for a consumer if—

''(i) the mortgage originator determines in good faith, based on then existing information and without undergoing a full underwriting process, that the consumer has a reasonable ability to repay and, in the case of a

refinancing of an existing residential mortgage loan, receives a net tangible benefit, as determined in accordance with regulations prescribed under subsections (a) and (b) of section 129C; and

''(ii) the loan does not have predatory characteristics or effects (such as equity stripping and excessive fees and abusive terms) as determined in accordance with regulations prescribed under paragraph (4).

''(3) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

''(A) creating an agency or fiduciary relationship between a mortgage originator and a consumer if the originator does not hold himself or herself out as such an agent or fiduciary; or

''(B) restricting a mortgage originator from holding himself or herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.

''(4) REGULATIONS.—

''(A) IN GENERAL.—The Federal banking agencies, in consultation with the Secretary, and the Commission, shall jointly prescribe regulations to—

''(i) further define the duty established under paragraph (1);

''(ii) implement the requirements of this subsection;

''(iii) establish the time period within which any disclosure required under paragraph (1) shall be made to the consumer; and

''(iv) establish such other requirements for any mortgage originator as such regulatory agencies may determine to be appropriate to meet the purposes of this subsection.

''(B) COMPLEMENTARY AND NONDUPLICATIVE DISCLOSURES.—The agencies referred to in subparagraph (A) shall endeavor to make the required disclosures to consumers under this subsection complementary and nonduplicative with other disclosures for mortgage consumers to the extent such efforts—

''(i) are practicable; and

''(ii) do not reduce the value of any such disclosure to recipients of such disclosures.

''(5) COMPLIANCE PROCEDURES REQUIRED.—The Federal banking agencies shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.''.

(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 129 the following new items:

''129A. Fiduciary duty of servicers of pooled residential mortgages.
''129B. Residential mortgage loan origination.''.

SEC. 9003. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 102(a)) is amended by inserting after subsection (b) the following new subsection:

''(c) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any mortgage loan, the total amount of direct and indirect compensation from all sources permitted to a mortgage originator may not vary 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 mortgage loan, a mortgage originator may not arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.

''(B) EXCEPTION.—Notwithstanding paragraph subparagraph (A), a mortgage originator may arrange for a consumer to finance through rate an origination fee or cost if—

''(i) the mortgage originator does not receive any other compensation from the consumer except the compensation that is financed through rate; and

''(ii) the mortgage is a qualified mortgage.

''(3) REGULATIONS.—The Federal banking agencies, in consultation with the Secretary and the Commission, shall jointly prescribe regulations to prohibit—

''(A) mortgage originators from steering any consumer to a residential mortgage loan that—

''(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a));

''(ii) in the case of a refinancing of a residential mortgage loan, does not provide the consumer with a net tangible benefit (in accordance with regulations prescribed under section 129C(b)); or

''(iii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

''(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(c)(3)) to a residential mortgage loan that is not a qualified mortgage;

''(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age;

''(D) mortgage originators from assessing excessive points and fees (as such term is described under section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4))) to a consumer for the origination of a residential mortgage loan based on such consumer's decision to finance all or part of the payment through the rate for such points and fees; and

''(E) mortgage originators from—

''(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

''(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

''(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, discouraging a consumer from seeking a home mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

''(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

''(A) permitting yield spread premiums or other similar incentive compensation;

''(B) affecting the mechanism for providing the total amount of direct and indirect compensation permitted to a mortgage originator;

''(C) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

''(D) restricting a consumer's ability to finance, including through principal, any origination fees or costs permitted under this subsection, or the mortgage originator's ability to receive such fees or costs (including compensation) from any person, so long as such fees or costs were fully and clearly disclosed to the consumer earlier in the application process as required by 129B(b)(1)(C)(i) and 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

''(E) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.''.

SEC. 9004. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 103) the following new subsection:

''(d) LIABILITY FOR VIOLATIONS.—

''(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator to comply with any requirement imposed under this section and any regulation prescribed under this section, subsections (a) and (b) of section 130 shall be applied with respect to any such failure by substituting 'mortgage originator' for 'creditor' each place such term appears in each such subsection.

''(2) MAXIMUM.—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee.''.

SEC. 9005. REGULATIONS.

(a) DISCRETIONARY REGULATORY AUTHORITY.—Section 129B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 104) the following new subsection:

''(e) DISCRETIONARY REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Federal banking agencies shall, by regulations issued jointly, prohibit or condition terms, acts or practices relating to residential mortgage loans that the agencies find to be abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129B, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

''(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

''(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.''.

(b) EFFECTIVE DATE.—The regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 129(l)(2) of the Truth in Lending Act (15 U.S.C. 1639(l)(2)) is amended by inserting ''referred to in section 103(aa)'' after ''loans'' each place such term appears.

SEC. 9006. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at-risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

Subtitle B—Minimum Standards For Mortgages

SEC. 9101. ABILITY TO REPAY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 102(a)) the following new section:

"§ 129C. Minimum standards for residential mortgage loans

''(a) ABILITY TO REPAY.—

''(1) IN GENERAL.—In accordance with regulations prescribed jointly by the Federal banking agencies, in consultation with the Commission, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information 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 residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same 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 residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

''(4) INCOME VERIFICATION.—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 provided by a third party; or

''(B) such other similar method that quickly and effectively verifies income documentation by a third party as the Federal banking agencies may jointly prescribe.

''(5) NONSTANDARD LOANS.—

''(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

''(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

''(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

''(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

''(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

''(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Federal banking agencies, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

''(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

''(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which the sole net-tangible benefit to the mortgagor would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

''(i) consider the mortgagor's good standing on the existing mortgage;

''(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

''(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

''(6) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term 'fully indexed rate' means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

''(7) REVERSE MORTGAGES.—This subsection shall not apply with respect to any reverse mortgage''.

(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 (as added by section 102(b)) the following new item:

''129C. Minimum standards for residential mortgage loans.''.

SEC. 9102. NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.

Section 129C of the Truth in Lending Act (as added by section 9101(a)) is amended by inserting after subsection (a) the following new subsection:

''(b) NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.—

''(1) IN GENERAL.—In accordance with regulations prescribed under paragraph (3), no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer.

''(2) CERTAIN LOANS PROVIDING NO NET TANGIBLE BENEFIT.—A residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan shall not be considered to provide a net tangible benefit to the consumer if the costs of the refinanced loan, including points, fees and other charges, exceed the amount of any newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer.

''(3) NET TANGIBLE BENEFIT.—The Federal banking agencies shall jointly prescribe regulations defining the term 'net tangible benefit' for purposes of this subsection.''.

SEC. 9103. SAFE HARBOR AND REBUTTABLE PRESUMPTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 9102) the following new subsection:

''(c) PRESUMPTION OF ABILITY TO REPAY AND NET TANGIBLE BENEFIT.—

''(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee or securitizer of such loan, may presume that the loan has met the requirements of subsections (a) and (b), if the loan is a qualified mortgage.

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

''(A) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means any residential mortgage loan—

''(i) 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 Federal Banking Agencies;

''(ii) that does not provide for a repayment schedule that results in negative amortization at any time;

''(iii) 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;

''(iv) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

''(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than 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));

''(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than 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

''(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

''(v) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

''(vi) in the case of a fixed rate loan, 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;

''(vii) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and 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 consumer's total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of the consumer's monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer's income 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 '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 paragraph (4).

''(B) 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.

''(C) REVERSE MORTGAGES.—For purposes of this subsection, the term 'qualified mortgage' includes any reverse mortgage that complies with the condition established in subparagraph (A)(iv).

''(3) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

''(A) shall publish, and update at least weekly, average prime offer rates;

''(B) may publish multiple rates based on varying types of mortgage transactions; and

''(C) shall adjust the thresholds of 1.50 percentage points in paragraph (2)(A)(iv)(I), 2.50 percentage points in paragraph (2)(A)(iv)(II), and 3.50 percentage points in paragraph (2)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

''(4) REGULATIONS.—

''(A) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this subsection.

''(B) REVISION OF SAFE HARBOR CRITERIA.—

''(i) IN GENERAL.—The Federal banking agencies may jointly 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 proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

''(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Federal banking agencies, prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are Qualified Mortgages for purposes of subsection (c)(1)(A) upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections—

''(I) 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 loans guaranteed by the Secretary of Agriculture pursuant to 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 Corporation or the Federal Home Loan Mortgage Corporation; and

''(V) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.''.

SEC. 9104. LIABILITY.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 9103) the following new subsection:

''(d) LIABILITY FOR VIOLATIONS.—

''(1) IN GENERAL.—

''(A) RESCISSION.—In addition to any other liability under this title for a violation by a creditor of subsection (a) or (b) (for example under section 130) and subject to the statute of limitations in paragraph (9), a civil action may be maintained against a creditor for a violation of subsection (a) or (b) with respect to a residential mortgage loan for the rescission of the loan, and such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney's fee.

''(B) CURE.—A creditor shall not be liable for rescission under subparagraph (A) with respect to a residential mortgage loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the creditor, acting in good faith, a cure.

''(2) LIMITED ASSIGNEE AND SECURITIZER LIABILITY.—Notwithstanding sections 125(e) and 131 and except as provided in paragraph (3), a civil action which may be maintained against a creditor with respect to a residential mortgage loan for a violation of subsection (a) or (b) may be maintained against any assignee or securitizer of such residential mortgage loan, who has acted in good faith, for the following liabilities only:

''(A) Rescission of the loan.

''(B) Such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney's fee.

''(3) ASSIGNEE AND SECURITIZER EXEMPTION.—No assignee or securitizer of a residential mortgage loan that has exercised reasonable due diligence in complying with the requirements of subsections (a) and (b), consistent with reasonable due diligence practices prescribed by the Federal banking agencies, shall be liable under paragraph (2) with respect to such loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the assignee or securitizer provides a cure so that the loan satisfies the requirements of subsections (a) and (b).

''(4) ABSENT PARTIES.—

''(A) ABSENT CREDITOR.—Notwithstanding the exemption provided in paragraph (3), if the creditor with respect to a residential mortgage loan made in violation of subsection (a) or (b) has ceased to exist as a matter of law or has filed for bankruptcy protection under title 11, United States Code, or has had a receiver, conservator, or liquidating agent appointed, a consumer may maintain a civil action against an assignee to cure the residential mortgage loan, plus the costs and reasonable attorney's fees incurred in obtaining such remedy.

''(B) ABSENT CREDITOR AND ASSIGNEE.—Notwithstanding the exemption provided in paragraph (3), if the creditor with respect to a residential mortgage loan made in violation of subsection (a) or (b) and each assignee of such loan have ceased to exist as a matter of law or have filed for bankruptcy protection under title 11, United States Code, or have had receivers, conservators, or liquidating agents appointed, the consumer may maintain the civil action referred to in subparagraph (A) against the securitizer.

''(5) CURE DEFINED.—For purposes of this subsection, the term 'cure' means, with respect to a residential mortgage loan that violates subsection (a) or (b), the modification or refinancing, at no cost to the consumer, of the loan to provide terms that satisfy the requirements of subsections (a) and (b) and the payment of such additional costs as the obligor may have incurred in connection with obtaining a cure of the loan, including a reasonable attorney's fee.

''(6) DISAGREEMENT OVER CURE.—If any creditor, assignee, or securitizer and a consumer fail to reach agreement on a cure with respect to a residential mortgage loan that violates subsection (a) or (b), or the consumer fails to accept a cure proffered by a creditor, assignee, or securitizer—

''(A) the creditor, assignee, or securitizer may provide the cure; and

''(B) the consumer may challenge the adequacy of the cure during the 6-month period beginning when the cure is provided.

If the consumer's challenge, under this paragraph, of a cure is successful, the creditor, assignee, or securitizer shall be liable to the consumer for rescission of the loan and such additional costs under paragraph (2).

''(7) INABILITY TO PROVIDE OR OBTAIN RESCISSION.—If a creditor, assignee, or securitizer cannot provide, or a consumer cannot obtain, rescission under paragraph (1) or (2), the liability of such creditor, assignee, or securitizer shall be met by providing the financial equivalent of a rescission, together with such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney's fee.

''(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR SECURITIZER UNDER PARAGRAPH (2).—Only individual actions may be brought against an assignee or securitizer of a residential mortgage loan for a violation of subsection (a) or (b).

''(9) STATUTE OF LIMITATIONS.—The liability of a creditor, assignee, or securitizer under this subsection shall apply in any original action against a creditor under paragraph (1) or an assignee or securitizer under paragraph (2) which is brought before—

''(A) in the case of any residential mortgage loan other than a loan to which subparagraph (B) applies, the end of the 3-year period beginning on the date the loan is consummated; or

''(B) in the case of a residential mortgage loan that provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable rate or that provides for a nonamortizing payment schedule and then converts to an amortizing payment schedule, the earlier of—

''(i) the end of the 1-year period beginning on the date of such reset, adjustment, or conversion; or

''(ii) the end of the 6-year period beginning on the date the loan is consummated.

''(10) TRUSTEES, POOLS, AND INVESTORS IN POOLS EXCLUDED.—In the case of residential mortgage loans acquired or aggregated for the purpose of including such loans in a pool of assets held for the purpose of issuing or selling instruments representing interests in such pools including through a securitization vehicle, the terms 'assignee' and 'securitizer', as used in this section, do not include the securitization vehicle, any trustee that holds such loans solely for the benefit of the securitization vehicle, the pools of such loans or any original or subsequent purchaser of any interest in the securitization vehicle or any instrument representing a direct or indirect interest in such pool.

''(e) OBLIGATION OF SECURITIZERS, AND PRESERVATION OF BORROWER REMEDIES.—

''(1) OBLIGATION TO RETAIN ACCESS.—Any securitizer of a residential mortgage loan sold or to be sold as part of a securitization vehicle shall, in any document or contract providing for the transfer, conveyance, or the establishment of such securitization vehicle, reserve the right and preserve the ability—

''(A) to identify and obtain access to any such loan;

''(B) to acquire any such loan in the event of a violation of subsection (a) or (b) of this section; and

''(C) to provide to the consumer any and all remedies provided for under this title for any violation of this title.

''(2) ADDITIONAL DAMAGES.—Any creditor, assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subsection (d) and has failed to comply with paragraph (1) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

''(3) CONTACT INFORMATION NOTICE.—The servicer with respect to a residential mortgage loan shall provide a written notice to a consumer identifying the name and contact information of the creditor or any assignee or securitizer who should be contacted by the consumer for any reason concerning the consumer's rights with respect to the loan. Such notice shall be provided—

''(A) upon request of the consumer;

''(B) whenever there is a change in ownership of a residential mortgage loan; or

''(C) on a regular basis, not less than annually.

''(f) RULES TO ESTABLISH PROCESS.—The Board shall promulgate rules to govern the rescission process established for violations of subsections (a) and (b) of this section. Such rules shall provide that notice given to a servicer or holder is sufficient notice regardless of the identity of the party or the parties liable under this title.''.

SEC. 9105. DEFENSE TO FORECLOSURE.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by section 9104) the following new subsections:

''(g) DEFENSE TO FORECLOSURE.—Notwithstanding any other provision of law—

''(1) when the holder of a residential mortgage loan or anyone acting for such holder initiates a judicial or nonjudicial foreclosure—

''(A) a consumer who has the right to rescind under this section with respect to such loan against the creditor or any assignee or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder, or

''(B) if the foreclosure proceeding begins after the end of the period during which a consumer may bring an action for rescission under subsection (d) and the consumer would have had a valid basis for such an action if it had been brought before the end of such period, the consumer may seek actual damages incurred by reason of the violation which gave rise to the right of rescission, together with costs of the action, including a reasonable attorney's fee against the creditor or any assignee or securitizer; and

''(2) such holder or anyone acting for such holder or any other applicable third party may sell, transfer, convey, or assign a residential mortgage loan to a creditor, any assignee, or any securitizer, or their designees, subject to the rights of the consumer described in this subsection, to effect a rescission or cure.''.

SEC. 9106. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (g) (as added by section 9105) the following new subsections:

''(h) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

''(1) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a 'qualified mortgage' may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated. For purposes of this subsection, a 'qualified mortgage' may not include a residential mortgage loan that has an adjustable rate.

''(2) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (c)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

''(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

''(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

''(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

''(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

''(3) 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 the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

''(i) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

''(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

''(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

''(j) ARBITRATION.—

''(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, other than a reverse mortgage, may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

''(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor, any assignee, or any securitizer to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

''(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

''(k) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

''(1) the creditor provides the consumer with a statement that—

''(A) the pending transaction will or may, as the case may be, result in negative amortization;

''(B) describes negative amortization in such manner as the Federal banking agencies shall prescribe;

''(C) negative amortization increases the outstanding principal balance of the account; and

''(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

''(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-

time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.''.

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by inserting after paragraph (6) the following new paragraph:

''(7) sections 21B and 21C of the Securities Exchange Act of 1934, in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.''.

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (k) (as added by subsection (a) of this section) the following new subsection (and designated succeeding subsections accordingly):

''(l) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

''(1) DEFINITION.—For purposes of this subsection, the term 'anti-deficiency law' means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

''(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

''(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.''.

(d) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (l) (as added by subsection (c)) the following new subsection:

''(m) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

''(1) the creditor's policy regarding the acceptance of partial payments; and

''(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.''.

SEC. 9107. RULE OF CONSTRUCTION.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this subtitle), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.

SEC. 9108. EFFECT ON STATE LAWS.

(a) IN GENERAL.—Except as provided in subsection (b), section 129C(d) of the Truth in Lending Act (as added by section 9104) shall supersede any State law to the extent that it provides additional remedies against any assignee, securitizer, or securitization vehicle for a violation of subsection (a) or (b) of section 129C of such Act or any other State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act, and the remedies described in section 129C(d) shall constitute the sole remedies against any assignee, securitizer, or securitization vehicle for such violations.

(b) RULES OF CONSTRUCTION.—No provision of this section shall be construed as limiting—

(1) the application of any State law, or the availability of remedies under such law, against a creditor for a particular residential mortgage loan regardless of whether such creditor also acts as an assignee, securitizer, or securitization vehicle for such loan;

(2) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer, or securitization vehicle under State law, other than a provision of such law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act;

(3)(A) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer or securitization vehicle for its participation in or direction of the credit or underwriting decisions of a creditor relating to the making of a residential mortgage loan; or

(B) the ability of a consumer to assert any rights against or obtain any remedies from an assignee, securitizer or securitization vehicle with respect to a residential mortgage loan as a defense to foreclosure under section 129C(g);

(4) the availability of any equitable remedies, including injunctive relief, under State law; or

(5) notwithstanding paragraph (2), the availability of any remedies under State law against any assignee, securitizer or securitization vehicle that—

(A) are in addition to those remedies provided for in section 129C; and

(B) were in effect on the date of enactment of this Act.

SEC. 9109. REGULATIONS.

Regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

SEC. 9110. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is amended—

(1) by striking ''$100'' and inserting ''$200'';

(2) by striking ''$1,000'' and inserting ''$2,000''; and

(3) by striking ''$500,000'' and inserting ''$1,000,000''.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking ''Any action'' and inserting ''Except as provided in the subsequent sentence, any action''; and

(2) by inserting after the first sentence the following new sentence: ''Any action under this section with respect to any violation of section 129 may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.''.

SEC. 9111. LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.

Section 130 of the Truth in Lending Act is amended by adding at the end the following new subsection:

''(k) EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.—In addition to any other remedy available by law or contract, no creditor, assignee, or securitizer shall be liable to an obligor under this section, nor shall it be subject to the right of rescission of any obligor under 129B, if such obligor, or co-obligor, knowingly, or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining such residential mortgage loan.''.

SEC. 9112. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

''§ 128A. Reset of hybrid adjustable rate mortgages

''(a) HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.—For purposes of this section, the term 'hybrid adjustable rate mortgage' means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

''(b) NOTICE OF RESET AND ALTERNATIVES.—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

''(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

''(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

''(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

''(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

''(A) refinancing;

''(B) renegotiation of loan terms;

''(C) payment forbearances; and

''(D) pre-foreclosure sales.

''(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the

Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

''(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.''.

(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 128 the following new item:

''128A. Reset of hybrid adjustable rate mortgages.''.

SEC. 9113. REQUIRED DISCLOSURES.

Section 128(a) of Truth in Lending Act (15 U.S.C. 1638(a)) is amended by adding at the end the following new paragraphs:

''(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

''(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

''(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

''(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

''(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

''(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.''.

SEC. 9114. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following new subsection:

''(f) PERIODIC STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.—

''(1) IN GENERAL.—The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

''(A) The amount of the principal obligation under the mortgage.

''(B) The current interest rate in effect for the loan.

''(C) The date on which the interest rate may next reset or adjust.

''(D) The amount of any prepayment fee to be charged, if any.

''(E) A description of any late payment fees.

''(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

''(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

''(H) Such other information as the Board may prescribe in regulations.

''(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Federal banking agencies shall jointly develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.''.

SEC. 9115. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the ''Secretary'' shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) COMPETITIVE ALLOCATION.—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection ''State and local legal organizations'' are those State and local organizations whose primary business or mission is to provide legal assistance.

(c) PRIORITY TO CERTAIN AREAS.—In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 100 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) COMMENCE USE WITHIN 90 DAYS.—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) PROHIBITION ON CLASS ACTIONS.—No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) LIMITATION ON LEGAL ASSISTANCE.—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) EFFECTIVE DATE.—Notwithstanding section 9116, this subsection shall take effect on the date of the enactment of this Act.

(e) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) DEFINITION OF APPLICABLE INDIVIDUALS.—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 convicted for a violation under Federal law relating to an election for Federal office.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $35,000,000 for each of fiscal years 2009 through 2012 for grants under this section.

SEC. 9116. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to transactions consummated on or after the effective date of the regulations specified in section 9109.

SEC. 9117. REPORT BY THE GAO.

(a) REPORT REQUIRED.—The Comptroller General shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinance—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities' ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;

(6) of extending the rescission right, if any, on adjustable rate loans and its impact on litigation;

(7) of State foreclosure laws and, if any, an investor's ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section 129C(l)(3)(A) of

the Truth in Lending Act and a recommendation on whether a uniform standard is needed.

(d) ANALYSIS OF CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

SEC. 9118. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking ''section 129 may also'' and inserting ''section 129, 129B, or 129C of this Act may also''.

Subtitle C—High-Cost Mortgages

SEC. 9201. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) HIGH-COST MORTGAGE DEFINED.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

''(aa) HIGH-COST MORTGAGE.—

''(1) DEFINITION.—

''(A) IN GENERAL.—The term 'high-cost mortgage', and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

''(i) in the case of a credit transaction secured—

''(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than $50,000) the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction; or

''(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

''(ii) the total points and fees payable in connection with the transaction exceed—

''(I) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

''(II) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

''(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

''(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

''(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

''(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the transaction agreement.

''(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the transaction.''.

(b) ADJUSTMENT OF PERCENTAGE POINTS.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

''(B) An increase or decrease under subparagraph (A)—

''(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

''(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.''.

(c) POINTS AND FEES DEFINED.—

(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

''(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that originates a loan in the name of the creditor in a table-funded transaction;'';

(B) in subparagraph (C)(ii), by inserting ''except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(c)(4) of the Real Estate Settlement Procedures Act of 1974'' before the semicolon at the end;

(C) in subparagraph (C)(iii), by striking ''; and'' and inserting '', except as provided for in clause (ii);'';

(D) by redesignating subparagraph (D) as subparagraph (G); and

(E) by inserting after subparagraph (C) the following new subparagraphs:

''(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

''(E) except as provided in subsection (cc), the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

''(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and''.

(2) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

''(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.''.

(d) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by inserting after subsection (cc) (as added by section 101) the following new subsection:

''(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

''(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point—

''(A) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

''(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

''(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—

''(A) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

''(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

''(3) For purposes of paragraph (1), the term 'bona fide discount points' means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

''(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.''.

SEC. 9202. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) PREPAYMENT PENALTY PROVISIONS.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

(b) NO BALLOON PAYMENTS.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

''(e) NO BALLOON PAYMENTS.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer or in the case of a balance due under the customary terms of a reverse mortgage.''.

SEC. 9203. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k) and (l) as subsections (n), (o) and (p) respectively; and

(2) by inserting after subsection (i) the following new subsections:

''(j) RECOMMENDED DEFAULT.—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

''(k) LATE FEES.—

''(1) IN GENERAL.—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

''(A) in an amount in excess of 4 percent of the amount of the payment past due;

''(B) unless the loan documents specifically authorize the charge or fee;

''(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

''(D) more than once with respect to a single late payment.

''(2) COORDINATION WITH SUBSEQUENT LATE FEES.—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

''(3) FAILURE TO MAKE INSTALLMENT PAYMENT.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

''(l) ACCELERATION OF DEBT.—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

''(m) RESTRICTION ON FINANCING POINTS AND FEES.—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

''(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

''(2) Any points or fees.''.

(b) PROHIBITIONS ON EVASIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (p) (as so redesignated by subsection (a)(1)) the following new subsection:

''(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a high-cost mortgage—

''(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

''(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.''.

(c) MODIFICATION OR DEFERRAL FEES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as added by subsection (b) of this section) the following new subsection:

''(r) MODIFICATION AND DEFERRAL FEES PROHIBITED.—

''(1) CREDITORS.—A creditor may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension or amendment results in a lower annual percentage rate on the mortgage for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer's principal dwelling and are not high-cost mortgages.

''(2) THIRD PARTIES.—A third-party may not charge a consumer any fee to—

''(A) modify, renew, extend, or amend a high-cost mortgage, or defer any payment due under the terms of such mortgage;

''(B) negotiate with a creditor on behalf of a consumer, the modification, renewal, extension, or amendment of a high-cost mortgage; or

''(C) negotiate with a creditor on behalf of a consumer, the deferral of any payment due under the terms of such mortgage,

unless the modification renewal, extension or amendment results in a significantly lower annual percentage rate on the mortgage, or a significant reduction in the amount of the outstanding principal on the mortgage, for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer's principal dwelling and are not high-cost mortgages.

''(3) ENFORCEMENT.—Section 130 shall be applied for purposes of paragraph (2) by—

''(A) substituting 'third party' for 'creditor'each place such term appears; and

''(B) substituting 'any fee charged by a third party' for 'finance charge' each place such term appears.''.

(d) PAYOFF STATEMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (r) (as added by subsection (c) of this section) the following new subsection:

''(s) PAYOFF STATEMENT.—

''(1) FEES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

''(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

''(C) FEE DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

''(D) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

''(2) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

''(3) SERVICES CONSIDERED ASSIGNEE.—For the purposes of this subsection, a servicer shall be considered an assignee under the Truth in Lending Act.''.

(e) PRE-LOAN COUNSELING REQUIRED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (d) of this section) the following new subsection:

''(t) PRE-LOAN COUNSELING.—

''(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

''(2) DISCLOSURES REQUIRED PRIOR TO COUNSELING.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

''(3) REGULATIONS.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).''.

(f) FLIPPING PROHIBITED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (t) (as added by subsection (e)) the following new subsection:

''(u) FLIPPING.—

''(1) IN GENERAL.—No creditor may knowingly or intentionally engage in the unfair act or practice of flipping in connection with a high-cost mortgage.

''(2) FLIPPING DEFINED.—For purposes of this subsection, the term 'flipping' means the making of a loan or extension of credit in the form a high-cost mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, net tangible benefit (as determined in accordance with regulations prescribed under section 129C(b)) to the consumer considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer's circumstances.

''(v) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—A creditor or assignee in a high cost loan who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

''(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

''(A) make the loan satisfy the requirements of this chapter; or

''(B) in the case of a high-cost mortgage, change the terms of the loan in a manner

beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

''(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error as described in subsection (c) and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

''(A) make the loan satisfy the requirements of this chapter; or

''(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.''.

SEC. 9204. REGULATIONS.

(a) IN GENERAL.—The Board of Governors of the Federal Reserve System shall publish regulations implementing this subtitle and the amendments made by this subtitle in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

(b) CONSUMER MORTGAGE EDUCATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System may prescribe regulations requiring or encouraging creditors to provide consumer mortgage education to prospective customers or direct such customers to qualified consumer mortgage education or counseling programs in the vicinity of the residence of the consumer.

(2) COORDINATION WITH STATE LAW.—No requirement established by the Board of Governors of the Federal Reserve System pursuant to paragraph (1) shall be construed as affecting or superseding any requirement under the law of any State with respect to consumer mortgage counseling or education.

SEC. 9205. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the end of the 6-month period beginning on the date of the enactment of this Act and shall apply to mortgages referred to in section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) for which an application is received by the creditor after the end of such period.

Subtitle D—Office of Housing Counseling

SEC. 9301. SHORT TITLE.

This subtitle may be cited as the ''Expand and Preserve Home Ownership Through Counseling Act''.

SEC. 9302. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

''(g) OFFICE OF HOUSING COUNSELING.—

''(1) ESTABLISHMENT.—There is established, in the Department, the Office of Housing Counseling.

''(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

''(3) FUNCTIONS.—

''(A) IN GENERAL.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

''(i) research, grant administration, public outreach, and policy development relating to such counseling; and

''(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

''(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

''(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

''(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

''(iii) contributing to the preparation and distribution of home buying information booklets pursuant to section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604);

''(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e));

''(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for selection of applications to receive assistance;

''(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 6 of the Expand and Preserve Home Ownership Through Counseling Act;

''(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

''(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

''(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

''(4) ADVISORY COMMITTEE.—

''(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

''(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

''(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

''(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

''(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

''(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

''(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.''.

SEC. 9303. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following new subsection:

''(g) PROCEDURES AND ACTIVITIES.—

''(1) COUNSELING PROCEDURES.—

''(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

''(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term 'homeownership counseling' means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

''(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

''(ii) in the United States Housing Act of 1937—

''(I) section 9(e) (42 U.S.C. 1437g(e));

''(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

''(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

''(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

''(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

''(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

''(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

''(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

''(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

''(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

''(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

''(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

''(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

''(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

''(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

''(x) in the National Housing Act—

''(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

''(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and

''(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);

''(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

''(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7); and

''(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).

''(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term 'rental housing counseling' means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

''(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

''(ii) in the United States Housing Act of 1937—

''(I) section 9(e) (42 U.S.C. 1437g(e));

''(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

''(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

''(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

''(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

''(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

''(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

''(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

''(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

''(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

''(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

''(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

''(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

''(3) MORTGAGE SOFTWARE SYSTEMS.—

''(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

''(i) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

''(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

''(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary's specifications.

''(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

''(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

''(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

''(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

''(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

''(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

''(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

''(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

''(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

''(I) tips on avoiding foreclosure rescue scams;

''(II) tips on avoiding predatory lending mortgage agreements;

''(III) tips on avoiding for-profit foreclosure counseling services; and

''(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

''(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

''(iii) TERMS DEFINED.—For purposes of this subparagraph:

''(I) HIGH DENSITY OF FORECLOSURES.—An area has a 'high density of foreclosures' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

''(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a 'high percentage of retirement communities' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

''(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a 'high percentage of low-income minority communities' if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

''(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.''.

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (III), by striking ''and'' at the end;

(2) in subclause (IV) by striking the period at the end and inserting ''; and''; and

(3) by inserting after subclause (IV) the following new subclause:

''(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).''.

SEC. 9304. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at the end the following new paragraph:

''(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

''(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

''(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to

receive assistance under this paragraph, in accordance with subparagraph (D).

''(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

''(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

''(i) IN GENERAL.—None of the amounts made available under this paragraph 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.

''(ii) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subparagraph, the term 'applicable individual' means an individual who—

''(I) is—

''(aa) employed by the organization in a permanent or temporary capacity;

''(bb) contracted or retained by the organization; or

''(cc) 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.

''(E) GRANTMAKING PROCESS.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

''(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2009 through 2012 for—

''(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

''(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

''(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.''.

SEC. 9305. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.'';

(2) in paragraph (2)—

(A) by inserting ''and for certifying organizations'' before the period at the end of the first sentence; and

(B) in the second sentence by striking ''for certification'' and inserting '', for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,'';

(3) in paragraph (3), by inserting ''organizations and'' before ''individuals'';

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

''(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

''(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).''.

SEC. 9306. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.

SEC. 9307. DEFAULT AND FORECLOSURE DATABASE.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available.

(b) CENSUS TRACT DATA.—Information in the database shall be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary considers appropriate.

SEC. 9308. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new subsection:

''(h) DEFINITIONS.—For purposes of this section:

''(1) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

''(2) STATE.—The term 'State' means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

''(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

''(4) HUD-APPROVED COUNSELING AGENCY.—The term 'HUD-approved counseling agency' means a private or public nonprofit organization that is—

''(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

''(B) certified by the Secretary to provide housing counseling services.

''(5) STATE HOUSING FINANCE AGENCY.—The term 'State housing finance agency' means any public body, agency, or instrumentality specifically created under State statute that is authorised to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.''.

SEC. 9309. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following:

''(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

''(1) TRACKING OF FUNDS.—The Secretary shall—

''(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

''(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

''(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

''(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

''(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section

or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, or any requirements or conditions under which such assistance was provided—

''(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

''(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

The remedies under this paragraph are in addition to any other remedies that may be available under law.

''(3) COVERED ASSISTANCE.—For purposes of this subsection, the term 'covered assistance' means any grant or other financial assistance provided under—

''(A) this section; or

''(B) section 9115 of the Mortgage Reform and Anti-Predatory Lending Act.''.

SEC. 9310. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) in the section heading, by striking ''SPECIAL'' and inserting ''HOME BUYING'';

(2) by striking subsections (a) and (b) and inserting the following new subsections:

''(a) PREPARATION AND DISTRIBUTION.—The Director of the Consumer Financial Protection Agency (hereafter in this section referred to as the 'Director') shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

''(b) CONTENTS.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

''(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

''(A) balloon payments;

''(B) prepayment penalties;

''(C) the advantages of prepayment; and

''(D) the trade-off between closing costs and the interest rate over the life of the loan.

''(2) An explanation and sample of the uniform settlement statement required by section 4.

''(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

''(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

''(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

''(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled 'Consumer Handbook on Adjustable Rate Mortgages', published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

''(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

''(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

''(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

''(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

''(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

''(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

''(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.'';

(3) in subsection (c), by inserting at the end the following new sentence: ''Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.''; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: ''The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.''.

SEC. 9311. HOME INSPECTION COUNSELING.

(a) PUBLIC OUTREACH.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the ''Secretary'') shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564–CN entitled ''For Your Protection: Get a Home Inspection'', in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled ''For Your Protection: Get a Home Inspection'', in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled ''For Your Protection—Get a Home Inspection'' that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled ''Ten Important Questions To Ask Your Home Inspector'', in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

SEC. 9312. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) ASSISTANCE TO NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 9304 of this title), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform

borrowers under residential mortgage loans—

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development websites for housing counseling and for tips for avoiding foreclosure.

Subtitle E—Mortgage Servicing

SEC. 9401. ESCROW AND IMPOUND ACCOUNTS 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 9101) the following new section:

"SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

''(a) IN GENERAL.—Except as provided in subsection (b), (c), or (d) , a creditor, in connection with the formation or consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

''(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

''(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

''(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

''(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

''(A) 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 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 the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 1.5 or more percentage points; or

''(B) 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 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 the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 2.5 or more percentage points; or

''(4) so required pursuant to regulation.

''(c) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b), shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, and until such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance, or such other period as may be provided in regulations to address situations such as borrower delinquency, unless the underlying mortgage establishing the account is terminated.

''(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE AND FOR CERTAIN CONDOMINIUM UNITS.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

''(e) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

''(1) on terms mutually agreeable to the parties to the loan;

''(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

''(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

''(f) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—

''(1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution.

''(2) ADMINISTRATION.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

''(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

''(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

''(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

''(3) APPLICABILITY OF PAYMENT OF INTEREST.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

''(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

''(g) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is subject to this section, the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

''(1) The fact that an escrow or impound account will be established at consummation of the transaction.

''(2) The amount required at closing to initially fund the escrow or impound account.

''(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

''(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

''(5) The fact that, if the consumer chooses to terminate the account at the appropriate time in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

''(6) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.

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

''(1) FLOOD INSURANCE.—The term 'flood insurance' means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

''(2) HAZARD INSURANCE.—The term 'hazard insurance' shall have the same meaning as provided for 'hazard insurance', 'casualty insurance', 'homeowner's insurance', or other similar term under the law of the State where the real property securing the consumer credit transaction is located.''.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, (hereafter in this title referred to as the ''Federal banking agencies'') and the Federal Trade Commission shall prescribe, in final form, such regulations as determined to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply to covered mortgage loans consummated after the end of the 1-year period beginning on the

date of the publication of final regulations in the Federal Register.

(c) 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 (as added by section 9101) the following new item:

''129D. Escrow or impound accounts relating to certain consumer credit transactions.''.

SEC. 9402. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

(a) IN GENERAL.—Section 129D of the Truth in Lending Act (as added by section 9401) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

''(1) IN GENERAL.—If—

''(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

''(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

''(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

''(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

''(B) A clear and prominent notice that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

''(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

''(D) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.''.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Federal banking agencies and the Federal Trade Commission shall prescribe, in final form, such regulations as such agencies determine to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply in accordance with the regulations established in paragraph (1) and beginning on the date occurring 180-days after the date of the publication of final regulations in the Federal Register.

SEC. 9403. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

(a) SERVICER PROHIBITIONS.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

''(k) SERVICER PROHIBITIONS.—

''(1) IN GENERAL.—A servicer of a federally related mortgage shall not—

''(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

''(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Secretary shall prescribe) under this section;

''(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

''(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner assignee of the loan; or

''(E) fail to comply with any other obligation found by the Secretary, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

''(2) FORCE-PLACED INSURANCE DEFINED.—For purposes of this subsection and subsections (l) and (m), the term 'force-placed insurance' means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

''(l) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

''(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

''(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

''(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

''(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

''(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

''(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

''(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

''(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

''(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

''(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall—

''(A) terminate the force-placed insurance; and

''(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

''(4) CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

''(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges for force-placed insurance premiums shall be bona fide and reasonable in amount.''.

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(f)) is amended—

(1) in paragraphs (1)(B) and (2)(B), by striking ''$1,000'' each place such term appears and inserting ''$2,000''; and

(2) in paragraph (2)(B)(i), by striking ''$500,000'' and inserting ''$1,000,000''.

(c) DECREASE IN RESPONSE TIMES.—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking ''20 days'' and inserting ''5 days'';

(2) in paragraph (2), by striking ''60 days'' and inserting ''30 days''; and

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

''(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.''.

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: ''Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.''.

SEC. 9404. TRUTH IN LENDING ACT AMENDMENTS.

(a) REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129E (as added by section 9502) the following new section (and by amending the table of contents accordingly):

''SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.

''(a) IN GENERAL.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

''(b) EXCEPTION.—If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.''.

(b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2 of such Act is further amended by inserting after section 129F (as added by subsection (a)) the following new section (and by amending the table of contents accordingly):

"SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME LOAN.

''A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.''.

SEC. 9405. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

''(4) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

''(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974.

''(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.''.

Subtitle F—Appraisal Activities

SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 9404(b)) the following new section:

"SEC. 129H 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 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.''.

SEC. 9502. 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 129D (as added by section 9401(a)) the following new section:

"SEC. 129E. 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 129D (as added by section 9401(c)) the following new item:

''129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.''.

SEC. 9503. 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 129E 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 129E 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. 9504. 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. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (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. 9506. 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.''.

Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform

SEC. 9601. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae's and Freddie Mac's mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be ''special affordable'' loans made to borrowers with incomes less than 60 percent of an area's median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased $175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately $1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae's acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agreeing to purchase at least $200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise's common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of $5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

Subtitle H—Reports

SEC. 9701. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) SPECIFIC TOPICS.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

Subtitle I—Multifamily Mortgage Resolution

SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

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

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) COORDINATION.—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

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

Subtitle J—Study of Effect of Drywall Presence on Foreclosures

SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and

(2) the availability of property insurance for residential structures in which such drywall is present.

(b) REPORT.—Not later than the expiration of the 120-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study conducted under subsection (a) containing its findings, conclusions, and recommendations.

The Acting CHAIR. No further amendment to the bill, as amended, shall be in order except those printed in House Report 111–370 and amendments en bloc described in section 3 of House Resolution 964. Each amendment printed in the report shall be considered only in the order printed in the report, except as specified in section 4 of that resolution, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It shall be in order at any time for the Chair of the Committee on Financial Services or his designee to offer amendments en bloc consisting of amendments printed in the report not earlier disposed of. Amendments en bloc pursuant to this section shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before the disposition of the amendments en bloc.

The Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report out of the order printed, but no sooner than 30 minutes after the Chair of the Committee on Financial Services or his designee announces from the floor a request to that effect.

AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111–370.

Mr. FRANK of Massachusetts. Madam Chair, I rise to offer amendment No. 1.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FRANK of Massachusetts:

Page 1, line 4, strike ''The'' before ''Wall Street''.

Page 13, line 6, insert ''(hereafter in this title referred to as a 'foreign financial parent') after'' after ''United States''.

Page 13, beginning on line 14, strike ''of a company'' and all that follows through ''United States'' on line 16.

Page 15, after line 11, insert the following new clause (and redesignate subsequent clauses appropriately):

(iv) after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) and any subsidiary (as such term is defined in the Bank Holding Company Act of 1956) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph, to the extent that the subsidiary is engaged in an activity described in such subparagraph;

Page 15, line 25, strike ''a'' and insert ''any''.

Page 17, after line 6, insert the following new clause (and redesignate subsequent clauses appropriately):

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);''

Page 21, line 11, strike ''to pursuant'' and insert ''pursuant''.

Page 21, after line 21, insert the following new subparagraph:

(J) The head of the Consumer Financial Protection Agency.

Page 21, after line 23, insert the following (and redesignate succeeding paragraphs accordingly):

(A) The Director of the Federal Insurance Office.

Page 23, line 4, strike ''plans'' and insert ''strategies''.

Page 23, line 5, strike ''plans'' and insert ''strategies''.

Page 23, line 6, insert after the period the following new sentence: ''In doing so, the Council shall collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate.''.

Page 24, beginning on line 23, strike ''another dispute mechanism specifically has been provided under Federal law'' and insert ''a dispute mechanism specifically has been provided under section 4204 or title III''.

Page 28, line 24, strike ''plans'' and insert ''strategies''.

Page 29, line 2, strike ''plans'' and insert ''strategies''.

Page 32, strike line 22 and all that follows through page 33, line 7.

Page 34, after line 22, insert the following new paragraph:

(3) MITIGATION REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.—Before requiring the submission of reports from a company that is a foreign financial parent, the Council or the Board shall, to the extent appropriate, coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization and, whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational with English translation.

Page 35, line 1, insert after ''entities'' the following: ''(including the Federal Insurance Office)''.

Page 37, line 12, insert ''**; AGENCY AUTHORITY**'' before the period.

Page 37, strike lines 17 and 18, and insert the following:

(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—

(1) IN GENERAL.—A Federal financial regulatory agency specifically

Page 37, line 19, strike ''is authorized to'' and insert ''may, in response to a Council recommendation under this section or otherwise,''.

Page 38, after line 4, insert the following new paragraph:

(2) APPLYING STANDARDS TO FOREIGN FINANCIAL PARENTS.—In applying standards under paragraph (1) to any foreign financial parent, or to any branch of, subsidiary of, or other operating entity related to such foreign financial parent that operates within the United States, the Federal financial regulatory agency shall—

(A) give due regard to the principles of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial parent is subject to comparable standards on a consolidated basis in the home country of such foreign financial parent that are administered by a comparable foreign supervisory authority.

Page 38, line 22, after ''such company,'' insert the following: ''and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office,''.

Page 39, strike line 11 and all that follows through line 15 (and redesignate subsequent paragraphs accordingly).

Page 39, after line 25, insert the following new paragraphs (and redesignate subsequent paragraphs accordingly):

(5) The company's importance as a source of credit for low-income, minority, or underserved communities and the impact the failure of such company would have on the availability of credit in such communities.

(6) The extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse.

Page 40, line 5, insert before the period the following: ''or, in the case of a foreign financial parent, the extent to which such foreign parent is subject to prudential standards on a consolidated basis in the home country of such financial parent that are administered and enforced by a comparable foreign supervisory authority''.

Page 40, after line 5, insert the following new paragraphs (and redesignate the subsequent paragraph accordingly):

(8) The amount and nature of the company's financial assets.

(9) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

Page 41, strike line 10 and all that follows through line 19 (and redesignate subsequent subsections accordingly).

Page 42, strike line 9 and all that follows through page 44, line 10, and insert the following new paragraphs:

(1) APPLICATION OF FEDERAL LAWS.—

(A) APPLICATION OF BANK HOLDING COMPANY ACT AND FEDERAL DEPOSIT INSURANCE ACT.—A financial company subject to stricter standards that does not own a bank (as defined in section 2 of the Bank Holding Company Act of 1956) and that is not a foreign bank or company that is treated as a bank holding company under section 8 of the International Banking Act of 1978 shall be subject to section 4, subsections (b), (c), (d), (e), (f), and (g) of section 5, and section 8 of the Bank Holding Company Act of 1956, and section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(B) BOARD AUTHORITY.—For purposes of administering and enforcing the provisions of this title, the Board may take any action with respect to a financial holding company subject to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS AND SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate a section 6 holding company in accordance with section 6 of the Bank Holding Company Act of 1956 through which it conducts activities of the company that are determined to be financial in nature or incidental thereto under section 4(k) of the such Act; and

(ii) such section 6 holding company shall be the financial holding company subject to stricter standards for purposes of this title.

(B) EXCEPTIONS FROM SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(i) GENERAL REQUIREMENT FOR BOARD TO CONSIDER EXCEPTIONS.—Before such time as a financial holding company subject to stricter standards is required to establish or designate a section 6 holding company under section 6 of the Bank Holding Company Act, and in consultation with the financial holding company subject to stricter standards and any appropriate Federal or State financial regulators (and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office)—

(I) the Board shall consider whether to grant any of the exemptions from the requirements applicable to section 6 holding companies under section 6(a)(6)(A) of the Bank Holding Company Act of 1956, in accordance with that provision; and

(II) the Board, at the request of a financial holding company subject to stricter standards that is predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, shall consider whether to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, taking into consideration paragraph (2)(D), and the extent to which the exemption would: facilitate the extension of credit to individuals, households and businesses; improve efficiency or customer service or result in other public benefits; potentially threaten the safety and soundness of the financial holding company or any of its subsidiaries; potentially increase systemic risk or threaten the stability of the overall financial system; potentially result in unfair competition; and potentially have anticompetitive effects that would not be outweighed by public benefits.

(ii) BOARD DETERMINATION NOT TO EXEMPT.—

(I) IN GENERAL.—If the Board determines not to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall establish a section 6 holding company within 90 days after the Board's determination.

(II) EXTENSION OF PERIOD.—The Board may extend the time by which the financial holding company subject to stricter standards is required to establish a section 6 holding company for an additional reasonable period of time, not to exceed 180 days.

(iii) BOARD DETERMINATION TO EXEMPT.—

(I) IN GENERAL.—If the Board grants the requested exemption from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall at all times remain predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, and shall be the financial holding company subject to stricter standards for purposes of this title.

(II) SUBSEQUENT LOSS OF EXEMPTION.—Upon a determination by the Board, in consultation with any relevant Federal or State regulators of the financial holding company subject to stricter standards, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, that the financial holding company subject to stricter standards fails to comply with this subsection, the financial holding company subject to stricter standards shall lose the exemption from the section 6 holding company requirement and shall establish a section 6 holding company within the time periods described in clause (ii)(I).

(C) ACTIVITIES CONDUCTED ABROAD.—Section 4 of the Bank Holding Company Act of 1956 shall not apply to any activities that a foreign financial holding company subject to stricter standards conducts solely outside the United States if such activities are conducted solely by a company or other entity that is located outside the United States.

(D) FLEXIBLE APPLICATION.—In applying the activity restrictions and ownership limitations of section 4 of the Bank Holding Company Act of 1956 to financial holding companies subject to stricter standards described in paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

Page 45, line 5, insert '', as agent of the Council,'' after ''Board''.

Page 45, beginning on line 18, strike ''heightened'' and insert ''stricter''.

Page 45, strike lines 21 and 22 and insert the following new clause (and redesignate subsequent clauses accordingly):

(i) risk-based capital requirements and leverage limits, unless the Board determines that such requirements are not appropriate for a financial holding company subject to stricter standards because of such company's activities (such as investment company activities or assets under management) or structure, in which case the Board shall apply other standards that result in appropriately stringent controls.

Page 46, line 4, insert ''and'' after the semicolon.

Page 46, line 6, strike ''; and'' and insert a period.

Page 46, strike line 7 and all that follows through line 9.

Page 46, line 12, insert ''short-term debt limits prescribed in accordance with subsection (d) and'' after ''include''.

Page 46, line 17, after ''AGENCIES'' insert the following: ''AND THE FEDERAL INSURANCE OFFICE''.

Page 47, line 2, after the period insert the following: ''With respect to a financial holding company subject to stricter standards that is an insurance company or any insurance company subsidiary of such a financial holding company subject to stricter standards, the Board shall also consult with the Federal Insurance Office.''.

Page 47, strike line 3 and all that follows through line 5 and insert the following:

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this section, the Board—

(A) may differentiate among financial

Page 47, line 11, strike the period and insert ''; and''.

Page 47, after line 11, insert the following new subparagraph:

(B) shall take into consideration whether and to what extent a financial holding company subject to stricter standards that is not a bank holding company or treated as a bank holding company owns or controls a depository institution and shall adapt the prudential standards applied to such company as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which capital requirements are not appropriate.

Page 47, beginning on line 20, strike ''financial companies'' and all that follows through ''own or control'' on line 22, and insert ''a foreign financial parent and to''.

Page 47, beginning on line 23, strike ''that is a'' and all that follows through ''principle'' on line 25 and insert ''that is owned or controlled by a foreign financial parent, giving due regard to principles''.

Page 48, beginning on line 2, strike ''such companies are subject'' and insert ''the foreign financial parent is subject on a consolidated basis''.

Page 50, line 22, strike '', as such entities are'' and insert ''as''.

Page 51, line 13, before the period insert the following: ''and, with respect to an insurance company, the Federal Insurance Office''.

Page 54, line 14, insert before the period the following: ''except as specifically provided in this title''.

Page 54, line 19, insert before the period the following: ''except as specifically provided in this title''.

Page 55, line 14, strike ''shall'' and insert ''may.''

Page 55, line 19, strike ''The'' and insert ''Any''.

Page 56, strike line 20 and all that follows through line 25.

Page 68, line 17, insert ''The Board, in determining whether to impose any requirement under this subparagraph that is likely to have a significant effect on a functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary of a financial holding company subject to stricter standards, shall consult with the primary financial regulatory agency for such subsidiary. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.'' after the period.

Page 76, line 9, insert '', after consultation with the primary financial regulatory agency for any functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary that is likely to be significantly affected by such actions. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office'' before the period.

Page 86, line 1, after ''standards'' insert the following: ''(and, if the financial holding company subject to stricter standards is an insurance company, the Federal Insurance Office)''.

Page 87, after line 5, insert the following new subsections:

(j) RULE OF CONSTRUCTION REGARDING CONSUMER PROTECTION STANDARDS.—The prudential standards imposed or recommended by the Board or the Council under this section shall not be construed as superseding—

(1) any consumer protection standards promulgated under a State or Federal consumer protection law, including the Consumer Financial Protection Agency Act and the Federal Trade Commission Act; or

(2) any investor protection standard that protects consumers (including public reporting requirements) imposed under State or Federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1944, and the Investment Advisors Act of 1944.

(k) RULEMAKING AUTHORITY.—The Board may prescribe such regulations and issue such orders as the Board, in consultation with the Council, determines to be necessary to carry out the provisions of this subtitle.

Page 87, line 24, strike ''financial company subjected to stricter prudential'' and insert ''financial holding company subject to stricter''.

Page 88, line 2, insert after the period the following: ''With respect to any requirements under this section that is likely to have a significant effect on an insurance company, the Council shall consult with the Federal Insurance Office.''.

Page 89, line 8, insert ''stricter'' after ''modifying the''.

Page 90, line 14, insert ''holding'' after ''financial''.

Page 90, line 15, strike ''prudential''.

Page 90 line 16, strike ''financial company'' and insert ''financial holding company subject to stricter standards''.

Page 90, line 22, strike ''company subject to stricter prudential'' and insert ''holding company subject to stricter''.

Page 92, line 20, strike ''subsection (e)(5)'' and insert ''this section''.

Page 93, line 1, strike ''(e)(5)'' and insert ''(e)(2)''.

Page 96, line 18, insert '', as agent of the Council,'' after ''Board''.

Page 97, line 4, insert after the period the following: ''With respect to any standard that is likely to have a significant effect on insurance companies, the Board also shall consult with the Federal Insurance Office.''.

Page 97, after line 16, insert the following new paragraph:

(3) EXCEPTION.—The standards recommended by the Board and adopted by a primary financial regulatory agency pursuant to this section shall not apply to activities that a foreign financial parent conducts solely outside the United States if such activities are conducted solely by a company or other operating entity that is located outside the United States.

Page 119, line 7, insert '', after notice and opportunity for comment,'' after ''may''.

Page 119, line 13, strike ''agency'' and insert ''Board''.

Page 119, line 14, strike ''agency'' and insert ''Board''.

Page 122, line 18, strike ''The authorities'' and insert the following:

(a) CONSTRUCTION.—The authorities

Page 123, after line 2, insert the following new subsection:

(b) AGENT RESPONSIBILITIES.—For purposes of this subtitle, the term ''agent'' means the Board acting under section 1103(c) and coordinating with the Council in exercising authority under sections 1104 and 1107.

Page 129, line 17, insert '', and who shall coordinate with the Office of Thrift Supervision pursuant to section 1211'' before the period at the end.

Page 131, after line 5, insert the following new subsection:

(f) EFFECTIVE DATE.—Subsection (b) shall take effect on the date of the enactment of this Act .

Page 132, after line 15, insert the following new paragraph:

(4) FUNCTIONS RELATING TO SUPERVISION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of Savings and Loan Holding Companies are transferred to the Board.

(B) BOARD AUTHORITY.—The Board shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date, relating to the supervision and regulation of Savings and Loan Holding Companies.

Page 132, after line 24, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(2) in paragraph (2)(E), by striking ''and'' at the end;

Page 133, after line 2, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) after paragraph (2)(F), by inserting the following new subparagraph:

''(G) any savings and loan holding company and any subsidiary of a savings and loan holding company (other than a savings association); and'';

Page 147, line 21, insert ''and'' after the semicolon.

Page 147, line 25, strike ''; and'' and insert a period.

Page 148, strike line 1 and all that follows through line 3.

Page 162, after line 6, insert the following new paragraphs (and redesignate succeeding paragraphs accordingly):

(1) In subsection (a)—

(A) in paragraph (1)(A), by striking ''Director'' and inserting ''Board'';

(B) in paragraph (1)(D), by striking clause (i) and inserting: ''(i) In general.—.

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'savings and loan holding company' means any company that directly or indirectly controls a savings association or that controls any company that is a savings and loan holding company, and that is either—

''(I) a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986; or

''(II) a company that is, together with all of its affiliates on a consolidated basis, predominantly engaged in the business of insurance.'';

(C) in paragraph (1)(F), by striking ''Director'' and inserting ''Board'';

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

''(K) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.''.

(E) in paragraph (2)(D), by striking ''Director'' and inserting ''Board'';

(F) in paragraph (3)(A), by striking ''Director'' and inserting ''Board''; and

(G) in paragraph (4), by striking ''Director'' and inserting ''Board''.

(2) In subsection (b), by striking ''Director'' each place it appears and inserting ''Board''.

(3) In subsection (c)—

(A) in paragraph, (2)(F)(i)—

(i) by striking ''of Governors of the Federal Reserve System''; and

(ii) by striking ''Director'' and inserting ''Board'';

(B) in paragraph (2)(G), by striking ''Director'' and inserting ''Board'';

(C) in paragraph (4)(A), by striking ''Director'' and inserting ''Board'';

(D) in paragraph (4)(B)—

(i) in the heading, by striking ''director'' and inserting ''Board''; and

(ii) by striking ''the Director shall'' and inserting ''the Board shall'';

(E) in paragraph (4)(C)—

(i) in the heading, by striking ''director'' and inserting ''Board''; and

(ii) by striking ''the Director may'' and inserting ''the Board may'';

(F) in paragraph (5), by striking ''Director'' and inserting ''Board'';

(G) in paragraph (6)(D)—

(i) in the heading, by striking ''director'' and inserting ''Board''; and

(ii) by striking ''Director'' each place it appears and inserting ''Board'';

(H) in paragraph (9)(A)(ii), by inserting '', but only if the conditions for engaging in expanded financial activities set forth in section 4(l) of the Bank Holding Company Act of 1956 have been met'' after ''1956''; and

(I) in paragraph (9)(E), by striking ''Director'' each place it appears and inserting ''Board''.

(4) In subsection (e)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking ''Director'' and inserting ''Board'';

(ii) in clause (ii), by striking ''Director'' and inserting ''Board'';

(iii) in clause (iii), by striking ''Director'' each place it appears and inserting ''Board''; and

(iv) in clause (iv), by striking ''Director'' each place it appears and inserting ''Board'';

(B) in paragraph (1)(B), by striking ''Director'' each place it appears and inserting ''Board'';

(C) in paragraph (2), by striking ''Director'' each place it appears and inserting ''Board'';

(D) in paragraph (3), by striking ''Director'' and inserting ''Board'';

(E) in paragraph (4)(A), by striking ''Director'' and inserting ''Board''; and

(F) in paragraph (5), by striking ''Director'' each place it appears and inserting ''Board''.

(5) In subsection (f), by striking ''Director'' each place it appears and inserting ''Board''.

(6) In subsection (g), by striking ''Director'' each place it appears and inserting ''Board''.

(7) In subsection (h)—

(A) in paragraph (2), by striking ''Director'' and inserting ''Board''; and

(B) in paragraph (3), by striking ''Director'' and inserting ''Board''.

(8) In subsection (i)—

(A) in paragraph (1)(A), by striking ''Director'' and inserting ''Board'';

(B) in paragraph (2)(B), by striking ''Director'' and inserting ''Board'';

(C) in paragraph (2)(F), by striking ''Director'' and inserting ''Board'';

(D) in paragraph (3)(B), by striking ''Director'' and inserting ''Board'';

(E) in paragraph (3)(F), by striking ''Director'' and inserting ''Board'';

(F) in paragraph (4), by striking ''Director'' and inserting ''Board''; and

(G) in paragraph (5), by striking ''Director'' and inserting ''Board''.

(9) In subsection (j), by striking ''Director'' each place it appears and inserting ''Board''.

(10) In subsection (l)—

(A) in paragraph (1), by striking ''Director'' and inserting ''Board, in consultation with the Comptroller of the Currency,''; and

(B) in paragraph (2), by striking ''Director'' and inserting ''Board, in consultation with the Comptroller of the Currency,''.

Page 166, after line 18 insert the following:

(13) In subsections (p), (q), (r), and (s), by striking ''Director'' each place it appears and inserting ''Board''.

Page 169, strike lines 1 through 4 and insert the following:

''(7) VALUATION.—

''(A) IN GENERAL.—The Board shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

''(B) EXCEPTION.—In the case of a savings association which has reorganized into a mutual thrift holding company under section 10(b) of the Home Owners' Loan Act and has issued minority stock either from its midtier stock holding company or its subsidiary stock savings association prior to December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.''.

Page 204, line 14, strike ''may decrease'' and insert ''decreases''.

Page 204, beginning on line 23, strike '', on a consolidated basis,'' and insert ''a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,''.

Page 205, beginning on line 4, strike '', on a consolidated basis,'' and insert ''a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,''.

Page 205, after line 13, insert the following new section:

SEC. 1257. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, the amendments made by sections 1221 through section 1253 and 1256 and subsections (a), (b), and (c)(1) of section 1254 shall take effect on the transfer date.

Page 207, line 6, strike '', on a consolidated basis,'' and insert ''a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,''.

Page 207, strike line 9, and insert the following:

(B) in subparagraph (F)(i), by inserting before the semicolon the following: '', including issuing credit cards and other credit devices (including virtual or intangible devices) that function as credit cards'';

(C) in subparagraph (F)(v), by inserting before the semicolon the following: '', other than loans that otherwise meet the requirements of this subparagraph and are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations''; and

(D) by striking subparagraph (H) and inserting the following:

''(H) An industrial loan company, industrial bank, or other similar institution which—

''(i) is an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act;

''(ii) either—

''(I) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

''(II) has total assets of less than $100,000,000; or

''(III) the control of which is not acquired by any company after August 10, 1987;

''(iii) predominantly provides financial products and services to current and former members of the military and their families; and

''(iv) is controlled by a savings and loan holding company, as defined in section 10(a) of the Home Owners' Loan Act.

This subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate, if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title.''; and

Page 208, strike line 10 and all that follows through page 209, line 7, and insert the following:

''(ii) conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

''(I) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

''(II) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.''; and

Page 209, strike line 15 and all that follows through page 210, line 14 and insert the following:

''(i) on the date of enactment of the Financial Stability Improvement Act of 2009, a unitary savings and loan holding company that continues to control not fewer than one savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(3) of the Financial Stability Improvement Act 2009; or''.

Page 210, line 19, strike ''1301(a)(3)(B)'' and insert ''1301(a)(4)(B)''.

Page 220, after line 25, insert the following:

''(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—For purposes of this subsection, the term 'unitary savings and loan holding company' means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

''(A) that controls—

''(i) only 1 savings association; or

''(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c),

1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

''(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners' Loan Act); and

''(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.''.

Page 220, after line 25, insert the following:

(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—Solely for purposes of this subsection, the term ''unitary savings and loan holding company'' means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

(A) that controls —

(i) only 1 savings association; or

(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c), 1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners' Loan Act); and

(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.

Page 222, line 18, strike ''subtitle B'' and insert ''section 1103''.

Page 223, strike line 15 and all that follows through page 224, line 11 and insert the following:

(B) A company that is required to form a section a section 6 holding company shall conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

(i) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

(ii) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section 6 holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.

Page 225, beginning on line 22, strike '', as a bank holding company''.

Page 226, line 2, strike ''subtitle B'' and insert ''section 1103''.

Page 226, strike lines 7 and 8 and insert the following:

''(ii) subject to the provisions of this Act and other Federal law as provided in section 1103(g) of the Financial Stability Improvement Act of 2009; and''.

Page 227, line 5, strike ''subtitle A'' and insert ''section 1103''.

Page 228, line 6, after ''section 6(a)(2)(B)'' insert the following: ''and financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company''.

Page 236, strike lines 17-25.

Page 237, line 12, strike ''sections 4(p) and 6'' and insert ''section 1301 of the Financial Stability Improvement Act of 2009''.

Page 237, line 13, insert '', other than a section 6 holding company,'' after ''company''.

Page 250, beginning on line 19, strike ''after subsection (y) (as added by section 1408)'' and insert ''at the end''.

Page 250, line 21, strike ''(z)'' and insert ''(y)''.

Page 252, line 16, insert ''holding'' after ''financial''.

Page 252, beginning on line 16, strike ''prudential''.

Page 252, line 19, strike ''greater'' and insert ''great''.

Page 253, line 23, strike ''8(c)(5)'' and insert ''18(c)(5)''.

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.

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

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking ''paragraph (1)(A)'' and inserting ''subsection (a)''.

(2) TECHNICAL CORRECTION RELATING TO CERTAIN SAVINGS BANKS.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and inserting the following new subsection:

''(i) [Repealed]''.

(b) AMENDMENTS TO 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 new paragraph:

''(12) NATIONWIDE DEPOSIT CAP.—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.''.

(2) PARALLEL REQUIREMENT.—Subparagraph (A) of section 44(b)(2) of the Federal Deposit Insurance Act 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 HOME OWNERS' LOAN ACT.—Section 10(e)(2) of the Home Owners' Loan Act 1467a(e)(2)) is amended—

(1) by striking ''or at the end of subparagraph (C)'';

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

(3) by inserting after subparagraph (D), the following new subparagraph:

''(E) in the case of an application involving an interstate acquisition, if the applicant (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.''.

Page 257, line 10, strike ''assessment period'' and insert ''assessment period, minus additional deductions or adjustments necessary to establish assessments consistent with the definition under section 7(b)(1)(C) of the Federal Deposit Insurance Act for custodial banks (as defined by the Corporation based on factors including percentage of total revenues generated by custodial businesses and the level of assets under custody) or a bankers' bank (as referred to in section 5136 of the Revised Statutes of the United States)''.

Page 275, line 15, insert ''if the financial company is an insurance company or'' after ''section 1603''.

Page 277, line 11, insert ''activities'' after ''or''.

Page 277, line 22, strike the period and insert ''; and''.

Page 277, after line 22, insert the following new subparagraph:

(C) that is not a Federal home loan bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

Page 278, beginning on line 2, strike ''includes'' and all that follows through line 3 and insert ''means any entity covered by a State law designed specifically to deal with the rehabilitation, liquidation, or insolvency of an insurance company.''.

Page 278, strike line 22 and all that follows through page 279, line 13, and insert the following new paragraph:

(1) VOTE REQUIRED.—

(A) IN GENERAL.—At the request of the Secretary, the Chairman of the Federal Reserve Board, or the appropriate regulatory agency, the Board and the appropriate regulatory agency shall, or on their own initiative the Board and the appropriate regulatory agency may, consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company.

(B) 2/3 AGREEMENT.—Any recommendation under subparagraph (A) shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and not less than two thirds of any members of the board or commission then serving of the appropriate regulatory agency, as applicable.

Page 280, beginning on line 7, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 280, beginning on line 12, strike ''the board of directors or commission of''.

Page 280, line 19, strike ''resolution'' and insert ''dissolution''.

Page 282, beginning on line 8, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 282, beginning on line 20, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283, beginning on line 2, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283, beginning on line 5, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283, beginning on line 9, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283, beginning on line 15, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283 beginning on line 18, strike ''financial holding company subject to stricter standards'' and insert ''financial company''.

Page 283, line 22, strike ''**RESOLUTION**'' and insert ''**DISSOLUTION**'' (and conform the table of contents accordingly).

Page 284, after line 7, insert the following new paragraphs:

(3) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (2) may be extended by the Secretary for up to 1 additional year if—

(A) the Corporation has not completed the dissolution of the company within the time provided in paragraph (2); and

(B) the Secretary certifies in writing that continuation of the receivership is necessary—

(i) to protect the best interests of the taxpayers of the United States; and

(ii) to protect the stability of the financial system and the economy of the United States.

(4) FURTHER EXTENSION.—The time limit, as extended in paragraph (3), may be extended for up to 1 additional year if—

(A) the conditions of paragraph (3) are met; and

(B) the Corporation submits a report to the Congress, no later than 60 days before the receivership will expire under the extended limit under paragraph (3), that describes in detail—

(i) the basis for the determination by the Corporation that a second extension is necessary; and

(ii) the specific plan of the Corporation for concluding the receivership before the end of the proposed additional year.

Page 284, line 8, strike ''RESOLUTION'' and insert ''DISSOLUTION''.

Page 284, line 10, strike ''resolved'' and insert ''dissolved''.

Page 284, line 11, strike ''resolution'' and insert ''dissolution''.

Page 284, line 18, strike ''resolution'' and insert ''dissolution''.

Page 285, line 6, strike ''resolution'' and insert ''dissolution''.

Page 285, line 11, strike ''resolution'' and insert ''dissolution''.

Page 285, line 16, strike ''1602(9)(B)(iv)'' and insert ''1602(9)(B)(v)''.

Page 285, line 18, strike ''resolution'' and insert ''dissolution''.

Page 287, beginning on line 1, strike ''CERTAIN INSURANCE SUBSIDIARIES'' and insert ''INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES''.

Page 287, strike line 4 and all that follows through line 9, and insert ''(a), if an insurance company covered by a State law designed specifically to deal with the rehabilitation, liquidation or insolvency of an insurance company is a covered financial company or a subsidiary of a covered financial company, resolution of such insurance company, and any subsidiary of such company, will be conducted as provided under such State law.''.

Page 287, line 13, insert before the period the following: '', that is not itself an insurance company''.

Page 287, line 22, strike ''resolution'' and insert ''dissolution''.

Page 288, line 2, strike ''resolution'' and insert ''dissolution''.

Page 289, line 11, strike ''RESOLUTION'' and insert ''DISSOLUTION''.

Page 289, line 21, insert ''in accordance with section 1604'' before the comma after ''is appointed''.

Page 299, line 11, strike ''resolution'' and insert ''dissolution''.

Page 305, line 19, strike ''resolution'' and insert ''dissolution''.

Page 327, line 2, strike ''resolving'' and insert ''dissolving''.

Page 327, line 8, strike ''resolution'' and insert ''dissolution''.

Page 370, line 15, strike ''resolution'' and insert ''dissolution''.

Page 401, line 10, strike ''$10,000,000,000'' and insert ''$50,000,000,000''.

Page 401, line 11, insert a comma after ''inflation''.

Page 411, line 10, insert '',subject to the requirements of section 1604(g),'' after ''Fund''.

Page 413, line 11, strike ''resolution'' and insert ''dissolution''.

Page 413, line 12, strike ''resolution'' and insert ''dissolution''.

Page 425, line 8, strike ''Resolution'' and insert ''Dissolution''.

Page 425, line 14, strike ''**RESOLUTION**'' and insert ''**DISSOLUTION**'' (and conform the table of contents accordingly).

Page 425, line 21, strike ''Resolution'' and insert ''Dissolution''.

Page 426, line 2, strike ''Resolution'' and insert ''Dissolution''.

Page 426, line 7, strike ''Resolution'' and insert ''Dissolution''.

Page 426, line 8, strike ''Resolution'' and insert ''Dissolution''.

Page 432, line 1, strike ''Resolution'' and insert ''Dissolution''.

Page 433, line 4, strike ''Resolution'' and insert ''Dissolution''.

Page 455, line 5, before the comma insert ''(as such terms are defined in subsection (c)(1))''.

Page 461, strike lines 8 through 15 and insert the following:

(J) the Consumer Financial Protection Agency,

(K) the Federal Insurance Office,

Page 461, after line 19, insert the following new section:

SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE IN FIEC.

After section 1007 of the Federal Financial Institutions Examination Council Act of 1987 (12 U.S.C. 3306) insert the following new section:

''SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE.

''Whenever the Council takes any actions with respect to issues that relate to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal home loan banks, the Federal Housing Finance Agency shall participate in the Council's proceedings in an advisory role.''.

Page 462, beginning on line 20, strike ''(as'' and all that follows through line 22 and insert a comma.

Page 463, beginning on line 15, strike ''(as'' and all that follows through line 17 and insert a comma.

Page 464, strike lines 11 and 12 and insert ''States, the''.

Page 465, after line 2, insert the following new subtitle:

Subtitle L—Securities Holding Companies

SEC. 1961. SECURITIES HOLDING COMPANIES.

(a) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or foreign law to be subject to comprehensive consolidated supervision and that is not—

(A) a financial holding company subject to stricter standards,

(B) an affiliate of an insured bank (other than an institution described in subparagraphs (D) or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association,

(C) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978,

(D) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), or

(E) subject to comprehensive consolidated supervision by a foreign regulator,

may register with the Board to become supervised, pursuant to paragraph (2). Any securities holding company filing such a registration shall be supervised in accordance with this section and comply with the rules and orders prescribed by the Board applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—A securities holding company described in paragraph (1) shall register by filing with the Board such information and documents concerning such securities holding company as the Board, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Such supervision shall become effective 45 days after the date of receipt of such registration by the Board or within such shorter time period as the Board, by rule or order, may determine.

(b) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

(1) RECORDKEEPING AND REPORTING.—

(A) IN GENERAL.—Every supervised securities holding company and each affiliate of such company shall make and keep for prescribed periods such records, furnish copies of records, and make such reports, as the Board determines to be necessary or appropriate for the Board to carry out the purposes of this section, prevent evasions, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board may require and shall be provided promptly at any time upon request by the Board. Such records and reports may include—

(i) a balance sheet and income statement;

(ii) an assessment of the consolidated capital of the supervised securities holding company;

(iii) an independent auditor's report attesting to the supervised securities holding company's compliance with its internal risk management and internal control objectives; and

(iv) reports concerning the extent to which the company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised securities holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(B) AVAILABILITY.—A supervised securities holding company or an affiliate of such company shall provide to the Board, at the request of the Board, any report referred to in subparagraph (A), as permitted by law.

(3) EXAMINATION AUTHORITY.—

(A) FOCUS OF EXAMINATION AUTHORITY.—The Board may make examinations of any supervised securities holding company and any affiliate of such company to carry out the purposes of this subsection, prevent evasions thereof, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board shall, to the fullest extent possible, use the

reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary, as defined under section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)), or an institution described in subparagraphs (D) or (G) of section 1841(c)(2).

(c) CAPITAL AND RISK MANAGEMENT.—

(1) The Board shall, by regulation or order, prescribe capital adequacy and other risk management standards for a supervised securities holding company appropriate to protect the safety and soundness of the company and address the risks posed to financial stability by a supervised securities holding company. Standards imposed under this subparagraph shall take account of differences among types of business activities and—

(A) the amount and nature of the company's financial assets;

(B) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(C) the extent and nature of the company's off-balance sheet exposures;

(D) the extent and nature of the company's transactions and relationships with other financial companies;

(E) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system; and

(F) the nature, scope, and mix of the company's activities.

(2) In imposing standards under this subsection, the Board may differentiate among supervised securities holding companies on an individual basis or by category, taking into consideration the criteria specified above.

(3) Any capital requirements imposed under this subsection shall not take effect until the expiration of 180 days after a supervised securities holding company is provided notice of such requirement.

(d) OTHER PROVISIONS.—

(1) Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act shall apply to any supervised securities holding company, and to any subsidiary (other than a bank) of a supervised securities holding company, in the same manner as they apply to a bank holding company. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank) of a supervised securities holding company, the Board shall be considered the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Except as the Board may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent that bank holding companies are subject to such provisions, except that any such supervised securities holding company shall not by reason of this subparagraph be deemed a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956.

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

(1) SECURITIES HOLDING COMPANY.—The term ''securities holding company'' means—

(A) any person other than a natural person that owns or controls one or more brokers or dealers as defined in section 3 of the Securities Exchange Act; and

(B) the associated persons of the securities holding company.

(2) SUPERVISED SECURITIES HOLDING COMPANY.—The term ''supervised securities holding company'' means any securities holding company that is supervised by the Board pursuant to this section.

(3) OTHER BANKING TERMS.—The terms ''affiliate'', ''bank'', ''bank holding company'', ''company'', ''control'', ''savings association'', and ''subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(4) INSURED BANK.—The term ''insured bank'' has the same meaning as in section 13 of the Federal Deposit Insurance Act.

(5) FOREIGN BANK.—The term ''foreign bank'' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(6) ASSOCIATED PERSONS.—The terms ''person associated with a securities holding company'' and ''associated person of a securities holding company'' mean any person directly or indirectly controlling, controlled by, or under common control with, a securities holding company.

Page 480, line 12, strike ''2009'' and insert ''2008''.

Page 668, strike lines 4 and 5 and insert the following:

(13) DEPOSIT-TAKING, MONEY ACCEPTANCE, OR MONEY MOVEMENT ACTIVITY.—The term ''deposit-taking, money acceptance, or money movement activities'' means—

Page 669, line 15, insert ''(b),'' after ''Subsections''.

Page 669, line 20, insert ''except for section 505 as it applies to section 501(b)'' before the period.

Page 670, after line 9, insert the following:

(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 670, line 23, after ''taking'' insert '', money acceptance, or money movement''.

Page 672, line 3, insert '', except that furnishing a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history shall not be considered a financial activity'' before the period at the end.

Page 673, line 2, insert ''a person regulated as an investment adviser by'' after ''or'' the 1st place such term appears.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(ix) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a ''financial activity'' with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

Page 678, line 10, as modified by the amendment MWB_05, before ''data is undifferentiated'' insert ''financial''.

Page 679, line 2, insert ''and shall include any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank'' before the period at the end.

Page 679, beginning on line 17, strike ''covered''.

Page 681, strike line 18 and all that follows through line 20 and insert the following new subparagraph:

(C) an investment company that—

(i) is required to be registered under the Investment Company Act of 1940; or

(ii) is excepted from the definition of investment company under section 3(c) of such Act, or any successor provision.

Page 682, line 21, strike ''the person'' and insert ''any person described in any subparagraph of this paragraph''.

Page 682, line 23, insert '', or, with respect to a person described in subparagraph (C)(ii), any employee, agent, or contractor acting on behalf of, or providing services to any such person, but only to the extent that such person, or the employee, agent, or contractor of such person acts in such exempt capacity'' before the period at the end.

Page 686, line 19, insert '' or any federally recognized Indian tribe as defined by the Secretary of Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a))'' before the period.

Page 693, line 13, before the semicolon insert the following: '', except that the Director shall not exercise any authorities that are granted to State insurance authorities under section 505(a)(6) of the Gramm-Leach-Bliley Act''.

Page 693, line 14, insert '', except that Director shall not exercise any authorities that are granted to State insurance authorities under Section 505(a)(6) of the Gramm-Leach-Bliley Act'' before the semicolon.

Page 696, strike line 14 and all that follows through page 697, line 9, and insert the following:

(1) APPOINTMENT.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

Page 701, line 1, insert ''the Federal Trade Commission,'' after ''banking agencies,''.

Page 714, strike lines 11 through 14, and insert the following:

(2) an analysis of the major problems consumers of financial products and services were confronted with during the preceding year, including a description of the nature of such problems, and recommendations for such administrative and legislative action as may be appropriate to resolve such problems;

Page 715, after line 7, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(6) an analysis of the Agency's efforts to increase workforce and contracting diversity consistent with subtitle I of title I of this Act;

Page 717, beginning on line 17, strike ''and complexity of the covered person,'' and insert '', complexity of, risk posed by,''.

Page 719, beginning on line 10, strike ''and complexity of the covered person,'' and insert '', complexity of, risk posed by,''.

Page 720, line 16, insert ''in the each of the first 3 years following the date of enactment of this Act'' after ''persons''.

Page 720, beginning on line 18, strike ''the 12-month period ending on December 31, 2009'' and insert ''the calendar year immediately preceding the designated transfer date''.

Page 720, line 24, insert '', on a risk-adjusted basis,'' after ''that''.

Page 721, line 11, insert ''or to set assessments that would result in higher marginal assessments on the depository institution covered persons with assets of less than $25,000,000,000 if based on the compliance record of or higher risks posed by such covered persons'' before the period.

Page 721, line 18, strike ''enforcement or regulation'' and insert ''or enforcement activities''.

Page 722, line 1, insert ''so that levels of assessments under this subparagraph combined with levels of assessments by an agency responsible for chartering and or supervising the depository institution covered person shall be no more'' before ''than it paid''.

Page 725, line 6, insert ''or the CFPA Nondepository Fund, at the discretion of the Agency'' before the period at the end.

Page 728, beginning on line 12, strike ''as a result of the'' and insert ''that are reasonably related as a general matter to''.

Page 743, line 3, insert ''a provision of'' after ''reports under''.

Page 743, line 4, insert ''a provision of'' after ''title,''.

Page 743, line 5, insert ''any provision of'' after ''law,''.

Page 743, line 8, insert ''under that provision of law'' after ''exclusive authority''.

Page 748, line 6, strike ''$1,500,000,000'' and insert ''$10,000,000,000''.

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTION FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency 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 goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided; and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 762, line 14, strike ''or''.

Page 762, line 22, strike the period and insert ''; or''.

Page 762, after line 22, insert the following new subparagraph:

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

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

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

Page 764, after line 24, insert the following new subsection and redesignate subsequent subsections accordingly):

(d) 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 (m), the Director and the Agency 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 any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

Page 765, strike line 20 and all that follows through page 766, line 3, and insert the following new paragraph:

(3) PRESERVATION OF CERTAIN AUTHORITIES.—No provision of this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

Page 766, line 13, insert ''Finance'' after ''Housing''.

Page 770, after line 4, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(3) CERTAIN ACTIVITIES NOT EXCLUDED.—

(A) IN GENERAL.—In no event shall paragraph (1) apply to any activity which involves the sale of securities or extension of credit which is provided by a person described in paragraph (1)(A).

(B) DEFINITION.—For purposes of subparagraph (A), the term ''extension of credit'' shall not include an ordinary account receivable.

Page 772, beginning on line 15, strike ''order assessments, over'' and all that follows through page 773, line 7, and insert ''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.''.

Page 776, after line 19, insert the following new subsections:

(l) EXCLUSION FOR PAWNBROKERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, under this title with respect to any pawnbroker licensed by a State or political subdivision thereof, a territory of the United States, or the District of Columbia, but only to the extent that such person acts in such capacity and provides either—

(A) non-recourse credit secured by a possessory security interest in tangible goods physically delivered by the consumer to the pawnbroker for which the consumer does not provide a written or electronic promise, order or authorization to pay, or in any other manner authorize a debit of a deposit account, prior to or contemporaneously with the disbursement of the original proceeds; or

(B) credit or any other financial activity issued directly by a pawnbroker to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the pawnbroker.

(2) RULE OF CONSTRUCTION.—

(A) FTC AUTHORITY PRESERVED.—Except as provided in subparagraph (B), no provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission with respect to the activities described under paragraph (1).

(B) EXERCISE OF RULEMAKING AUTHORITY.—The Director may exercise any rulemaking authority regarding the activities described in paragraph (1) only as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(m) EXCLUSION FOR CERTAIN CONSUMER REPORTING AGENCIES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is a consumer reporting agency, as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), but only to the extent that such consumer reporting agency furnishes a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(n) LIMITED AUTHORITY OF THE AGENCY TO OBTAIN INFORMATION.—Notwithstanding subsections (a), (f), (g), (h), (i), and (k), the Director may request or require information from any person subject to or described in any such subsection in order to carry out the responsibilities and functions of the Agency and in accordance with section 4206, 4501, or 4502.

Page 781, line 22, after the period insert the following: ''This authority shall not prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.''.

Page 787, strike line 17 and all that follows through page 788, line 10, and insert the following new subsection:

(c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES DEFINED.—

(1) UNFAIR ACTS OR PRACTICES.—Any determination by the Director and the Agency

that an act or practice is unfair shall be consistent with the standard set forth under section 5 of the Federal Trade Commission Act and with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated December 17, 1980.

(2) DECEPTIVE ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is deceptive shall be consistent with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated October 14, 1983.

(3) ABUSIVE ACTS OR PRACTICES.—The Director and the Agency may determine that an act or practice is abusive only if the Director finds that—

(A) the act or practice is reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and

(B) the widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system.

Page 795, line 23, insert ''(other than by the Agency, or by a State regulator, as may be necessary to enforce an administrative order under this section)'' before the comma at the end.

Page 799, line 24, after ''and'' insert '', notwithstanding any other provision of this title,''.

Page 815, line 11, insert ''to be effected or used primarily for personal, family, or household purposes'' after ''funds''.

Page 845, after line 13, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) COVERED EMPLOYEE.—The term ''covered employee'' means any individual performing tasks related to the provision of a financial product or service to a consumer.

Page 878, beginning on line 5, strike ''for any violation of a regulation prescribed under section 4306 or''.

Page 880, strike line 16 through page 893, line 8 and insert the following:

SEC. 4507. EMPLOYEE PROTECTION.

(a) No covered person 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 employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee) has—

(1) provided information to the Agency or to any other state, local, federal, or tribal government entity, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title; or

(2) 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, or regulation, or to be unfair, deceptive, or abusive and likely to cause specific and substantial injury to one or more consumers.

(b)(1) 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 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. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) 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 an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings 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. 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.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) 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.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) 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.

(iii) The Secretary 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.

(iv) 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.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary 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, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary 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. If such an order is issued under this paragraph, the Secretary, 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 attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $ 1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving 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 with 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. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain 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. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. 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.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, 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, but

not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) 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.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) 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)(1) 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 any predispute arbitration agreement.

(2) Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(e) Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under paragraph (a)(2) of this section unless the Agency determines by rule that such provision is inconsistent with the purposes of this Act.

(f) Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

Page 881, line 1, strike ''provided information to'' and insert ''provided, caused to be provided, or is about to provide or cause to be provided information to the employer,''.

Page 893, line 6, strike ''(a)(2)'' and insert ''(a)(4)''.

Page 893, after line 8 insert the following new section (and redesignate succeeding sections accordingly):

SEC. 4508. NO PRIVATE RIGHT OF ACTION.

Nothing in this title shall be construed to create a private right of action, but this section shall not be construed or interpreted to deny any private right of action arising under the enumerated consumer laws or the authorities transferred under subtitle F or H.

Page 897, beginning on line 21, strike ''BACKSTOP''.

Page 898, line 2, strike ''4202(e)(3)'' and insert ''paragraph (2) or (3) of section 4202(e)''.

Page 898, line 8, insert ''transferred under subsection (a)'' after ''functions''.

Page 922, beginning on line 1, strike ''a Federal home loan bank, a joint office of the Federal home loan banks,''.

Page 922, line 5, strike ''or''.

Page 922, line 6, insert '', or the Federal Home Loan Bank Board or any successor to such Board'' before ''shall be''.

Page 922, beginning on line 23, strike ''a Federal home loan bank, a joint office of the Federal home loan banks,''.

Page 923, line 2, strike ''or''.

Page 923, line 3, insert '', or the Federal Home Loan Bank Board or any successor to such Board'' before ''shall be''.

Page 933, line 4, insert ''the Federal Home Loan Bank Board or any successor to such Board,'' after ''Federal reserve bank''.

Page 933, line 21, insert ''the Federal Home Loan Bank Board or any successor to such Board,'' after ''reserve bank''.

Page 934, line 24, strike ''before the designated transfer date'' and insert ''during the 24-month period beginning on the date of the enactment of this title''.

Page 954, line 2, insert ''and shall not apply to the term 'Board' when used in reference to the Federal Deposit Insurance Corporation or the National Credit Union Administration'' before the period.

Page 955, line 16, strike ''25(a)'' and insert ''25A''.

Page 957, line 3, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 957, line 20, insert ''(and except for any insertion of 'Federal Trade Commission' made by this subtitle)'' after ''subparagraph (B)''.

Page 958, line 2, strike ''and 129(m) (as amended by paragraph (7))'' and insert ''129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).''.

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting ''the Federal Trade Commission,'' after ''in consultation with''.

Page 960, beginning on line 1, strike ''paragraph (7)(A)'' and insert '' paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of 'Federal Trade Commission' made by this subtitle)''.

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting ''the Federal Trade Commission,'' after ''in consultation with''.

Page 961, line 22, strike ''(5)'' and insert ''(6)''.

Page 961, line 22, strike ''611(e)(2)'' and insert ''611(e)''.

Page 961, line 23, strike ''15 U.S.C.1681i(e)(2)'' and insert ''15 U.S.C. 1681i(e)''.

Page 961, line 24, strike ''amended to read as follows:'' and insert ''amended—'', and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert ''; and'' and after such line insert the following:

(B) in the heading of paragraph (3) by inserting ''CONSUMER REPORTING'' before ''AGENCY''.

Page 962, strike lines 6 through 8 and insert the following:

(8) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting ''the Federal Trade Commission,'' after ''in consultation with'';

(B) in subsection (e)(1), by striking ''and the Commission'' and inserting ''the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission''; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

Page 962, line 11, strike ''(7)'' and insert ''(8)''.

Page 963, line 2, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 968, after line 7, insert the following (and redesignate succeeding subparagraphs accordingly):

(C) in paragraph (2) of subsection (c)—

(i) by inserting ''the Agency and'' before ''the Federal Trade Commission'' in the first sentence;

(ii) by inserting ''Agency and the Federal Trade'' after ''provide the''; and

(iii) by inserting ''Agency,'' before ''Federal Trade Commission'' in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting ''Agency'', before ''the Federal Trade Commission''; and

(ii) inserting ''Agency, the Federal Trade'' after ''complaint of the'';

(E) in paragraph (2) of subsection (f), by inserting ''the Federal Trade Commission'' after ''in consultation with'';

Page 968, beginning on line 12, strike ''with respect to a covered person described in subsection (b)'' and insert '', except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections''.

Page 968, line 14, strike ''(D)'' and insert ''(G)''.

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting ''of Governors of the Federal Reserve System'' after ''Board''; and

(II) by striking ''and'' after the semicolon;

Page 974, line 2, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 978, line 4, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 982, line 21, strike ''and'' and after such line insert the following:

(iii) in paragraph (1)(B), by inserting ''of Governors of the Federal Reserve System'' after ''Board'';

Page 982, line 22, strike ''(iii)'' and insert ''(iv)''.

Page 983, line 7, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting ''(other than the Consumer Financial Protection Agency)'' after ''title''.

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting ''the Consumer Financial Protection Agency,'' after ''(including''.

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting ''Consumer Financial Protection Agency in consultation with the other'' before ''agencies''; and

(2) by striking ''jointly''.

Page 988, line 13, strike ''and'' at the end.

Page 988, line 15, strike the period and insert ''; and'' and after such line insert the following:

(3) by inserting ''the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and'' before ''representatives of State insurance authorities''.

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking ''Federal Trade Commission'' and inserting ''Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission''.

Page 997, line 6, strike ''25(a)'' and insert ''25A''.

Page 1016, strike line 7 through page 1018, line 5, and insert the following:

SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD ABUSE AND PREVENTION ACT.

(a) Section 4 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting ''and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency

under the Consumer Financial Protection Agency Act'' after ''Commission'' each of the first 2 places it appears; and

(B) by inserting ''or the Consumer Financial Protection Agency'' after ''Commission'' the last place it appears; and

(2) in subsection (d), by inserting ''or the Consumer Financial Protection Agency'' after ''Commission'' each place such term appears.

(b) Section 5 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting ''and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency under the Consumer Financial Protection Agency Act'' after ''Commission'' each of the first 2 places it appears; and

(B) by inserting ''or the Consumer Financial Protection Agency'' after ''Commission'' the last place it appears; and

(2) in subsection (c), by inserting ''or the Consumer Financial Protection Agency'' after ''Commission'' each place such term appears.

(c) Section 6 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

''(c) ENFORCEMENT BY THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this Act shall be enforced by the Consumer Financial Protection Agency, under subtitle E of that Act, with respect to a person subject to the authority of that Agency under that Act. For the purpose of the exercise by the Consumer Financial Protection Agency of its powers under subtitle E, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under the Consumer Financial Protection Agency Act. In addition to its powers under subtitle E of that Act, the Agency may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.''.

Page 1019, line 8, strike ''and'' and after such line insert the following:

(2) by inserting a comma after ''under this Act'';

(3) by inserting a comma after ''subsection (a)(1))''; and

Page 1019, line 9, strike ''(2)'' and insert ''(4)''.

Page 1019, line 15, insert ''partnership, or corporation'' after ''person,''.

Page 1020, after line 20, insert the following new subtitle:

Subtitle J—Miscellaneous

SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS.

Paragraph (2) of section 1505 (b) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2)) is amended by inserting after and below subparagraph (B), the following:

''Notwithstanding the preceding sentence, a State loan originator supervisory authority may provide for review of applicants and for granting exceptions, on a case-by-case basis, to the minimum standard under subparagraph (B), but only to the extent that any such exception otherwise complies with the purposes of this title.''.

Page 1021, strike lines 24 and 25 and insert the following:

''(i) in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser; and''.

Page 1022, strike lines 1 and 2 and insert the following:

''(ii) aggregate assets under management attributable to clients and investors in the United States in private funds advised by the investment adviser of''.

Page 1022, line 20, strike ''Section'' and insert the following:

(a) EXEMPTION.—Section

Page 1024, after line 3, insert the following:

(b) CONSIDERATION OF RISK.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c)) is amended by adding at the end the following:

''(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.''.

Page 1024, line 4, strike ''**SYSTEMIC RISK**''.

Page 1024, beginning on line 23, strike '', and to any other entity that the Commission identifies as having systemic risk responsibility'' and insert ''and to the Financial Services Oversight Council''.

Page 1027, beginning on line 12, strike '', and to any other entity that the Commission identifies as having systemic risk responsibility'' and insert ''and to the Financial Services Oversight Council''.

Page 1027, line 17, strike ''such other entity'' and insert ''the Financial Services Oversight Council''.

Page 1028, strike line 11 and all that follows through page 1029, line 2, and insert the following:

''(8) NON-DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION AND CONFIDENTIALITY OF REPORTS.—Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this section 204(b) shall be subject to the same limitations on public disclosure as any facts ascertained during an examination as provided by section 210(b) of this title. The Commission may not compel the private fund to disclose such proprietary information to counterparties and creditors. For purposes of this section, proprietary information shall include sensitive, non-public information regarding the investment adviser's investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the Commission determines to be proprietary. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or to prevent the Commission from complying with 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 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 paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.''.

Page 1030, line 12, strike ''private funds'' the second place it appears and insert ''investment adviser acts solely as an adviser to private funds and''.

Page 1032, line 23, insert '', 203(m),'' after ''203(1)''.

Page 1033, line 23, insert ''to the extent necessary'' after ''regulations''.

Page 1034, line 7, insert ''in any rule or regulation'' after ''any factor used''.

Page 1034, line 11, insert ''by order,'' after ''Commission shall,''.

Page 1034, line 15, strike ''$1,000'' and insert ''$100,000''.

Page 1034, line 16, strike ''$1,000'' and insert ''$100,000''.

Page 1038, line 2, insert ''disclosure of'' after ''with respect to''.

Page 1041, beginning on line 13, strike ''and reliable''.

Page 1042, beginning on line 2, strike ''or its ultimate holding company''.

Page 1059, line 2, strike ''; and'' and insert a period.

Page 1059, strike lines 3 through 8 and insert the following:

(2) SYMBOLS.— The Commission may prescribe rules that require nationally recognized statistical rating organizations to establish credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors, provided such rules do not prevent public pension funds or other State regulated entities from investing in rated products.

Page 1059, line 9, strike ''(2)'' and insert ''(3)''.

Page 1066, line 7, insert ''certify that they'' after ''diligence services''.

Page 1067, line 10, strike ''service,'' and insert ''service to that issuer, underwriter, or placement agent in determining a credit rating,''.

Page 1068, line 17, strike ''this title'' and insert ''the securities laws''.

Page 1068, line 21, strike ''or a similar''.

Page 1090, line 14, insert ''section 211 of'' after ''under''.

Page 1090, line 18, insert after the period the following: ''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.''.

Page 1092, line 1, strike ''(3)'' and insert ''(2)''.

Page 1096, line 4, insert ''**AND RULEMAKING**'' after ''**STUDY**''.

Page 1096, beginning on line 9, strike ''manner in which'' and all that follows through ''products or services'' on line 12 and insert ''provision of documents or information to retail customers prior to the purchase of investment products or services''.

Page 1098, line 19, strike ''in connection with'' and insert ''rules that require the provision of documents or information to retail customers prior to''.

Page 1103, strike ''**ADVISOR**'' and insert ''**ADVISER**''.

Page 1109, line 11, insert ''law enforcement agency,'' after the comma.

Page 1109, line 17, strike ''or'' and after such line insert the following:

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws; or

Page 1109, line 18 strike ''(C)'' and insert ''(D)''.

Page 1116, strike lines 11 through page 1118, line 13, and insert the following:

''(2) CONFIDENTIALITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

''(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

''(i) the Attorney General of the United States,

''(ii) an appropriate regulatory authority,

''(iii) a self-regulatory organization,

''(iv) State attorneys general in connection with any criminal investigation, and

''(v) any appropriate State regulatory authority,

''each of which shall not disclose such information in accordance with subparagraph (A).''.

Page 1123, line 13, insert ''municipal financial adviser,'' after ''transfer agent,''.

Page 1123, line 22, insert ''municipal financial adviser,'' after ''transfer agent,''.

Page 1124, line 6, insert ''municipal financial adviser,'' after ''municipal securities dealer,''.

Page 1124, line 15, insert ''municipal financial adviser,'' after ''transfer agent,''.

Page 1127, beginning on line 18, strike ''head of any division or office within the Commission or his designee'' and insert ''Director of the Division of Enforcement of the Commission or the Director's designee''.

Page 1127, beginning on line 24, strike ''head of any division or office within the Commission or his designee'' and insert ''Director of the Division of Enforcement of the Commission or the Director's designee''.

Page 1128, beginning on line 3, strike ''head of any division or office within the Commission or his designee'' and insert ''Director of the Division of Enforcement of the Commission or the Director's designee''.

Page 1128, beginning on line 9, strike ''head of any division or office within the Commission or his designee'' and insert ''Director of the Division of Enforcement of the Commission or the Director's designee''.

Page 1128, line 24, strike ''without findings'' and insert '', has concluded without findings,''.

Page 1129, line 3, insert ''responsible for compliance examinations and inspections'' after ''Commission''.

Page 1129, line 7, insert a comma after ''inspection''.

Page 1129, line 8, insert a comma after ''action''.

Page 1129, line 11, insert ''responsible for compliance examinations and inspections'' after ''Commission''.

Page 1129, strike line 16 through page 1131, line 2, and insert the following:

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

Page 1131, line 9, strike ''MONEY'' and insert ''MONETARY''.

Page 1133, line 21, strike ''TO ASSESS MONEY'' and insert ''TO ASSESS MONETARY''.

Page 1143, beginning on line 2, strike ''Except as provided in subsection (f), the'' and insert ''The''.

Page 1146, beginning on line 8, strike ''The jurisdiction'' and all that follows through line 11 and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of section 17(a) of this title, and all''.

Page 1147, beginning on line 4, strike ''The jurisdiction'' and all that follows through ''subsection (a)'' and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction''.

Page 1148, beginning on line 3, strike ''The jurisdiction'' and all that follows through ''subsection (a)'' and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction''.

Page 1149, line 18, strike the semicolon at the end.

Page 1158, line 7, insert ''and'' after ''with''.

Page 1190, line 13, strike ''that—'' and insert the following: ''that is not exempt from registration under section 203 and—''.

Page 1190, beginning on line 15, strike ''by a State'' and insert ''in the State where it maintains its principal office and place of business''.

Page 1191, line 8, insert after the first period the following: ''If no State in which an investment adviser described in subparagraph (B) is registered conducts such an examination, the investment adviser must register with the Commission. If, pursuant to this paragraph, an investment adviser would be required to register with 5 or more States, then the adviser may maintain its registration with the Commission.''.

Page 1191, strike line 10 and all that follows through page 1192, line 3, and insert the following:

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this title, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of that Act for an investment adviser registered under such Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

(b) EXCEPTIONS.—The rule adopted under subsection (a) shall include such exceptions as the Commission determines in the public interest and consistent with the protection of investors. Any exemption granted under this subsection shall ensure that at least once per year, a client described in subsection (a) shall receive a report from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client's account are in accord with those stated on the client's account statement.

(c) NO LIMITS ON OTHER ACTIONS.—Nothing in this section shall be construed to limit other actions the Securities and Exchange Commission may take under this Act to require the protection of client assets.

Page 1192, line 21, strike ''maintain'' and insert ''assure that safeguards exist to maintain''.

Page 1193, line 9, strike ''regards'' and insert ''regard''.

Page 1193, after line 10, insert the following new sections:

SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following new subsection:

''(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

''(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad-17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

''(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

''(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25.

''(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

''(D) For purposes of such revised regulations—

''(i) a security holder shall be considered a 'missing security holder' if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

''(ii) the term 'paying agent' includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

''(2) RULEMAKING.—The Commission shall adopt such rules, regulations, and orders

necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.''.

SEC. 7422. SHORT SALE REFORMS.

(a) SHORT SALE DISCLOSURE.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

''(2)(A) Every institutional investment manager that effects a short sale of an equity security shall also file a report on a daily basis with the Commission in such form as the Commission, by rule, may prescribe. Such report shall include, as applicable, the name of the institution, the name of the institutional investment manager and the title, class, CUSIP number, number of shares or principal amount, aggregate fair market value of each security, and any additional information requested by the Commission. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section. The information contained in reports of an institutional investment manager filed with the Commission pursuant to this section, shall be subject to the same non-disclosure and confidentiality protection provided under section 204(b)(8) of the Investment Advisers Act of 1940.

''(B) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.''.

(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (c), the following new subsection:

''(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.''.

(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (d) the following new subsection:

''(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.''.

SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.

(a) APPROVAL PROCESS.—Section 19(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)) is amended to read as follows:

''(2) FILING PROCEDURES.—

''(A) IN GENERAL.—Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

''(i) by order approve such proposed rule change; or

''(ii) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

''(B) PROCEEDINGS.—Proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 200 days from the date of receipt of a proper filing. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents. The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.''.

(b) RULES.—Not later than 12 months after the date of enactment of this Act, the Commission shall issue rules implementing a disapproval process for filings submitted on or after the effective date of such rules.

Page 1196, line 5, strike ''containing''.

Page 1198, strike line 22 through page 1199, line 16.

Page 1199, line 17, strike ''(3)'' and insert ''(2)''.

Page 1199, line 21, strike ''or (2)''.

Page 1206, strike lines 15, through 23.

Page 1211 strike line 24 through page 1212, line 21, and insert the following:

(e) INSPECTIONS BY REGISTERED ACCOUNTING FIRMS.—Subsection (a) of Section 104 of such Act is amended—

(1) by striking ''(a) IN GENERAL.—The Board shall'' and inserting the following:

''(a) IN GENERAL.—

''(1) The Board shall''; and

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

''(2) INSPECTIONS OF AUDIT REPORT FOR BROKERS AND DEALERS.—

''(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (a)(1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

''(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

''(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

''(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (a)(2)(A) of this section.

''(3) CONFORMING AMENDMENT.—Section 17 (e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e) (1) (A)) is amended by striking 'registered public accounting firm' and inserting 'independent public accounting firm or by a registered public accounting firm if registration is required under the Sarbanes-Oxley Act of 2002 as amended.'.''.

Page 1215, line 1, strike ''dealer'' and insert ''dealers''.

Page 1219, beginning on line 10, strike ''domestic'' and insert ''domestically''.

Page 1223, lines 5, strike ''shall—'' and all that follows through line 13 and insert ''shall prevent the Board from responding to requests for reports from the Committees specified under subsection (h) about the activities or programs of the Board, provided that any confidential information contained therein shall be subject to the provisions of section 105(b)(5).''.

Page 1228, line 14, strike ''**MISLEAD**'' and insert ''**MISLED**''.

Page 1231, after line 15, insert the following:

(4) APPLICATION OF FIDUCIARY DUTY FOR PERSONALIZED INVESTMENT ADVICE ABOUT SECURITIES.—Nothing in this section shall diminish in any manner nor supersede the standard of conduct applicable to all brokers, dealers and investment advisers providing personalized investment advice about securities as set forth in section 7103 of this Act.

Page 1231, line 16, strike ''(4)'' and insert ''(5)''.

Page 1231, beginning on line 19, strike '', to the extent practicable, conform to the'' and insert ''meet or exceed''.

Page 1232, strike lines 3 through page 1235, line 5, and insert the following:

(6) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—A State shall have adopted rules that govern suitability requirements in the sale of annuities which shall meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation in effect on the date of the enactment of this Act, or any successor thereto.

Page 1235, line 18, strike ''senior'' and insert ''seniors who are''.

Page 1238, line 13, insert a comma after ''finding''.

Page 1242, line 7, insert ''United States Code,'' after ''title 18,''.

Page 1243, line 9, insert ''or the rules of the Municipal Securities Rulemaking Board,'' after ''statutes,''.

Page 1243, line 17, insert ''or the rules of the Municipal Securities Rulemaking Board,'' after ''statutes,''.

Page 1247, line 18, insert ''broker, dealer, investment adviser, municipal securities dealer, transfer agent, nationally recognized statistical rating organization, or''.

Page 1248, line 1, strike ''or (E)'' and insert ''(E), (G), or (H)''.

Page 1254, line 22, strike ''or''.

Page 1254, line 24, strike the period at the end and insert ''; or'' and after such line insert the following:

(v) the independent accountant that audits the financial statements of the municipal securities issuer.

Page 1259, after line 24, insert the following new subparagraph and redesignate subsequent subparagraphs accordingly):

''(C) To monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in 24 section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance.''.

Page 1261, after line 6, insert the following new paragraph:

''(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Services Oversight Council established under the Financial Stability Improvement Act of 2009.''.

Page 1261, line 9, after ''Secretary'' insert ''in coordination with the Secretary of the Department of Health and Human Services''.

Page 1261, line 14, after ''data'' insert '', including financial data,''.

Page 1262, beginning on line 2, strike ''is authorized to write'' and insert ''writes''.

Page 1262, line 3, strike ''reinsure'' and insert ''reinsures''.

Page 1262, line 4, strike ''issue'' and insert ''issues''.

Page 1278, line 13, strike ''and broadened''.

Page 1279, line 1, insert ''Federal or State'' after ''any''.

Page 1279, line 3, insert ''with respect to such study'' before ''to modernize''.

Page 17 of title VII of the bill, as added by the amendment TITLE7__02, strike lines 14 and 15 and insert the following:

''(A) permitting any yield spread premium or other similar compensation that would, for any mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);''.

Page 17 of title VII of the bill, as added by the amendment TITLE7__02, line 25, strike ''including through principal'' and insert ''at the option of the consumer, including through principal or rate''.

Page 18 of title VII of the bill, as added by the amendment TITLE7__02, line 5, after ''costs were'' insert ''limited by agreement with the consumer and were''.

Page 33 of title VII of the bill, as added by the amendment TITLE7__02, line 24, after ''that'' insert ''is insured by the Federal Housing Administration or''.

Page 153 of title VII of the bill, as added by the amendment TITLE7__02, line 11, after ''loan'' insert '', other than a reverse mortgage loan insured by the Federal Housing Administration,''.

Add at the end of the bill the following:

TITLE VIII—FORECLOSURE AVOIDANCE AND AFFORDABLE HOUSING

SEC. 10001. 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 insert ''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. 10002. 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.

Page 204, line 14, strike ''may decrease'' and insert ''decreases''.

Page 826, after line 20, insert the following new subsection:

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Agency 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 Agency.

(2) AGENCY CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Agency 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 Agency—

(A) shall include a discussion of the considerations required in subsection (b) in the Federal Register notice of a final regulation prescribed pursuant to this section; and

(B) whenever the Agency 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 section shall be construed as limiting or restricting the authority of the Agency 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 section shall be construed as exempt the Agency from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this section, the term ''consumer protection regulation'' means a regulation that the Agency is authorized to prescribe under this title, the enumerated consumer laws, or any law or authority transferred under subtitle F or H.

Page 827, line 4, after ''defendant,'' strike the rest of line 4 through line 6 and insert, ''to enforce and secure remedies under provisions of this title or regulations issued thereunder, or otherwise provided under other law.''.

Page 831, line 23, after ''that'' insert ''directly and specifically''.

Page 832, beginning on line 8, strike ''National banks'' and all that follows through ''State laws.'' on line 9.

Page 832, line 9, strike ''State laws are'' and insert ''State consumer financial laws are''.

Page 832, line 11, strike ''state'' and insert ''State consumer financial''.

Page 832, strike lines 15 through 20, and insert the following:

''(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a national bank to engage in the business of banking. Any 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. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 832, line 21, insert ''consumer financial'' after ''State''

Page 832, strike line 23 and all that follows through page 833, line 2 and insert the following:

''(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a national bank (other than an institution chartered as a national bank) that is not a depository institution.

Page 833, strike lines 3 through 17 and insert the following:

''(3) CASE-BY-CASE DETERMINATION.—

''(A) DEFINITION.—The term 'case-by-case determination pursuant to this section' means a determination 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 case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Consumer Financial Protection Agency and shall take such Agency's views into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This Act 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 Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency's consideration, the validity of the agency's reasoning, 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 subsection (b)(1)(B) shall be made by the Comptroller and shall not be delegable to another officer or employee of the Comptroller of the Currency.

Page 833, line 18, after ''regulation'' insert ''or order''.

Page 833, strike line 25 and all that follows through page 834, line 2, and insert the following: ''prevents, significantly interferes with, or materially impairs the ability of a national bank to engage in the business of banking.''.

Page 834, line 5, after ''prescribe'' insert ''a'', after ''regulation'' insert ''or order''.

Page 835, after line 9, insert new subsections as follows:

''(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.

Page 835, on lines 21 and 22 strike ''supervisory, examination, or regulatory'' and insert ''visitorial''.

Page 836, strike lines 4 through 7 and renumber subsequent sections accordingly.

Page 836, line 12, after ''or'' delete the rest of line 12 through line 15 and insert, ''nonpreempted State law against a national bank, as authorized by such law, or to seek relief as authorized by such law.''.

Page 838, line 13, after ''that'' and insert ''directly and specifically''.

Page 838, beginning line 19, strike ''Federal savings association'' and all that follows through ''State laws.''

Page 838, beginning on line 20, strike ''State laws are'' and insert ''State consumer financial laws are''.

Page 838, line 22, strike ''state'' and insert ''State consumer financial''.

Page 839, strike lines 1 through 7, and insert the following:

''(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a Federal savings association to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Director of the Office of

Thrift Supervision in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 839, line 8, insert ''consumer financial'' after ''State''.

Page 839, strike lines 10 through 14 and insert the following:

''(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a Federal savings association (other than an institution chartered as a Federal savings association) that is not a depository institution.

Page 839, strike line 15 and all that follows through page 840, line 4 and insert the following:

''(3) CASE-BY-CASE DETERMINATION.—

''(A) DEFINITION.—The term 'case-by-case determination pursuant to this section' means a determination made by the Director concerning the impact of a particular State consumer financial law on any Federal savings association that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Director of the Office of Thrift Supervision is preempting, the Director shall first consult with the Consumer Financial Protection Agency and shall take such Agency's views into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This Act 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 Director regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency's consideration, the validity of the agency's reasoning, 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 Director in making determinations regarding the meaning or interpretation of the Home Owners' Loan Act or other Federal laws.

''(6) OTS DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Director of the Office of Thrift Supervision under subsection (b)(1)(B) shall be made by the Director and shall not be delegable to another officer or employee of the Director of the Office of Thrift Supervision.

Page 840, line 7, after ''regulation'' insert ''or order''.

Page 840, line 15, after ''regulation'' insert ''or order''.

Page 840, strike lines 22 through 24 and insert the following: ''finding that the provision prevents, significantly interferes with, or materially impairs the ability of a Federal savings association to engage in the business of banking.''.

Page 841, after line 23, insert new subsections as follows and renumber subsequent sections accordingly:

''(g) PRESERVATION OF POWERS RELATED TO CHARGING OF INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 4(g) of the Home Owners' Loan Act (12 U.S.C. 1463(g)) for the charging of interest by a Federal savings association 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 OTS PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision shall publish and update no less frequently than quarterly, a list of preemption determinations by such Director then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

Page 842, strike lines 13 through 16 and renumber subsequent sections accordingly.

Page 842, line 22, after ''law,'' delete the rest of line 22 through page 843, line 2 and insert, ''or to seek relief as authorized by such law''.

Page 30, after line 21, insert the following new subsection:

(e) STUDY OF EFFECTS CONSUMER FINANCIAL PROTECTION AGENCY REGULATIONS AND STANDARDS.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the effects that regulations and standards of the Consumer Financial Protection Agency will have on all covered persons (as such term is defined in section 4002(9)), including nondepository institution covered persons. The Director of the Consumer Financial Protection Agency shall take the findings of the study into account when issuing regulations.

(2) VALUE OF NONBANK PRODUCTS.—The study shall include an evaluation and assessment of the appropriateness of using ''APR'' as a true measure of the value of all nonbank products.

(3) SUBMISSION.—Not later than 240 days after the date of the enactment of this Act, the Director of the Consumer Financial Protection Agency shall submit the study to Congress and include any recommendations the Director may have for changes in law and regulations to improve consumer protections and maintain access to credit.

Page 734, strike lines 8 through 12, and insert the following:

(A) consider the potential benefits and costs to consumers, covered persons, and the Federal Government, including the potential reduction of consumers' access to consumer financial products or services, resulting from such regulation; and

Page 734, line 20, insert before the period the following: ''and whether such regulation will have an inconsistent effect on nondepository institution covered persons and depository institution covered persons''.

Page 747, after line 21, add the following new subsections:

(i) NO ONE SIZE FITS ALL REGULATION OF NONBANK PRODUCTS.—The Director shall be required to issue only product specific rules and regulations for each of the non-bank products under the jurisdiction of the Agency.

(j) NONBANK REGULATORY APPEAL RIGHTS.—

(1) ADMINISTRATIVE.—The Agency shall establish a procedure through which a nonbank financial company that has been given contradictory or conflicting supervisory determinations or directives from the Agency and their prudential supervisors will be able to appeal the decisions to a disinterested governing panel.

(2) JUDICIAL REVIEW.—Any nonbank financial company which has been subjected to contradictory or conflicting supervisory determinations or directives may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

Page 731, after line 24, insert the following new subsection:

(h) ASSESSMENTS FOR CERTAIN NONDEPOSITORY INSTITUTION COVERED PERSONS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, a nondepository institution covered person shall not be subject to assessments by the Agency if—

(A) the assets that are financial activities of that nondepository covered person represent less than a substantial portion of its total assets; and

(B) the gross revenues derived from financial activities of that nondepository covered person are less than a substantial portion of its gross revenues.

(2) EXTENSIVE CONSUMER FINANCIAL PRODUCTS OR SERVICES OPERATIONS.—Paragraph (1) shall not apply to nondepository institution covered person that the Director determines has a level of assets or revenues derived from financial activities, a number of transactions in consumer financial products or services, or a number of accounts relating to consumer financial products or services that the Director determines represents an extensive consumer financial products or services operation.

Page 1068, line 7, strike ''knowingly or recklessly violated'' and insert ''was grossly negligent in violating''.

Page 1068, beginning on line 18, strike ''knowledge and recklessness'' and insert ''gross negligence''.

Page 1019, line 22, strike ''57a(b)'' and insert ''57a''.

Page 1019, after line 22, insert the following:

(1) in subsection (a)(1), by striking ''(h)'' and inserting ''(f)'';

Page 1019, line 23, strike ''(1)'' and insert ''(2)''.

Page 1020, strike lines 6 through 13 and insert the following:

(3) by striking subsection (c);

(4) in subsection (d), by striking ''(d)(1) The Commission's'' and all that follows through the end of paragraph (2) and by redesignating paragraph (3) of such subsection as subsection (c);

(5) In such subsection (c) (as so redesignated), by inserting ''prescribed'' after ''any rule'';

(6) by striking subsections (f), (i), and (j) and redesignating subsections (e), (g), and (h) as subsections (d), (e), and (f), respectively;

Page 1020, line 14, strike ''(4)'' and insert ''(7)''.

Page 1020, after line 14, insert the following:

(A) in paragraph (1)(A), by striking ''promulgated'' and inserting ''prescribed'';

Page 1020, line 15, strike ''(A)'' and insert ''(B)''.

Page 1020, strike lines 17 through 20 and insert the following:

(C) in paragraph (3), by striking ''The court shall hold unlawful'' and all that follows through the end of the paragraph; and

(D) by striking paragraphs (4) and (5) and inserting the following:

''(4) The procedure set forth in this subsection for judicial review of a rule prescribed under subsection (a)(1)(B) is the exclusive means for such review, other than in an enforcement proceeding.''; and

(7) in subsection (e)(2) (as so redesignated), by striking ''class or persons'' and inserting ''class of persons''.

Page 754, after line 1, add the following new subsection at the end of section 4203:

(h) ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL INSTITUTIONS.—

(1) ESTABLISHMENT; PURPOSE.—There is established in the Agency an office to be known as the ''Assistive Division for Community Financial Institutions'' to advise the Director on the impact of Agency policies and regulations on community financial institutions and to help ensure that the policies and regulations of the Agency do not unduly burden community financial institutions.

(2) ADDITIONAL DUTIES.—The Assistive Division for Community Financial Institutions shall also—

(A) provide assistance to and respond to inquiries from community financial institutions regarding policies of the Agency and the effects of such policies on community financial institutions;

(B) provide educational materials, training aides, and support to community financial institutions with respect to any new regulatory obligations the Agency establishes during the initial rule-making period;

(C) establish and maintain a toll-free telephone number, to be available at least 8 hours a day and 7 days a week, at which community financial institution may make inquiries and receive assistance under subparagraph (A); and

(D) perform other duties and exercise such other powers set by the Director.

Page 949, after line 2, add the following new section (and update the table of contents appropriately):

SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking ''resulting'' and inserting ''in each State that result'';

(2) in paragraph (3), by inserting ''each State for'' after ''modifications in''; and

(3) in paragraph (4), by inserting ''in each State'' after ''total number of loans''.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: ''Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.''.

In subtitle H of title VII (relating to mortgage reform) insert ''**and Data Collection**'' after ''**Reports**''

At the end of title VII (relating to mortgage reform), add the following new section (and update the table of contents appropriately):

SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking ''resulting'' and inserting ''in each State that result'';

(2) in paragraph (3), by inserting ''each State for'' after ''modifications in''; and

(3) in paragraph (4), by inserting ''in each State'' after ''total number of loans''.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: ''Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.''.

Page 119, strike lines 12 to 13 and insert the following new paragraph:

(1) the Board determines that a specified financial company fails to meet prudential standards established by the Board; or

Page 1035, line 4, strike ''Section'' and insert ''(a) IN GENERAL.—Section''.

Page 1035, strike lines 7 and 8 and insert the following:

(A) by amending paragraph (1)(A) to read as follows:

''(A) IN GENERAL.—Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the 'applicant'), and shall file with the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).''.

Page 1035, line 10, strike ''and''.

Page 1035, line 12, insert ''and'' after the semicolon and after such line insert the following:

(D) by adding at the end of paragraph (1) the following:

''(F) EXEMPTIONS.—The registration requirement in subparagraph (A) shall not apply to—

''(i) a credit rating agency if the credit rating agency—

''(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and

''(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

''(ii) such other persons as the Commission may designate by rules and regulations or order when in the public interest and for the protection of investors.''.

Page 1067, after line 20, insert the following:

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

Page 731, after line 24, insert the following:

(4) FINANCIAL EDUCATION AND COUNSELING PROGRAM.—

(A) IN GENERAL.—To the extent such victims cannot be located or such payments are otherwise not practicable, 5 percent of the Victims Relief Fund shall be transferred, up to $10,000,000 on an annual basis, to the Secretary of the Treasury so that the Secretary may carry out the Financial Education and Counseling Grant Program established under section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701).

(B) MEMORANDUM OF UNDERSTANDING.—Not later than 12 months after the date of enactment of this subtitle, the Director shall enter into a memorandum of understanding with the Secretary of the Treasury to coordinate the release of Civil Penalty Fund amounts under subparagraph (A).

(C) ASSISTANCE FOR INDIVIDUALS AT FINANCIAL RISK.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701) is amended—

(i) in subsection (a), by striking ''prospective homebuyers'' each place that term appears and inserting ''individuals at financial risk'';

(ii) in subsection (b)—

(I) in paragraph (1), by striking ''prospective homebuyers'' and inserting ''individuals at financial risk''; and

(II) by adding at the end the following:

''(3) DETERMINATION OF FINANCIAL RISK.—For purposes of this section, the Director of the Consumer Financial Protection Agency shall establish the criteria used to determine whether an individual is at financial risk, and the Secretary shall use such criteria when selecting organizations under paragraph (2).''; and

(iii) in subsection (c)(1)—

(I) in subparagraph (A), by striking ''or'';

(II) in subparagraph (B), by striking the period and inserting ''; or''; and

(III) 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 individuals at financial risk.''.

Page 1278, after line 17 insert the following:

(7) Geographic disparities in access to and cost of insurance products.

Page 35, line 25, insert ''compelled to waive and shall not be'' after ''be''.

Page 26, line 22, strike ''DEPARTMENT OF THE TREASURY'' and insert ''VOTING MEMBERS OF THE COUNCIL''.

Page 26, line 23, insert ''and all other voting members of the Council may, with the approval of the Council,'' after ''shall''.

Page 27, line 10, strike ''Secretary of the Treasury'' and insert ''Council''.

Page 33, after line 10, insert the following new section (and conform the table of contents accordingly):

SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF AGENT ACTING ON BEHALF OF COUNCIL.

For purposes of this subtitle, the Board of Governors of the Federal Reserve System shall act in the capacity of agent for the Council, acting on behalf of the Council.

Page 1028, after line 10, insert the following new paragraph (and redesignate the subsequent paragraph):

''(8) APPLICABLE PRIVILEGES NOT WAIVED.—An investment advisor, and investment advisor to a private fund, a private fund, foreign private fund advisor, a foreign private fund, an advisor to a venture capital fund, a venture capital fund, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

''(A) the Financial Services Oversight Council;

''(B) the Commission;

''(C) any Federal financial regulator or State financial regulator, in any capacity; or

''(D) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).''.

Page 701, after line 9, insert the following:

(D) CONSUMER COMPLAINT WEBSITE.—The Director shall establish an Internet website for consumer complaints and inquiries concerning institutions regulated by the Agency. The website shall be interoperable with the database established under subparagraph (A).

Page 825, after line 12, insert the following:

SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate a new rule that requires banks to prominently place in each consumer branch office information regarding the fees and charges associated with enrollment in the bank's overdraft protection program.

Page 1230, line 15, strike ''$500,000'' and insert ''1,000,000''.

Page 1230, line 18, strike ''$100,000'' and insert ''250,000''.

Page 1236, line 13, strike ''$8,000,000'' and insert ''16,000,000''.

Page 93, line 8, insert ''pursuant to subsection (e)(5)'' after ''action''.

Page 93, beginning line 12, insert the following new subsection:

(i) RULE OF CONSTRUCTION.—Nothing in subsection (h) shall be construed as limiting the authority of a Federal financial regulatory agency to take action with respect to a financial company subject to the jurisdiction of such agency pursuant to applicable law other than this section.

Page 22, after line 12, insert the following new subparagraph:

(C) A State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners, provided that the term for which a State securities commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

Page 253, after line 21, insert the following new paragraph:

(3) Section 4(j) of the Bank Holding Company Act of 1956 is amended by inserting after paragraph (4) the following new paragraph (and redesignating succeeding paragraphs accordingly):

''(5) FINANCIAL STABILITY.—

''(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

''(B) STANDARDS FOR APPROVAL.—The Board may, in the sole discretion of the Board, disapprove any acquisition, merger, or consolidation of, or by, a financial holding company subject to stricter standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a great threat to financial stability during times of severe economic distress.''.

Page 255, after line 2, insert the following new section:

SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(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 5133 the following new sections:

''SEC. 5133A. MUTUAL NATIONAL BANKS.

''(a) IN GENERAL.—Notwithstanding the section designated the 'Third' of section 5134, in order to provide mutual institutions for the deposit of funds, the extension of credit, and provision of other services, the Comptroller of the Currency may charter mutual national banks either de novo or through a conversion of any insured depository institution or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section. The powers conferred by this section are intended to provide for the creation and maintenance of mutual national banks as bodies corporate existing in perpetuity for the benefit of their depositors and the communities in which they operate.

''(b) REGULATIONS.—

''(1) REGULATIONS OF THE COMPTROLLER.—The Comptroller of the Currency is authorized to prescribe appropriate regulations for the organization, incorporation, examination, operation, and regulation of mutual national banks. Except to the extent that such existing regulations conflict with sections 5133A and 5133B, mutual national banks shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of title 12, Code of Federal Regulations (as in effect on that date), for up to 3 years beginning on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009.

''(2) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding the manner in which requirements of this title with respect to capital stock, and limitations imposed on national banks under this title based on capital stock, shall apply to mutual national banks.

''(c) CONVERSIONS.—

''(1) CONVERSION OF A MUTUAL DEPOSITORY TO A MUTUAL NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any mutual depository may convert to a mutual national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual depository shall be converted to a mutual national bank charter on the date specified in the notice.

''(2) CONVERSION TO STOCK NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any national bank that is organized in the mutual form under subsection (a) may reorganize as a stock national bank.

''(3) CONVERSION TO STATE BANKS.—Any national mutual bank may convert to a State bank charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.

''(d) TERMINATING MUTUALITY.—If a mutual national bank elects to terminate mutuality, it must do so by—

''(1) liquidating; or

''(2) converting to a national banking association operating in stock form.

''(e) STATUS AND RIGHTS OF MEMBERS.—

''(1) In general, the status of a member is primarily that of a depositor and secondarily that of a holder of a contingent right to participate in the equity of a mutual national bank upon a liquidation or conversion.

''(2) Each member of a mutual national bank shall have the following rights:

''(A) Such rights as may be agreed upon, by contract, between the member and the mutual national bank.

''(B) The right to vote for members of the board of directors of the mutual national bank.

''(C) The right to attend any meeting of members properly called by the board of directors of a mutual national bank.

''(D) In the event the board of directors, in its sole discretion, determines a conversion of a mutual national bank to a national banking association operating in stock form is in the best interests of the community in which the bank operates and the members approve the conversion through a special proxy, then the members as of a record date set by the board of directors shall have the first right to subscribe for and purchase stock in the converted bank.

''(E) In the event the board of directors, in its sole discretion, determines a liquidation of the mutual national bank is in the best interests of the community in which the bank operates and the members approve the liquidation, or if for any other reason the bank is liquidated by operation of law, then the members as of the date of liquidation shall have the right to have credited to their accounts, on a pro rata basis, any residual assets left after the liquidation of the mutual national bank.

''(3) In the consideration of all questions requiring action by the members of a national mutual bank, the bank may provide in its charter that each member shall be permitted (i) one vote per member, or (ii) to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account, but not more than 1,000 votes per member.

''(f) PROXIES.—

''(1) A member may give, in writing or electronically, a perpetual proxy to a committee of the board of directors of a mutual depository, provided that the member may revoke such a proxy in writing or electronically, with such revocation to take effect after six business days.

''(2) Such proxies may be used to vote on any issue requiring approval of the members, including the conversion of a mutual depository into a mutual national bank and the reorganization of a mutual national bank into a Federal mutual bank holding company, except that, without a prior finding by the regulator of the mutual national bank that such action is needed to avoid loss to the Federal Deposit Insurance Corporation's deposit insurance fund or to protect the stability of the United States financial system, such proxies may not be used to vote in favor of—

''(A) terminating mutuality for a mutual national bank or a Federal mutual bank holding company;

''(B) permitting the modification of a Federal mutual bank holding company; or

''(C) issuing mutual capital certificates (except when used to found a mutual national bank or a Federal mutual bank holding company de novo).

''(3) Proxies given by a member, in writing or electronically, to management of, or to a committee of the board of directors of, a mutual depository shall not be deemed to have been revoked solely because of, and shall continue to exist following, a conversion to a mutual national bank and any concurrent or subsequent reorganization to a Federal mutual bank holding company.

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

''(1) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(2) MUTUAL NATIONAL BANK.—The term 'mutual national bank' means a national banking association that operates in mutual form and is chartered by the Comptroller of the Currency under this section.

''(3) MUTUAL DEPOSITORY.—The term 'mutual depository' means a depository institution that is organized in non-stock form, including a Federal non-stock depository and any form of non-stock depository provided for under State law, the deposits of which are insured by an instrumentality of the Federal Government.

''(4) MUTUALITY.—The term 'mutuality' means the quality of being an insured depository institution organized under a Federal or State law providing for the organization of non-stock depository institutions, or a holding company organized under a Federal or State law providing for the organization of non-stock entities that control one or more depository institutions.

''(5) MEMBER.—The term 'member' means each tax-liable depositor in a mutual depository's savings, demand, or other authorized depository accounts and each tax-liable depositor in such an account in a depository subsidiary of a Federal mutual bank holding company.

''(6) TAX LIABLE DEPOSITOR.—The term 'tax liable depositor' means the single person responsible for paying any Federal taxes due on any interest paid on any deposits held within any savings, demand, or other authorized depository account or accounts with any mutual depository.

''(7) MEMBERSHIP RIGHTS.—The term 'membership rights' means the rights of each member under this section.

''(h) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller of the Currency—

''(1) any reference in any Federal law to a national bank operating in stock form, including a reference to the term 'national banking association', 'member bank', 'national bank', 'national association', 'bank', 'insured bank', 'insured depository institution', or 'depository institution', shall be deemed to refer also to a mutual national bank;

''(2) any reference in any Federal law to the term 'board of directors', 'director', or 'directors' of a national bank operating in stock form shall be deemed to refer also to the board of a mutual national bank; and

''(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms 'stock', 'shares', 'shares of stock', 'capital stock', 'common stock', 'stock certificate', 'stock certificates', 'certificates representing shares of stock', 'stock dividend', 'transferable stock', 'each class of stock', 'cumulate such shares', 'par value', 'preferred stock' shall not apply to a mutual national bank, unless the Comptroller of the Currency determines that the context requires otherwise.

''SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

''(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

''(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the appropriate bank holding company regulator.

''(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the appropriate bank holding company regulator and the issuance of the appropriate charters—

''(A) the substantial part of the mutual national bank's assets and liabilities, including all of the bank's insured liabilities, shall be transferred to a national banking association, a majority of the shares of voting stock of which is owned, directly or indirectly, by the mutual national bank that is to become a Federal mutual bank holding company; and

''(B) the mutual national bank shall become a Federal mutual bank holding company.

''(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

''(1) a majority of the mutual national bank's board of directors has approved the plan providing for such reorganization; and

''(2) a majority of members has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank's charter and bylaws.

''(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—To avoid terminating mutuality, a Federal mutual bank holding company must own, directly or indirectly, a majority of the shares of voting stock of each of its depository subsidiaries.

''(d) NO TERMINATION OF MUTUALITY.—Neither a reorganization of a mutual depository nor a modification of a Federal mutual bank holding company shall cause a termination of mutuality.

''(e) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the approval of the appropriate bank holding company regulator, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller of the Currency for national banking associations.

''(f) TERMINATING MUTUALITY.—If a Federal mutual bank holding company elects to terminate mutuality, it must do so by either liquidating or converting to a bank holding company operating in stock form.

''(g) MEMBERSHIP RIGHTS.—Holders of savings, demand, or other authorized depository accounts in a depository subsidiary of a Federal mutual bank holding company shall have the same membership rights with respect to the Federal mutual bank holding company as those holders would have had if the depository subsidiary of the Federal mutual bank holding company had been a mutual national bank.

''(h) REGULATION.—A Federal mutual bank holding company shall be—

''(1) chartered by the appropriate bank holding company regulator and shall be subject to such regulations as the appropriate bank holding company regulator shall prescribe; and

''(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

''(i) CAPITAL IMPROVEMENT.—

''(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of the national banking association chartered as part of a transaction described in subsection (a) to raise capital for such national banking association.

''(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares or less than 50 percent of the voting shares of such bank to any person other than the Federal mutual bank holding company.

''(j) INSOLVENCY AND LIQUIDATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the appropriate bank holding company regulator may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

''(A) the default of any national bank—

''(i) the stock of which is owned by the Federal mutual bank holding company; and

''(ii) that was chartered in a transaction described in subsection (a); or

''(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (i)(1).

''(2) DISTRIBUTION OF NET PROCEEDS.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold membership interests in such Federal mutual bank holding company.

''(3) RECOVERY BY FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the interests of the depositors of the bank as members in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

''(k) DEFINITIONS.—

''(1) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'Federal mutual bank holding company' means a holding company that is organized in mutual form and owns, directly or indirectly, a majority of the shares of voting stock of one or more depository subsidiaries of a Federal mutual bank holding company.

''(2) DEPOSITORY SUBSIDIARY OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'depository subsidiary of a Federal mutual bank holding company' means a depository institution organized in stock form that is insured by the Federal Deposit Insurance Corporation, the majority of the shares of voting stock of which are owned by the Federal mutual bank holding company or its wholly owned subsidiaries and none of the shares of stock of which are pledged or otherwise subjected to lien except as permitted in subsection (i).

''(3) REORGANIZATION OF A MUTUAL DEPOSITORY.—The term 'reorganization of a mutual depository' means the conversion of a mutual depository into a depository subsidiary of a Federal mutual bank holding company.

''(4) MODIFICATION OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'modification of a Federal mutual bank holding company' means either (A) the sale of shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company to any party other than the subsidiary's parent Federal mutual bank holding company or a wholly owned subsidiary of that parent, or (B) the voluntary grant of a lien on shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company.

''(5) DEFAULT.—With respect to a national bank, the term 'default' means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller of the Currency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

''(l) CONFORMING REFERENCES.—Unless otherwise provided by the appropriate bank holding company regulator—

''(1) any reference in any Federal law to a bank holding company operating in stock form shall be deemed to refer also to a Federal mutual bank holding company;

''(2) any reference in any Federal law to the term 'board of directors', 'director', or 'directors' of a national bank operating in stock form shall be deemed to refer also to the board of a Federal mutual bank holding company; and

''(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms 'stock', 'shares', 'shares of stock', 'capital stock', 'common stock', 'stock certificate', 'stock certificates', 'certificates representing shares of stock', 'stock dividend', 'transferable stock', 'each class of stock', 'cumulate such shares', 'par value', 'preferred stock' shall not apply to a Federal mutual bank holding company, unless the appropriate bank holding company regulator determines that the context requires otherwise.''.

(b) LIMITATION ON FEDERAL REGULATION OF STATE BANKS.—Except as otherwise provided in Federal law, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation may not adopt or enforce any regulation that contravenes the corporate governance rules prescribed by State law or regulation for State banks unless the Director, Board, or Corporation finds that the Federal regulation is necessary to assure the safety and soundness of the State banks.

(c) TECHNICAL AMENDMENT.—The table of sections for 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 the item relating to section 5133 the following new items:

''5133A. Mutual national banks

''5133B. Federal mutual bank holding companies''

(d) APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.—Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)) is amended by inserting after subparagraph (F) the following new subparagraph:

''(G) supervisory or regulatory proceedings arising from the authority given to the appropriate bank holding company regulator under section 5133B of the Revised Statutes of the United States.''.

(e) MUTUAL HOLDING COMPANY CONVERSION.—

(1) IN GENERAL.—Any mutual holding company, including any form of mutual depository holding company provided for under State law, may convert to a Federal mutual bank holding company by filing with the appropriate bank holding company regulator a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual holding company shall be converted to a Federal mutual holding company charter on the date specified in the notice.

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

(A) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ''Federal mutual bank holding company'' has the same meaning as in section 5133B of the Revised Statutes of the United States (as added by this section); and

(B) MUTUAL HOLDING COMPANY.—The term ''mutual holding company'' has the same meaning as in section 10(o)(10)(A) of the Home Owners Loan Act as in effect on the day before the date of enactment of this Act.

(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.

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

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking ''paragraph (1)(A)'' and inserting ''subsection (a) of this section''.

(2) REMOVAL OF NONBANK SAVINGS ASSOCIATION PROVISION IN LIGHT OF BEING DEFINED AS A BANK.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and insert the following new subsection:

''(i) [Repealed.]''.

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

(1) IN GENERAL.—Section 18(e) of the Federal Deposit Insurance Act (12 U.S.C. I 828(c)) is amended—

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

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

''(12) NATIONWIDE DEPOSIT CAP.—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.''.

(2) PARALLEL REQUIREMENT.—Section 44(b)(2) 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 two 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) by striking ''or'' at the end of subparagraph (C); and

(2) by striking the period at the end of subparagraph (D), the following new subparagraph:

''(E) in the case of an application involving an interstate acquisition, if the applicant (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.''

Page 763, beginning online 11, strike ''authority to exercise'' and all that follows through ''this title'' and insert ''rulemaking, supervisory, enforcement or other authority, including the authority to order assessments, under this title''.

Page 436, after line 11, insert the following new section:

SEC. 1615. TREASURY STUDY.

(a) STUDY REQUIRED.—The Secretary shall carry out a study analyzing how the resolution authority provided under this subtitle should be funded. Such study shall consider the following factors:

(1) The consequences of any assessments on the overall recovery of the economy of the United States.

(2) Any immediate or continuing consequences of assessments on other aspects of the economy of the United States, including job creation, public and private investments, small business loans, and general credit availability.

(3) The consequences of any assessments on individual sectors of the financial services industry.

(4) The consequences of any assessments on the financial integrity on individual firms within each sector of the financial services industry.

(5) The appropriateness and effect of assessments on firms that are subject to separate assessments under existing State or Federal depositor, policyholder, or investor protection mechanisms and the consequences of any such assessments on these mechanisms themselves.

(6) The implications of assessments on all relevant stakeholders, including taxpayers, depositors, insurance policyholders, investors, counterparties, and creditors.

(7) Evaluation of the appropriate assessment base, including but not limited to factors such as assets and liabilities, assets under management, policyholder reserves, other reserves, statutory and regulatory capital requirements, trusteed assets, and deposits and inflationary factors.

(b) REPORT.—Not later than the end of the 6-month period beginning on the date of the enactment of this subtitle, the Secretary shall issue a report to the Congress containing all determinations and conclusions made by the Secretary in carrying out the study required under subsection (a).

Page 894, after line 4, add at the end of section 4601(a)(1) the following new subparagraph:

(C) RETENTION OF CONSUMER ADVISORY COUNCIL.—

(i) RETENTION AND CONTINUATION.—Notwithstanding the transfer of functions under subparagraph (A), the Consumer Advisory Council established by the Board of Governors pursuant to section 703(b) of Public Law 90–321 (15 U.S.C. 1691b(b)) shall continue as an entity within the Federal Reserve System.

(ii) ADDITIONAL FUNCTIONS.—In addition to the functions performed by the Consumer Advisory Council as of the designated transfer date, the Consumer Advisory Council shall—

(I) submit to the Director (and make available to the public) an annual set of recommendations for consumer protection regulations and meet with the Director to discuss the annual recommendations;

(II) meet with the Board of Governors of the Federal Reserve System at least once a year and provide oral or written representations concerning matters within the jurisdiction of the Board; and

(III) call for information and make recommendations in regard to consumer protection regulations.

(iii) RESPONSE TO RECOMMENDATIONS.—When the Chair of the Federal Reserve testifies before Congress, the Chair shall also testify about the recommendations of the Consumer Advisory Council under clause (ii)(II) and its recommendations for consumer protection regulations.

Page 216, line 21, strike ''or''.

Page 216, after line 21, insert the following new subparagraphs:

''(II) a change of control of an industrial bank, its section 6 holding company, or any entity that directly or indirectly controls the industrial bank, in a transaction other than a merger described in subclause (I), by an acquiring company that is predominately engaged in activities not permissible for a financial holding company pursuant to subsection (k), if—

''(aa) the transaction is approved by the appropriate Federal banking agency and the Board; and

''(bb) the industrial bank does not thereafter establish a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)),

''(III) an inadvertent acquisition of control, as determined by the Board, if such inadvertent acquisition of control is reversed or rectified within 180 days of its discovery, or''.

Page 216, line 22, strike ''(II)'' and insert ''(IV)''.

Page 669, line 15, insert ''(b),'' after ''Subsections''.

Page 669, line 20, insert ''except for section 505 as it applies to section 501(b)'' before the period.

Page 670, after line 9, insert the following:

(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 701, line 1, insert ''the Federal Trade Commission,'' after ''banking agencies,''.

Page 714, line 13, strike ''received and collected'' and insert ''identified''.

Page 743, line 3, insert ''a provision of'' after ''reports under''.

Page 743, line 4, insert ''a provision of'' after ''title,''.

Page 743, line 5, insert ''any provision of'' after ''law,''.

Page 743, line 8, insert ''under that provision of law'' after ''exclusive authority''.

Page 897, beginning on line 21, strike ''BACKSTOP''.

Page 898, line 2, strike ''4202(e)(3)'' and insert ''paragraph (2) or (3) of section 4202(e)''.

Page 898, line 8, insert ''transferred under subsection (a)'' after ''functions''.

Page 954, line 2, insert ''and shall not apply to the term 'Board' when used in reference to

the Federal Deposit Insurance Corporation or the National Credit Union Administration'' before the period.

Page 957, line 3, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 957, line 20, insert ''(and except for any insertion of 'Federal Trade Commission' made by this subtitle)'' after ''subparagraph (B)''.

Page 958, line 2, strike ''and 129(m) (as amended by paragraph (7))'' and insert ''129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).''.

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting ''the Federal Trade Commission,'' after ''in consultation with''.

Page 960, beginning on line 1, strike ''paragraph (7)(A)'' and insert '' paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of 'Federal Trade Commission' made by this subtitle)''.

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting ''the Federal Trade Commission,'' after ''in consultation with''.

Page 961, line 22, strike ''(5)'' and insert ''(6)''.

Page 961, line 22, strike ''611(e)(2)'' and insert ''611(e)''.

Page 961, line 23, strike ''15 U.S.C.1681i(e)(2)'' and insert ''15 U.S.C. 1681i(e)''.

Page 961, line 24, strike ''amended to read as follows:'' and insert ''amended—'', and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert ''; and'' and after such line insert the following:

(B) in the heading of paragraph (3) by inserting ''CONSUMER REPORTING'' before ''AGENCY''.

Page 962, strike lines 6 through 8 and insert the following:

(7) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting ''the Federal Trade Commission,'' after ''in consultation with'';

(B) in subsection (e)(1), by striking ''and the Commission'' and inserting ''the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission''; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

Page 962, line 11, strike ''(7)'' and insert ''(8)''.

Page 963, line 2, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 968, after line 7 insert the following:

(C) in paragraph (2) of subsection (c)—

(i) by inserting ''the Agency and'' before ''the Federal Trade Commission'' in the first sentence;

(ii) by inserting ''Agency and the Federal Trade'' after ''provide the''; and

(iii) by inserting ''Agency,'' before ''Federal Trade Commission'' in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting ''Agency'', before ''the Federal Trade Commission''; and

(ii) inserting ''Agency, the Federal Trade'' after ''complaint of the'';

(E) in paragraph (2) of subsection (f), by inserting ''the Federal Trade Commission'' after ''in consultation with'';

Page 968, line 8, strike ''(C)'' and insert ''(F)''.

Page 968, beginning on line 12, strike ''with respect to a covered person described in subsection (b)'' and insert '', except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections''.

Page 968, line 14, strike ''(D)'' and insert ''(G)''.

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting ''of Governors of the Federal Reserve System'' after ''Board''; and

(II) by striking ''and'' after the semicolon;

Page 974, line 2, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 978, line 4, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 982, line 21, strike ''and'' and after such line insert the following:

(iii) in paragraph (1)(B), by inserting ''of Governors of the Federal Reserve System'' after ''Board'';

Page 982, line 22, strike ''(iii)'' and insert ''(iv)''.

Page 983, line 7, insert ''(other than the Consumer Financial Protection Agency)'' after ''agency''.

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting ''(other than the Consumer Financial Protection Agency)'' after ''title''.

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting ''the Consumer Financial Protection Agency,'' after ''(including''.

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting ''Consumer Financial Protection Agency in consultation with the other'' before ''agencies''; and

(2) by striking ''jointly''.

Page 988, line 13, strike ''and'' at the end.

Page 988, line 15, strike the period and insert ''; and'' and after such line insert the following:

(3) by inserting ''the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and'' before ''representatives of State insurance authorities''.

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking ''Federal Trade Commission'' and inserting ''Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission''.

Page 1019, line 8, strike ''and'' and after such line insert the following:

(2) by inserting a comma after ''under this Act'';

(3) by inserting a comma after ''subsection (a)(1))''; and

Page 1019, line 9, strike ''(2)'' and insert ''(4)''.

Page 1019, line 15, insert ''partnership, or corporation'' after ''person,''.

Page 825, after line 12, insert the following:

SEC. 4313. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) REVIEW.—The Director shall review all Federal laws and regulations relating to the protection of persons who utilize exchange facilitators.

(b) REPORT.—Not later than 180 days after the effective date of this subtitle, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of persons who utilize exchange facilitators;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such persons; and

(3) recommendations for Agency regulations to ensure the appropriate protection of such persons.

(c) PROGRAM.—Not later than 180 days after the date of the submission of the report under subsection (b), the Director shall establish and carry out a program, utilizing the authorities of the Agency, to protect persons who utilize exchange facilitators.

(d) EXCHANGE FACILITATOR DEFINED.—In this section, the term ''exchange facilitator'' means a person that—

(1) facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000–37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(3));

(2) maintains an office for the purpose of soliciting business as an exchange facilitator; or

(3) purports to be an exchange facilitator by advertising any of the services listed in paragraph (1) or soliciting clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

Page 255, after line 2, insert the following new section:

SEC. 1316. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

''(A) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the national bank were a state bank chartered by such State;''.

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

''(i) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State;''.

Page 277, line 22, strike the period and insert ''; and''.

Page 277, after line 22, insert the following:

(C) is not an insured depository institution (as defined in section 3(c) of the Federal Deposit Insurance act), a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act), or a government-sponsored enterprise (as such term is defined in section 1004(f) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1811 note)).

Page 305, beginning on line 25, strike ''(that became a legally enforceable or perfected security interest after the date of the

enactment of this clause) other than a legally enforceable or perfected security interest of the Federal Government,'' and insert ''in assets of the covered financial company arising under a qualified financial contract (as defined under subsection (c)(8)(D)(i)) with an original term of 30 days or less (except that, for a contract for a term linked to a calendar month, the original term must be less than one calendar month), secured by collateral other than securities issued by the United States Treasury, the Board of Governors of the Federal Reserve System, any agency of the United States, any Federal Reserve bank, or any Government Sponsored Enterprise, that became a legally enforceable or perfected security interest after the date of the enactment of this clause, and that is not a security interest of the Federal Government''.

Page 306, beginning on line 7, strike ''the amount of up to 20 percent'' and insert ''in the amount specified under clause (v)''.

Page 306, line 13, insert after the period the following sentence: ''This clause shall not apply with respect to debt obligations secured by real property. This clause may only be implemented with respect to secured creditors if, as a result of the dissolution of the covered financial company, no funds are available to satisfy, in whole or in part, any claims of unsecured creditors or shareholders.''.

Page 306, after line 13, insert the following:

(v) AMOUNT SPECIFIED.—For purposes of clause (iv), the amount specified under this clause, in the case of a secured creditor, is the amount of up to 10 percent.

Page 318, after line 11, insert the following subparagraphs (and redesignate subparagraphs (B) through (E) as subparagraphs (J) through (M), respectively):

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property that—

(i) was made to or for the benefit of a creditor;

(ii) was made for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) was made while the covered financial company was insolvent;

(iv) was made—

(I) on or within 90 days before the date on which the Corporation was appointed receiver; or

(II) between 90 days and one year before the date that the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider, as that term is defined in section 101(31) of title 11, United States Code; and

(v) enables such creditor to receive more than such creditor would receive in the liquidation of the covered financial company if—

(I) the transfer had not been made; and

(II) such creditor received payment of such debt to the extent provided by the provisions of this subtitle.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraphs (A), (B) or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property from—

(i) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii)—

(i) from a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the violability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—A transferee or obligee from whom the Corporation seeks to recover a transfer or avoid an obligation under subparagraphs (A), (B) or (C) shall have the same affirmative defenses and rights to liens on the property transferred to the extent they would be available to a transferee or obligee from whom a trustee under title 11 seeks to recover a transfer under sections 547, 548, and 549 of title 11, United States Code.

(G) LIMITATIONS ON AVOIDING POWERS.—The rights of the Corporation under subparagraphs (A), (B) or (C) are restricted to the same extent as the rights of a trustee in bankruptcy under section 546(b)(1) of the Bankruptcy Code.

(H) PRESUMPTION OF INSOLVENCY.—For purposes of subparagraph (B), the covered financial company is presumed to have been insolvent on and during the 90 days immediately preceding the date on which the Corporation is appointed as receiver.

(I) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver for a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency of a Federal Home Loan Bank) under title 11, United States Code.

Page 31, line 24, strike ''control of the Council; and'' and insert ''control of or used by the Council;''.

Page 32, line 5, strike the period and insert ''; and'' and after such line insert the following:

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the agent's or representative's activities on behalf of the Council) at such reasonable times as the Comptroller General may request.

Page 32, after line 12, insert the following:

(3) COPIES.—Comptroller General may make and retain copies of such books, accounts, and other records access to which is granted under this provision as the Comptroller General considers appropriate.

Page 732, after line 10, insert the following:

SEC. 4111. OVERSIGHT BY GAO.

(a) AUTHORITY.—The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the Agency and of any agents and representatives of the Agency as related to the agent's or representative's activities on behalf of or under authority of the Agency.

(b) ACCESS.—Notwithstanding any other provision of law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the Agency, or any vehicles established by the Agency under this Act, and to the directors, officers, employees, independent public accountants, financial advisors, staff, working groups, and agents and representatives of the Agency (as related to the agent's or representative's activities on behalf of the Agency) or any vehicle established by the Agency at such reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

Page 732, line 11, strike ''4111'' and insert ''4112''.

Page 1077, line 23, strike ''1 year'' and insert ''18 months''.

Page 1079, after line 24, insert the following:

(3) ACCESS.—

(A) IN GENERAL.—For purposes of conducting the study described in paragraph (1), the Comptroller General shall have access, upon request and with the consent of the Securities and Exchange Commission, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by each nationally recognized statistical rating organization, and to the officers, directors, employees, independent public accountants, financial advisors, staff and agents and representatives of the organization (as related to the agent's or representative's activities on behalf of the organization) at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records as the Comptroller General deems appropriate.

(B) CONFIDENTIALITY.—The Comptroller General may not disclose reasonably designated proprietary, trade secret or business confidential information obtained from the organization except that such information shall be disclosed by the Comptroller General—

(i) to other Federal Government departments, agencies, and officials for official use upon request;

(ii) to committees of Congress upon request; and

(iii) to a court in any judicial proceeding under court order.

Nothing in this provision shall be construed to limit the requirements imposed by section 1905 of title 18, United States Code.

Page 1186, beginning on line 8, strike ''and the Securities and Exchange Commission shall each'' and insert ''shall''.

Page 1186, line 17, strike ''and''.

Page 1186, line 20, strike the period and insert a semicolon and after such line insert the following:

(3) determine how to reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is less than $250,000,000 for the relevant reporting period while maintaining investor protections for such companies; and

(4) determine whether various methods of reducing the compliance burden or a complete exemption for such companies (whose market capitalization is less than $250,000,000 for the relevant reporting period) from such compliance would encourage companies to list on exchanges in the United States in their initial public offerings.

Page 1186, beginning on line 21, strike ''On or before June 1, 2010'' and insert ''Not later than 9 months after the date of the enactment of this subtitle''.

Page 1186, beginning on line 22, strike ''and the Securities and Exchange Commission shall submit separate reports'' and insert ''shall submit a report''.

Page 1222, line 4, strike ''and the Comptroller General shall jointly'' and insert ''shall''.

Page 1222, line 15, strike ''180 days'' and insert ''9 months''.

Page 1222, beginning on line 16, strike ''and the Comptroller General''.

Page 706, after line 7, insert the following new paragraph:

(3) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(A) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Financial Protection for Older Americans, whose functions shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this paragraph, referred to as ''seniors'') on protection from unfair and deceptive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(B) DIRECTOR.—The Office of Financial Protection for Older Americans shall be headed by a director.

(C) DUTIES.—Such unit shall perform the following duties:

(i) Develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(I) help seniors recognize warning signs of unfair and deceptive practices, protect themselves from such practices;

(II) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(III) provide personal consumer credit advocacy to respond to consumer problems caused by unfair and deceptive practices.

(ii) Monitor certifications or designations of financial advisors who advise seniors and alert the Securities and Exchange Commission and State regulators of certifications or designations that are identified as unfair or deceptive.

(iii) Not later than 18 months after the date of the establishment of the Office of Financial Protection for Older Americans, submit to Congress and the Securities and Exchange Commission recommendations of the best practices for any legislative and regulatory—

(I) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(II) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(III) methods in which a senior can verify a financial advisor's credentials.

(iv) Conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(I) protecting themselves from unfair and deceptive practices;

(II) long-term savings; and

(III) planning for retirement and long-term care.

(v) Coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement.

(vi) Work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of financial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended. In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTIONS FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency 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 goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided, and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a financial activity with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

Page 1205, line 2, insert before the period at the end the following: ''and to provide additional levels of coverage on an optional basis''.

Page 1205, line 22, strike ''and'' after the semicolon.

Page 1205, line 25, strike the period at the end and insert ''; and''.

Page 1205, after line 25, insert the following:

(6) examine the feasibility of SIPC providing additional levels of coverage on an optional basis, what those additional levels of coverage should be, and the appropriate risked-based premium for providing additional coverage.

Page 1018, after line 25, insert the following:

SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.

(a) IN GENERAL.—Section 128(e) of the Truth in Lending Act is amended—

(1) by striking paragraph (3) and inserting the following new paragraph (3):

''(3) INSTITUTIONAL CERTIFICATION REQUIRED.—(A) Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in paragraph (1), the creditor shall obtain from the relevant institution of higher education such institution's certification—

''(i) of the enrollment status of the borrower;

''(ii) of the borrower's cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965;

''(iii) of the difference between the borrower's cost of attendance and the borrower's estimated financial assistance received under title IV of the Higher Education Act of 1965 and other assistance known to the institution, as applicable; and

''(iv) that the institution has—

''(I) informed the borrower—

''(aa) about the availability of, and the borrower's potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, and interest rates of Federal student loans;

''(bb) of the borrower's ability to select a private educational lender of the borrower's choice;

''(cc) about the impact of a proposed private education loan on the borrowers' potential eligibility for other financial assistance, including Federal financial assistance under the Higher Education Act of 1965; and

''(dd) about a borrower's right to accept or reject a private education loan within the 30-day period following a private educational lender's approval of a borrower's application and about a borrower's 3-day right to cancel altogether;

''(II) determined whether the borrower has applied for and exhausted the Federal financial assistance available to the borrower under the Higher Education Act of 1965 and informed the borrower accordingly; and

''(III) counseled the borrower on the borrower's financial aid options.

''(B) A creditor may issue funds with respect to an extension of credit described in paragraph (1) without obtaining from the relevant institution of higher education such institution's certification if such institution fails to provide such certification within 21 calendar days or 15 business days, whichever comes first, of the creditor's request for such certification.'';

(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following new paragraph (9):

''(9) PROVISION OF INFORMATION.—On or before the date a creditor issues any funds with respect to an extension of credit described in paragraph (1), the creditor shall notify the

relevant institution of higher education, in writing, of the amount of the extension of credit and the student on whose behalf credit is extended. The form of such written notification shall be subject to the regulations of the Agency.''.

(b) REGULATIONS.—

(1) DEADLINE FOR REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Agency shall issue regulations in final form to implement paragraphs (3) and (9) of section 128(e) of the Truth in Lending Act, as amended by subsection (a). Such regulations shall become effective not later than 6 months after their date of issuance.

(2) EFFECTIVE DATE.—The regulations in effect pursuant to section 128(e) of the Truth in Lending Act as of the date of the enactment of this Act shall remain in effect until the effective date of the regulations issued under paragraph (1).

(c) 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 Financial Services and the Committee on Education and Labor of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Health Education, Labor, and Pensions of the Senate on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(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 the types of institutions of higher education they attend, socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender), what other forms of financing borrowers use to pay for education, whether they exhaust their federal loan options before taking out a private loan, whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students, whether such borrowers are students enrolled in a program leading to a certificate, license or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree and, if practicable, employment and repayment behaviors;

(E) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(F) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(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 sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lenders' compliance with fair lending laws; and

(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.

(d) REPORT.—Not later than 18 months after the issuance of regulations under subsection (b)(1), the Consumer Financial Protection Agency and the Secretary of Education shall jointly submit to Congress a report on the compliance of institutions and private educational lenders with the amendments made by this section. The report shall include the degree to which specific institutions utilize certifications in effectively encouraging the exhaustion of Federal student loan eligibility and lowering student debt.

Page 198, after line 15, insert the following new subtitle:

Subtitle K—Home Affordable Modification Program

SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.

(a) NET PRESENT VALUE INPUT DATA.—The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.—

(1) NPV CALCULATOR.—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) DISCLOSURE.—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) APPLICATION.—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) PUBLIC AVAILABILITY OF NPV METHODOLOGY, COMPUTER MODEL, AND VARIABLES.—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all variables used in such net present value analysis.

Page 1068, after line 22, insert the following:

(c) REQUIREMENTS FOR LIABILITY.—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

''(c) REQUIREMENTS FOR LIABILITY.—A purchaser of a security given a rating by a nationally recognized statistical rating organization shall have the right to recover for damages if the process of determining the credit rating was—

''(1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and

''(2) a substantial factor in the economic loss suffered by the investor.

No action shall be maintained to enforce any liability created under this subsection unless brought within 2 years after the discovery of the facts constituting the violation and within 3 years after the initial issuance of the rating.''.

Strike section 1109 and insert the following new section:

SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof), if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council. Such terms and conditions may include the Corporation requiring collateral as a condition of any such guarantee.

(c) CAP FOR GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2), the Corporation may not have guaranteed debt outstanding at any time of more than $500,000,000,000 (as indexed to reflect growth in assets of insured depository institutions and depository institution holding companies as determined by the Corporation).

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Corporation, with the concurrence of the Council and the Secretary (in consultation with the President), determines that the Corporation must guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)) to prevent systemic financial instability, the Corporation may transmit to the Congress a request for authority

to guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)). Such request 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.

(d) FUNDING.—

(1) ADMINISTRATIVE EXPENSES AND COST OF GUARANTEES.—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) FEES AND OTHER CHARGES.—The Corporation shall charge fees or other charges to all participants in such program established pursuant to this section to offset projected losses and administrative expenses. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) EXCESS FUNDS.—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Dissolution Fund established pursuant to section 1609(n).

(4) AUTHORITY OF CORPORATION.—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraph (2), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Dissolution Fund established pursuant to section 1609(n).

(5) BACK-UP SPECIAL ASSESSMENT.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program.

(e) PLAN FOR MAINTENANCE OR INCREASE OF LENDING.—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent entity seeking to participate in such program shall be required to submit to the Corporation a plan detailing how the use of such guaranteed funds will facilitate the increase or maintenance of such solvent company's level of lending to consumers or small businesses.

(f) SUNSET OF CORPORATION'S AUTHORITY.—The Corporation's authority under subsections (a) and (d) and the authority to borrow funds from the Treasury under section 1609(o) shall expire on December 31, 2013.

(g) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

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

(1) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ''depository institution holding company'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(4) SOLVENT.—The term ''solvent'' means assets are more than the obligations to creditors.

Page 110, after line 7, insert the following new section (and redesignate the subsequent sections accordingly):

SEC. 1110. ADDITIONAL RELATED AMENDMENTS.

(a) FEDERAL DEPOSIT INSURANCE ACT RELATED AMENDMENTS.—

(1) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of the enactment of this section through December 31, 2013, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely-available debt guarantee program for which section 1109 would provide authority.

(2) FEDERAL DEPOSIT INSURANCE ACT AUTHORITY PRESERVED.—Effective December 31, 2013, the Corporation shall have the same authority pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act as the Corporation had prior to the date of enactment of this Act.

(b) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company participating in a program under section 1109 or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation may—

(1) appoint itself as receiver for the insured depository institution that defaults;

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require consideration of whether a determination shall be made as provided in section 1603 to resolve the company under subtitle G; and

(B) if the Corporation is not appointed receiver pursuant to subtitle G within 30 days of the date of default, require the company to file a petition for bankruptcy under section 301 of title 11, United States Code, or file a petition for bankruptcy against the company under section 303 of title 11, United States Code.

(c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(m) Notwithstanding subsections (a) and (b), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or other company participating in a guarantee program established by the Corporation on the ground that the company has defaulted on a debt or obligation guaranteed by the Corporation.''.

(d) BANKRUPTCY PRIORITY FOR DEFAULTS ON DEBT GUARANTEED PURSUANT TO SECTION 1109.—Section 507(a)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: ''and allowed unsecured claims based upon any debt to the Federal Deposit Insurance Corporation that arose prior to the commencement of the case under this title, as a result of the debtor's default on a guarantee provided by the Corporation pursuant to section 1109 of the Financial Stability Improvement Act of 2009 or the Federal Deposit Insurance Act, under a program established by the Corporation after the date of enactment of the Financial Stability Improvement Act of 2009''.

Page 110, line 8, strike ''**MUST**'' and insert ''**MAY**''.

Page 110, strike line 10 and all that follows through line 18 and insert the following:

(a) IN GENERAL.—In connection with any payment, credit extension, or guarantee or any commitment under section 1109 or 1604, the Corporation may obtain from the insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company, as the case may be—

Page 110, line 19, strike ''financial company'' and insert ''insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company''.

Page 111, line 3, strike ''financial company'' and insert ''insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company''.

Strike section 1614 and insert the following new section:

SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

At any time that the Corporation has borrowed from the Treasury pursuant to section 1609(o) to resolve a covered financial company, the Corporation shall apply the executive compensation limits under section 111 of the Emergency Economic Stabilization Act of 2008 to such company for so long as such company is in receivership.

Page 436, after line 11, insert the following new section:

SEC. 1615. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT INSURANCE ACT.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

(1) by redesignating clauses (iii) through (v) as clauses (iv) through (vi), respectively; and

(2) by inserting after clause (ii) the following new clause (iii):

''(iii) Any obligation of the institution owed to the Corporation as a result of the institution's default on a Corporation-guaranteed debt.''.

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

SEC. 4313. REGULATION OF PERSON-TO-PERSON LENDING.

(a) SCOPE OF EXEMPTION FROM FEDERAL SECURITIES REGULATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following new paragraph:

''(15) PERSON-TO-PERSON LENDING.—

''(A) IN GENERAL.—Any consumer loan, and any note representing a whole or fractional interest in any such loan, funded or sold through a person-to-person lending platform.

''(B) DEFINITIONS.— For purposes of this paragraph:

''(i) CONSUMER LOAN.—The term 'consumer loan' means a loan made to a natural person, the proceeds of which are intended primarily for personal, family, educational, household, or business use.

''(ii) PERSON-TO-PERSON LENDING PLATFORM.—

''(I) IN GENERAL.—The term 'person-to-person lending platform' means an Internet website, the primary purpose of which is to provide a transaction platform for the funding or sale of individual consumer loans, or the sale of notes representing whole or fractional interests in individual consumer loans, by matching natural persons who wish to obtain such loans with persons who wish to fund them, or by matching persons who wish to sell such loans or notes with persons who wish to purchase them.

''(II) PROHIBITION ON MULTIPLE LOANS IN A SINGLE TRANSACTION.—The term 'person-to-person lending platform' does not include any platform on which multiple loans may be funded or sold in a single transaction, or on which a note representing an interest in multiple loans or other debt obligations may be sold.''.

(b) REGULATION BY THE AGENCY.—

(1) IN GENERAL.—Primary jurisdiction for the regulation of the lending activities of person-to-person lending and person-to-person lending platforms is hereby vested in the Agency.

(2) INTERIM REQUIREMENTS.—Until the Director issues and adopts disclosure requirements with respect to the sale of consumer loans, or notes representing whole or fractional interests therein, on person-to-person lending platforms, a person-to-person lending platform that registers the offer and sale of any such notes under the Securities Act of 1933 shall, with respect to such registered offer and sale, provide the disclosure required under the Securities Act of 1933 to be contained in the registration statement and prospectus and provide such disclosure required in any periodic reports required to be filed by such person-to-person lender pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934.

(3) DEFINITIONS.—For purposes of this subsection, the terms ''consumer loan'', ''person-to-person lending platform'', ''prospectus'', and ''registration statement'' shall have the meaning given such term under the Securities Act of 1933.

(c) RULEMAKING.—The Director may prescribe such regulations and issue such orders as the Director considers necessary or appropriate to implement the provisions of this section and to provide borrower protection, lender protection, consumer choice, and expanded consumer access to fair and reasonable credit choices.

(d) EFFECTIVE DATE.—Notwithstanding section 4310, this section shall take effect on the date of the enactment of this title.

Page 699, line 13, strike ''and''.

Page 699, line 17, insert ''and'' after ''services;''.

Page 699, after line 17, insert the following:

(vi) the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers;

Page 788, after line 10, insert the following:

(3) CONSIDER AS UNFAIR CERTAIN PRACTICES WITH REGARD TO THE PROVISION OF CREDIT SCORES.—Subject to regulations prescribed by the Director, it shall be considered unfair for any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)) to make available for purchase by creditors any credit score for a consumer that is not also available for purchase by that consumer at the same price as other credit scores sold to consumers by such agency.

Page 699, line 17, insert '', and the impact of Federal policies, including resource limits in means-tested Federal benefit programs (as defined in section 318 of the Higher Education Act of 1965; 20 U.S.C. 1059e), on such consumers in influencing banking behavior'' after ''financial products or services''.

In section 4109(f) (as modified pursuant to the rule providing for the consideration of the bill and contained in the amendment designated MWB_05), strike paragraph (3) and insert the following:

(3) EXCEPTION.—Notwithstanding paragraph (1), an attorney's activities related to assisting another person in preventing a foreclosure shall be subject to this title except to the extent such activities constitute, or are incidental to, the provision of legal services to a client of the attorney.

Page 776, after line 19, insert the following new subsection:

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments or penalties, over any activities related to the solicitation or making of voluntary contributions to or through 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 donor(s) or potential donor(s) relating to a contribution to or through the organization.

(2) This exclusion shall not apply to other activities not described in the paragraph above and are financial activities as described in any subparagraph of section 4002(19), or otherwise subject to any of the enumerated consumer laws, or the authorities transferred under subtitle F or H.

In the last section title I of the bill (as added pursuant to the rule providing for the consideration of the bill and contained in the amendment designated ''TARP—001''), strike ''$22,059,000,000,'' and insert ''23,625,000,000''.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 15 minutes.

The Chair now recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chair, I yield 30 seconds to my colleague from Massachusetts (Ms. TSONGAS).

Ms. TSONGAS. Madam Chair, I urge adoption of Mr. FRANK's amendment, which includes my amendments to guarantee that consumers have the same access to their credit scores that lenders now have.

I have heard from a number of my constituents, like Carla Welsh from Concord, Massachusetts, that ''it seems unthinkable to me that . . . consumers would be placed in the dark in regard to their creditworthiness.''

I'm proud to say that the manager's amendment levels the playing field for consumers. I urge my colleagues to support the manager's amendment and the underlying bill.

Mr. FRANK of Massachusetts. I will now yield 2½ minutes to the gentlewoman from New York (Mrs. MCCARTHY).

□ 1730

Mrs. MCCARTHY of New York. I would like to ask the gentleman from Massachusetts, the distinguished chairman, to engage in a short colloquy.

I would like to clarify how the analysis of systemic risk and assessment factors would be applied by the Financial Services Oversight Council and for dissolution fund assessments.

Is it the chairman's intention that the factors used for identifying companies subject to stricter standards should be applied in light of the more detailed and balanced risk matrix set out in the dissolution fund section of the bill?

Mr. FRANK of Massachusetts. If the gentlewoman will yield, as the gentlewoman knows, there was a clerical glitch at the last minute so that we missed by a very narrow margin a submission time for the Rules Committee. And what I am glad to have the chance to do now is to agree with the gentlewoman, who has been working diligently on this, that this language will go if we have anything to say about it, as we will, into the conference report.

So the answer is yes.

Mrs. MCCARTHY of New York. I thank the chairman and look forward to working with him as the process moves forward.

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

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

The Acting CHAIR. The gentleman from Alabama is recognized for 15 minutes.

Mr. BACHUS. Madam Chair, I yield 1½ minutes to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT. Madam Chair, it's not surprising that this legislation, like much of the legislation, might have an unintended consequence. And one of my constituents pointed out just such in this legislation.

I took the problem to the chairman, and he very graciously has fixed it in his manager's amendment.

I yield to him so that he can explain.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding.

We are trying here to prevent fraud in the various programs. In the subprime mortgage bill, which we are reenacting here, which the House voted on, we put in some very strict restrictions against people who had a pattern or a history of fraud. But the gentleman from Maryland pointed out quite correctly that it was overly rigid, that it excluded, in the case of someone he knew, someone who many, many years ago had been involved in an unrelated situation where culpability was uncertain, there was a criminal conviction, and what this does is to provide some needed flexibility for minor offenses that were long ago.

I thank the gentleman for calling it to our attention. We were pleased to be able to make this change.

Mr. BARTLETT. I want to thank the chairman very much for helping to solve this problem.

Mr. FRANK of Massachusetts. Madam Chair, I yield 2½ minutes to the gentleman from North Carolina (Mr. MILLER), who is an important author of much of this bill.

Mr. MILLER of North Carolina. I will include in my revised and extended remarks the verbatim colloquy on the point, but Mr. FRANK had asked that I

simply explain one committee amendment offered by Mr. MOORE and by me and explain the revisions briefly here tonight on the floor.

The committee amendment and the revised amendment in the manager's amendment was originally a suggestion of Sheila Bair of the FDIC to get at one of the most infuriating episodes in the entire financial crisis. And the best example was the collapse and the rescue of AIG, which was not really about AIG but the counterparties to AIG. We have now heard that the counterparties, Morgan Stanley, Goldman Sachs, Societe Generale, Deutsche Bank, refused to take anything less than 100 cents on the dollar on what AIG owed them. According to the Special Inspector General for the TARP program's report, they did that in part because they had grabbed collateral for their debts in the last days of AIG's collapse so that they knew they could get paid in full even if AIG went into bankruptcy.

The FDIC believes it is better to take into resolution companies that are failing sooner rather than later so they don't arrive and find that every asset of the company has been pledged as collateral, which leads to a more expensive resolution, a less equitable resolution, and a resolution that inevitably is more disruptive of the economy.

It gets at two problems: One, the collateral grabs by taking a concept from bankruptcy, avoidable preference, where the company was insolvent and pledged collateral for existing debts in the last 90 days before the resolution, the FDIC can disregard it altogether, disregard the security altogether.

Then, second, the short-term collateralized lending without any market discipline, based entirely upon collateral, without any regard to the actual condition of the borrower of the company. The amendment gets at that by allowing some portion of that to be set aside, 10 percent to be disregarded, and then in limited circumstances, only short-term credit, 1 month or less, where the security is not a Treasury or other government-secured debt. It will impose some market discipline.

Mr. BACHUS. Madam Chairman, I yield 3 minutes to the gentlelady from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Madam Chair, I would like to speak in opposition to the bill, but I would like to talk about the manager's amendment as well.

But before I get into the manager's amendment, I would like to reinforce my opposition to the bill in its entirety because of the permanent bailout fund that is created, the continuation of bailouts, the implied government guarantee in the financial marketplace, and the way that taxpayers are placed on the hook potentially for billions, if not trillions, of dollars to bail out failed nonbanks.

But specifically I would like to talk about the two parts of the manager's amendment that were added without specific discussion by the committee, to my knowledge, and it also goes to a larger point. We've labeled this bill TARP II. This goes back to TARP I and using TARP funds to fund things that the TARP money was not intended to go for. I voted against the TARP funding in the first place. And now in the manager's amendment we have another $4 billion in existing TARP funds going to unproven foreclosure relief programs; $3 billion to reinstate a 1975 program, the Emergency Homeowners' Relief Act, to provide emergency mortgage relief.

We just had a hearing in our committee this week on the Making Homes Affordable plan, the administration's plan, that in our opinion, I think, across the board in a bipartisan way is a bust. It has not met with much success, and it has murky, if uncertain, guidelines attached to it. So I think in this case strapping an unemployed homeowner with more debt is not the answer. Congress needs to support policies that create jobs and do not perpetuate any more bailouts.

The other part of this amendment adds another $1 billion for the Neighborhood Stabilization Program. This program is a costly bailout for lenders and speculators. This program also could have the unintended consequences of making foreclosure a more attractive option for lenders, thereby compounding the problem.

We've already committed in two separate times $6 billion to the Neighborhood Stabilization Program, and this adds another billion. I think we also need to consider that this program of the $4 billion allocated to it in 2008, only 25 percent of the funds are even out the door. What is adding another billion dollars going to do and when can those funds actually get out the door? And of the $1.9 billion allocated in January of 2009, not one dollar has made it through HUD's cumbersome bureaucracy.

I object to the fact that this was added onto the manager's amendment on a very complicated, thousand-page bill, but it also adds two additions on here that I believe were part of the reason that the bill has been held up through this week and part of the reason it was held up yesterday; it was to satisfy certain interests in this House, and I think we need to have them discussed in front of the whole committee and discussed in front of the whole House.

□ 1740

Mr. FRANK of Massachusetts. Madam Chair, I yield 2½ minutes to the gentleman from North Carolina (Mr. WATT), a major shaper of the best parts of this bill.

Mr. WATT. It is an inconvenient fact that the Constitution reserves certain rights to the States and allows the Federal Government to have certain rights. And it sometimes gets inconvenient for those people who profess to believe in States' rights that we have to accommodate them.

One of the most difficult parts of making the appropriate accommodation has been finding the right preemption of State law standards to put into this bill. I am deeply indebted to all of the members of the committee, particularly Ms. BEAN, who has been very active on this issue.

We worked out 10 different things on Federal preemption, some reserved to the States, some reserved to the Federal Government. And as I said at the very outset of the discussions about this, we knew we would find the right place to be on preemption if the consumer groups were unhappy and if the industry was unhappy. And we have succeeded in making both of them unhappy. And they are equally unhappy, so I think we have found the right balance on preemption.

That is about all I can say because I don't have time to go through the 10 things that we were able to agree on. Nobody is jumping up and down and threatening to shoot any of us, but I can tell you that everybody is kind of equally unhappy.

I appreciate the chairman giving me the opportunity to explain that. And I am sure nobody understands it, but that's okay.

Mr. BACHUS. Madam Chair, I recognize the gentleman from Texas (Mr. NEUGEBAUER) for 3 minutes.

Mr. NEUGEBAUER. There are a number of provisions in the manager's amendment that make this bill less bad. And really, we've come a long way from the bill that was originally introduced to the one that's on the floor now. We went through a very lengthy markup process. In many cases, sometimes during those markups we were able to make the bill better. In this manager's amendment, there are some changes that in fact do make this bill a little less egregious to me.

But the problem is, fundamentally, the bill still does what it originally started out to do, and that is to perpetuate bailouts in this country. One of the things that my colleagues and I have said from the very beginning is the American people are tired of bailouts. Unfortunately, this bill perpetuates bailouts in this country. We continue to reward bad behavior and punish good behavior, and this bill perpetuates that.

One of the things that also concerns me about this bill is that even with some improvements, it still becomes a job killer. For example, one of the provisions in this bill would give secured creditors a haircut. In other words, here is somebody that took collateral to make a loan, thought they were securitized, thought they were collateralized, and now at the end, arbitrarily they can be given a 20 percent haircut for their collateral. That is going to cause huge implications in the credit markets because these people, a small businessman, is going out to borrow money for his plant or equipment or other things, lenders making what they think are secured loans, and all of

a sudden the lender finds himself at some point in time where their security is going to be shared with someone else.

The other piece of this is that this bill does something that I feel very strongly about, and that is, it limits the choices for consumers. I still believe that the American people are pretty smart people. I think it's their money, it's their credit, and they ought to have a lot more to say about the types of credit, the types of loans that they take out. They don't need the Federal Government telling them that this is the kind of loan we think is appropriate for you, this is the kind of student loan you should use to send your child to college, or this is the kind of car loan you should use. Or small businessman—this is the loan that we give small businesses, take it or leave it.

The other part of it is that this bill does something that I think is very egregious, and I think the American people ought to be outraged about. Here we are, Secretary Geithner gave the Democrats an early Christmas present. He said, you know what? That slush fund that we've got, we're going to keep it until next October. Man, a day doesn't go by and here we go, we're going to put our hand in the cookie jar here. In this bill, $4 billion out of the TARP money that was not represented to be used for these kinds of purposes, it was an emergency to stabilize the markets, but we're going to put our hand in the cookie jar and take $4 billion. By the way, it's $4 billion we didn't have to begin with; we had to go borrow that $4 billion.

Instead of taking the TARP money, the Treasury Secretary recently told us, he said, I think the financial markets are basically stabilized.

This is a bad bill, we should defeat it.

Mr. FRANK of Massachusetts. Madam Chair, I now yield 2½ minutes to one of the strongest advocates of fairness and equity, and critics of lack of action to stop the foreclosure process, the gentlewoman from California, the Chair of the Housing Subcommittee, Ms. WATERS.

Ms. WATERS. Madam Chair, I rise in strong support of the manager's amendment to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, and the underlying bill.

This bill will finally reform and rein in Wall Street and our financial system, triggered by greed and risk that caused this country to almost collapse. This bill addresses all of the elements of that collapse by allowing the government to wind down ''too big to fail'' institutions before their failure threatens the entire global economy, regulating risky over-the-counter derivatives, and requiring credit rating agencies to avoid the conflicts of interest that cause them to inflate the value of tax and assets.

Perhaps the most important part of this bill is the creation of a new Consumer Financial Protection Agency. This new agency's role will be to spot the next subprime crisis before it starts and prevent the next predatory product from stripping consumers of their homes and their wealth.

I would especially like to thank Financial Services Committee Chairman BARNEY FRANK for including a provision at the request of the members of the Congressional Black Caucus to use $3 billion in Troubled Asset Relief, TARP, dollars to provide low-interest loans to unemployed homeowners that are having difficulty making their mortgage payments. We also thank BARNEY FRANK for including another $1 billion to strengthen the Neighborhood Stabilization Program that will rehab foreclosed housing and also create jobs. This funding is needed because our current foreclosure prevention programs address the initial cause of our foreclosure crisis, subprime and predatory lending, and not the current cause, unemployment, which is at 10 percent nationally, and in minority communities 13 to 15 percent plus.

We know that these kinds of loans can work. Since 1983, Pennsylvania has run a very successful loan program—just ask Mr. CHAKA FATTAH—that has saved 42,700 unemployed homeowners from foreclosure.

Madam Chair, foreclosures and unemployment present a systemic risk to our economy. Therefore, I strongly urge my colleagues to vote ''yes'' on the manager's amendment and on H.R. 4173. This is a very important piece of legislation.

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

I rise in strong opposition to the manager's amendment. I think the manager's amendment illustrates the contradictions between the statements we've heard from the other side and the actual substance of the legislation. I just want to point out three or four conflicts between what it says and what they say it says.

The changes in the majority's $150 billion permanent bailout fund actually contradict the will of the majority of the Financial Services Committee by undermining the orderly and expedient resolution of failed firms. The body will recall, members of the Financial Services Committee, that we adopted an amendment in the committee that eliminated the conservatorship authority and limited the receivership to 1 year. Chairman FRANK has basically said this is going to be a death panel; we're going to put these companies to death. And in committee, they were going to be given 1 year, but the manager's amendment comes back and extends the term limit for doing this to 3 years, 3 years in which these failed companies or counterparties or creditors won't be put to death, as the chairman said, but they will be subsidized out of this, I guess, $150 billion fund, or what could actually turn into another $50 billion if the Treasury asks the Congress to fund it with taxpayer money and adds an additional $50 billion.

□ 1750

This is another example of why we need the Republican substitute. Instead of picking which politically important firms we are going to let survive and which less connected firms we are going to let disappear and fail, in the Republican substitute, we utilize a fair, transparent, rules-based bankruptcy process to resolve and to liquidate these failed financial firms, not to keep them going at the expense of what could be billions of dollars. We think that the Republican alternative is the only real option for eliminating taxpayer bailouts.

The chairman of the Financial Services Committee is also fond of saying that this legislation puts an end to the too-big-to-fail policy, which led to the bailout of our GSEs, of AIG and of other financial firms. Despite this claim, the reality is quite different.

If you will look at page 45 of the manager's amendment, it specifically excludes Fannie Mae and Freddie Mac from the dissolution provisions of the underlying bill. In other words, if they fail, they are excluded. We don't wind them down. Why?

Well, these two companies were at the center of the subprime lending problems that caused the financial market meltdown. Taxpayers have already pumped more than $100 billion into these failed GSEs, and they are likely to lose $300 billion more. It is unconscionable that we are going to exempt these two firms—our GSEs—from this dissolution authority.

Finally, the last aspect I will mention—and this probably is as disturbing as anything—we are raiding this TARP program, rather than ending it, for another $4 billion. The manager's amendment diverts $4 billion from TARP to a number of other programs that the law was never intended to support. TARP was intended to be a temporary plan to restore the health of the credit markets and to protect the economy from systemic risk caused by the collapse of firms that the government, really, allowed to become too big to fail.

We heard promises all last fall that the money would go back to the taxpayers. Instead, now we are talking about surpluses. We are talking about money that hasn't been used. It is almost like this is a ''walking around'' fund, and we're just going to take money out of it and use it on this pet project or on that pet project or on this good idea or on that good idea. Here is the first of those things, and it is $4 billion. Again, we are not giving it back to the taxpayers, and those promises made last September are now being broken.

The President himself has said that he is extending TARP until October 10 of this year. What he is doing is turning it into a permanent bailout agency, into a kind of petty cash drawer for politically favored interests. Here we see

the first one of those things—$4 billion. Part of it is $4 billion to help move this legislation across the finish line.

Let me close by saying we need to end TARP. That's the solution. We need to end it now. We need to require all repayments to go directly towards paying down the debt. That's the bottom line. End TARP right now. Require that all payments be used to pay down the debt. There is no surplus. There are only deficits and debts.

Madam Chair, I urge my colleagues to oppose this irresponsible breach of trust and this attack on our promises that we made last year.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. What is the time remaining on both sides, please, Madam Chair?

The Acting CHAIR. The gentleman from Massachusetts has 6½ minutes remaining. The gentleman from Alabama has 2½ minutes remaining. The gentleman from Alabama has the right to close.

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentleman from Colorado (Mr. PERLMUTTER), who hasn't had enough floor time this week.

Mr. PERLMUTTER. Thank you, Mr. Chairman.

The ranking member of the committee said that the Republican approach was to liquidate failed institutions. It is just the opposite, which is to let them linger and reorganize. That was the proposition made to us in Financial Services.

Madam Chair, my point here is to enter into a colloquy with the chairman.

Mr. Chairman, I had submitted an amount to exempt certain smaller banks and credit unions, which was not approved in the Rules Committee. It is my understanding that the legislation would give the new CFPA the authority to delegate the authority to conduct examinations and to enforce consumer protection provisions to the functional regulator for financial institutions that fall above the $10 billion asset threshold.

Would it be fair to say that the intent here is not to increase burdens on those institutions that have been good actors?

For example, if an institution has an onsite examination or audit team from their functional regulator, it would seem that adding a CFPA team to work with those already there would not be as big of a burden. However, if an institution's functional regulator has deemed that its consumer compliance record is strong and that the institution's regulator is doing an effective job, it would seem that subjecting them to CFPA examinations and enforcement would increase the regulatory burden on the institution.

Is this a situation where the chairman would envision the CFPA's delegating that authority back to the functional regulator under the authorities given in this legislation?

Mr. FRANK of Massachusetts. If the gentleman would yield, with regard to the permanent audit team, they may be the largest institutions, and that is a somewhat separate question, but for those who don't have a permanent audit team, not only would it be better for the regulated entity, it would be better for the CFPA. As any agency, they will have limited resources. If you have a bank that has $13-, $14-, $17 billion in assets and has had a good record, as most of those banks have had in consumer affairs, it would be a great waste of regulatory resources to be doing that when they would have the option, instead, of simply sending a CFPA member to join the other team.

So, yes, I would hope that the CFPA would take full advantage of this authority with those banks.

Mr. BACHUS. Madam Chair, I continue to reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself just 10 seconds to say that one of the Members whose business experience and general good judgment has been a very major asset for us is that of the gentlewoman from Illinois (Ms. BEAN). She has had a very significant and positive impact on this bill.

I will now yield her 2 minutes.

Ms. BEAN. I thank Chairman FRANK for yielding. I want to commend him and the committee for their hard work on this Financial Services regulatory reform bill we are considering today.

Madam Chair, Chairman FRANK's leadership and determination is the reason we are here on the verge of passing the most historic and comprehensive regulatory modernization of our financial system since the Great Depression.

Mr. Chairman, I rise in support of the manager's amendment and in support for H.R. 4173, the Wall Street Reform and Consumer Protection Act.

Included in the manager's amendment is compromise language I negotiated with the majority leader and with the administration to preserve the century-old precedent of national banks and Federal savings associations, which are chartered nationally, to operate, in some cases, under a uniform national set of rules.

The manager's amendment addresses key concerns many of my colleagues and I had with the underlying text, which included changes to existing law in preemption standard and judicial deference. The compromise allows for the national bank regulator to make case-by-case preemption determinations on an individual State's consumer financial laws and then apply that determination to categories of State consumer financial laws that have equivalent terms.

In addition, the amendment allows States to formally petition the CFPA to improve the Federal consumer protection standards. If a majority of States petition the CFPA by passing resolutions in their respective legislatures, they can require the CFPA to conduct rulemaking.

□ 1800

In regard to the underlying bill before us, I want to express my strong support. Reforming our financial system is vitally important to creating a functional and sustainable system that American families and businesses can count on.

Last September when we were at the precipice of financial collapse, we promised the American people that we would enact just such comprehensive reforms. This bill lives up to that promise. Passing it will reduce the severity of future downturns or the likelihood of the type of crisis and subsequent bailout that we experienced last year from everything happening again.

While there is much to be proud of, I want to emphasize the dissolution authority, which removes any implicit government guarantee or bailout.

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

Mr. FRANK of Massachusetts. I yield the gentlewoman an additional 15 seconds.

Ms. BEAN. This is the antibailout. That means when your company fails, you are fired. There will be consequences for your executives and your shareholders.

I urge my colleagues to support the manager's amendment and the underlying bill.

Mr. FRANK of Massachusetts. I will yield myself my remaining time.

How much is that?

The Acting CHAIR. The gentleman from Massachusetts has 2 minutes remaining.

Mr. FRANK of Massachusetts. I sympathize with the loss my Republican colleagues feel that we don't give a bailout for them, but this bill clearly repudiates it. First, they just today, as they did yesterday, made an issue out of the fact that we do include some bankruptcy, but their whole issue was bankruptcy. As the gentleman from Colorado said, there is nothing in their bill that prevents this from being extended ad infinitum under bankruptcy. Technically, we do have some time limitations, but that's part of bankruptcy.

Here is what we do say. If, in fact, the FDIC would decide with a failed institution to keep it going, it would do it without any funds. On page 397, there is established a separate fund to facilitate and provide for the orderly and complete dissolution of any failed financial company that poses a taxpayer threat.

Page 399, the fund shall be available to cover the costs incurred by the corporation as a receiver, repay such funds, cover the cost of systematic stabilization actions, not for the entity.

Then in 288, the corporation, such action—they shall only get involved if they think it's—they can only spend the money if it is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company. Yes, we are saying that in some cases, in a very

complex institution, you may not be able to wipe it out in a year. That's what was pointed it to us. If you wiped it out prematurely, you may find yourself costing more money, not to the institution, in severance pay and other things for employees. This is very clear.

By the way, as to the permanence of this, the authority to borrow here is sunsetted in 2013. Yes, there will be a fund of assessment from private financial institutions. I know the Republicans do not want us to discommode the major financial institutions for this.

We levy on them for money that can be used. If a major institution fails, then the money can be used to manage that failure in a reasonable way. The biggest difference is that we try to stop the failure and they do nothing to try to stop it.

Mr. BACHUS. I yield myself the balance of the time.

The Acting CHAIR (Ms. EDWARDS of Maryland). The gentleman has 2½ minutes remaining.

Mr. BACHUS. Let me say with AIG, the counterparties and creditors of the largest financial institutions were paid off dollar for dollar. I think we have all read that in the paper.

What this legislation does, it allows, in, quote, resolving this, it allows once again the creditors and the counterparties to be paid off. That is a bailout.

In AIG, it was a bailout of creditors and counterparties. That's what is provided for here.

I yield the balance of my time to the gentleman from Texas (Mr. HENSARLING).

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Parliamentary inquiry.

The Acting CHAIR. Would the gentleman please state his inquiry.

Mr. FRANK of Massachusetts. Well, when a Member says he is reserving his time to close, is it permissible to split it? I just, for the future of the bill, want to know that. I had assumed the gentleman was closing, and I thought only one Member closes.

The Acting CHAIR. The gentleman still may yield.

Mr. FRANK of Massachusetts. Thank you, Madam Chair.

Mr. HENSARLING. Madam Chair, regardless of any particular inquiries, the inquiry the American people want to know is: Where are the jobs? Now, what we have seen from the Democrats, our friends on the other side of the aisle, is an attempt to spend our way into jobs, an attempt to borrow our way into jobs and now an attempt to bail out our way into jobs. And what is the result? The result is the highest unemployment rate in a generation, the first trillion dollar deficit in our Nation's history, and a tripling of the national debt in the next 10 years.

Bailouts do not work. The Democratic bill enshrines us as a bailout Nation. It still allows people to privatize their profits and socialize their losses.

Section 1609(n) of the underlying bill creates a permanent bailout fund. Now, maybe some aspect of it is sunset, but nowhere else do you find a permanent bailout fund is going to be sunset. I assume you create the bailout fund for bailouts. This is what will happen.

If the American people believe that we can bail out our way into more jobs and that somehow we will have less systemic risk, they ought to support it. If they are tired of the bailouts, they need to support the Republican bill that ends the bailout. Ultimately, under their plan, you will have more taxpayer bailouts.

Now, they told us, the Speaker told us, if we would pass TARP, that she would make sure the taxpayers were repaid. What do we have? We have another TARP grab here by the chairman of the committee for yet another taxpayer-funded foreclosure mitigation plan, when every single other taxpayer-funded foreclosure mitigation plan has failed. The only one that will work is a job. That's what we need—jobs, not bailouts.

Mr. MILLER of North Carolina. Madam Chair, I offer this statement for the RECORD to clarify the intent of the portion of this amendment regarding haircuts for secured creditors to help establish a clear legislative record for its implementation, and to clarify Mr. MOORE's and my intent regarding the extension of secured credit to systemically important financial institutions under the dissolution section of the legislation.

It is our intent to bring a degree of responsibility to the extension of collateralized credit to covered entities that may fail and fall within the resolution process this legislation creates. However we understand the importance of secured credit to a vital financial system and want to be clear on exactly what is and what is not covered by this amendment.

Only secured credit with terms of 30 days or shorter will be subject to the discretionary authority provided in the provisions of this section. FDIC's authority to apply up to a 10 percent haircut on secured credit positions is discretionary, but it may be applied only in the context of qualified financial contracts and then only if and when unsecured creditors and shareholders are wiped out. Further the authority does not apply to security interests in securities or debt issued, secured, or guaranteed by the Treasury, a federal agency, the Federal Reserve, or a Government Sponsored Enterprise.

Further this amendment makes clear that insured depository institutions, credit unions, and GSEs are not within the definition of a ''financial company'' for purposes of Subtitle G of this legislation. These institutions have a resolution process that is already firmly established in law.

Mr. FRANK of Massachusetts. Madam Chair, I offer this statement to indicate that I agree with the interpretation of the Gentleman from North Carolina regarding his interpretation of the secured creditor haircut portion of the Manager's Amendment. Apparently, there are some people who feel that, even with the improvements to this provision in the Manager's Amendment, there are some who might interpret this incorrectly, and I would agree with the Gentleman that very explicit language reaffirming this interpretation could usefully be added at conference time.

Ms. FUDGE. Madam Chair, today this Congress and President Obama are taking critical steps in bringing our economy back from the brink of disaster. Reforming our financial system is one major part of restoring our economy's health.

I rise in support of an amendment Chairman BARNEY FRANK and I have offered requiring credit rating agencies to register with the Securities and Exchange Commission.

Credit rating agencies provide a valuable service by issuing opinions on the creditworthiness of a company or debt. Investors and creditors rely on these ratings to determine if their investment and contractual decisions are sound. However, credit agencies' registration and oversight is entirely voluntary.

Why should agencies as important as credit rating agencies be permitted to opt out of regulatory oversight? There is no valid reason. Large, established rating agencies should not be able to avoid regulation designed to protect the financial system, consumers, investors, and taxpayers. Under our provision, for the first time, the Securities and Exchange Commission will have an office dedicated to broad oversight of credit rating agencies.

Registering these entities will provide greater accountability and transparency. This amendment will truly enhance oversight of credit rating agencies and protect investors, and I urge my colleagues to vote in favor of this amendment.

I commend Chairman FRANK for his tireless efforts to protect the American economy and taxpayers.

Mr. WAXMAN. Madam Chair, I want to commend Chairman FRANK for his diligent work on the issue of financial reform. He has listened to members, and the manager's amendment and the bill before us today contain several provisions that were drafted in negotiation and cooperation with the Energy and Commerce Committee. In particular, the Manager's amendment makes a number of technical changes that are essential to preserving the intent of the legislation with regard to Federal Trade Commission (FTC) enforcement of consumer laws.

While I am pleased that these technical changes were included, I want to note my concerns with a few of its provisions.

First, the amendment creates new definitions for ''unfair,'' ''deceptive,'' and ''abusive'' that I believe could restrict the ability of the new Consumer Financial Products Agency (CFPA) to protect consumers. This new definition of both ''unfair'' and ''deceptive'' would require CFPA to abide by 30 year-old Federal Trade Commission policy statements that are not even legally binding on FTC. Perhaps the intent of this new language is to have CFPA use the same definitional terms used by FTC, but this language does not achieve that goal. Instead, it could slow rulemaking and limit the flexibility of the new agency.

The new definition of ''abusive'' is similarly problematic. CFPA's authority to pursue abusive practices helps ensure that the agency can address payday lending and other practices that can result in pyramiding debt for low income families. Under the new definition of ''abusive,'' however, CFPA would be required to prove that a practice has an impact on the entire country's financial system, a restriction that could prevent the new agency from issuing important and long overdue rules.

Second, I am concerned about new language that exempts some activities of consumer reporting agencies, known as CRAs, from CFPA oversight. I believe that these changes could split enforcement of the Fair Credit Reporting Act in a problematic manner and may lead to holes in regulation, oversight, and enforcement.

Third, the exclusion for auto dealers included in the bill and modified in this amendment is inappropriate. A key mission of CFPA is to protect consumers as they secure credit and finance purchases. For many Americans, the car is the second largest purchase they will ever make. In a hearing this March, the Subcommittee on Commerce, Trade, and Consumer Protection heard about numerous abuses in the used and subprime car market. Witnesses testified about excessive dealership mark-ups that are hidden from consumers, financing deals that consumers are forced to renegotiate days or even weeks after they drive off the car lot, and hidden fees that can be added to loan amounts.

There is a clear federal government role in strengthening consumer protection in the car financing area. The CFPA should have full authority to prescribe rules and enforce against fraud in this area. In addition to my general concerns about the exclusion, I am further concerned that the exclusion is so broad that it would allow virtually any activities by auto dealers to be excluded from oversight and enforcement by CFPA. Under this provision, an auto dealer could open a payday loan operation, develop financial fraud scams, or form other businesses under the umbrella of the dealership and remain entirely outside of CFPA's reach. If this provision becomes law, I expect that the Energy and Commerce Committee will ask the Federal Trade Commission to take a close look at the practices of auto dealers and to issue rules and conduct enforcement as necessary.

Fourth, I remain concerned about the number of exclusions in the legislation and am troubled to find more in the Manager's amendment. For example, I believe that the exclusion for non-profit fundraising, while well-intentioned, would be ripe for abuse. As Chairman of the Oversight Committee, I held two hearings on abuses by fundraisers for veterans' charities. We found questionable charities and telemarketers who abused the public trust and took money from unsuspecting people. We found for-profit mailers and fundraisers creating charities in order to create work for themselves. A broad exclusion from CFPA authority could allow these fraudulent organizations to proliferate.

Fifth, language in the Manager's amendment would add additional burdens to CFPA's rulemaking. We want CFPA to be strong and nimble. Yet, under this provision, CFPA would not be allowed to issue a ''one-size-fits-all regulation of nonbank products.'' Instead, it would be allowed only to issue ''product specific rules.'' This sounds innocuous and these terms are not defined but I anticipate that they could tie up any rulemaking proceedings. For example, if CFPA were to issue a rule governing disclosures for loans, some could argue that this provision would require the agency to issue separate, duplicative rules for each type of entity making loans. This provision could slow CFPA from prescribing important consumer protection rules that apply uniformly to all nondepository institutions.

Mr. Chair, again, I want to thank Chairman FRANK for working with me, and I look forward to continuing to work on this legislation. I am hopeful that, together, we can work through these issues as this bill moves through the legislative process.

Ms. WATERS. Madam Chair, I rise in strong support of the Manager's Amendment to H.R. 4173, the ''Wall Street Reform and Consumer Protection Act of 2009'' and the underlying bill.

This bill will reform Wall Street and our financial system by ensuring that another financial collapse never happens again. The bill addresses all of the elements of that collapse by allowing the government to wind down ''too big to fail'' institutions before their failure threatens the entire global economy, regulating risky over-the-counter derivatives, and requiring credit rating agencies to avoid the conflicts of interest that caused them to inflate the value of toxic assets.

Perhaps the most important part of this bill is the creation a new Consumer Financial Protection Agency. This new agency's role will be to spot the next subprime crisis before it starts, and prevent the next predatory product from stripping consumers of their homes and their wealth.

I would especially like to thank Financial Services Committee Chairman BARNEY FRANK for including a provision, at the request of the Congressional Black Caucus (CBC), to use $3 billion in Troubled Asset Relief Program (TARP) dollars to provide low-interest loans to unemployed homeowners that are having difficulty making their mortgage payments.

This funding is needed because our current foreclosure prevention programs address the initial cause of our foreclosure crisis—subprime and predatory lending—and not the current cause, unemployment, which is at 10 percent nationally.

We know that these kinds of loans can work. Since 1983, Pennsylvania has run a very successful loan program that has saved 42,700 unemployed homeowners from foreclosure.

Madam Chair, foreclosures and unemployment present a systemic risk to our economy. Therefore, I strongly urge my colleagues to vote ''yes'' on the Manager's Amendment and on H.R. 4173.

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

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

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

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

AMENDMENT NO. 2 OFFERED BY MR. SESSIONS

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111–370.

Mr. SESSIONS. Madam Chair, I have an amendment at the desk, amendment No. 2.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. SESSIONS:

Page 1068, strike lines 8 through 22.

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

The Chair now recognizes the gentleman from Texas.

Mr. SESSIONS. Madam Chair, since 2002, Congress has significantly built upon the budget, the payroll, and the authorities of the Securities and Exchange Commission to provide proper investor and consumer protections. Among the SEC's many responsibilities is handling regulatory disputes, which they were engaged in on a day-to-day basis.

The bill we are considering today once again increases the Securities and Exchange Commission budget by doubling their multibillion dollar budget, by doubling their multibillion dollar budget. My Democratic colleagues claim that the additional monies will provide additional protection for consumers and investors. However, instead of allowing the Securities and Exchange Commission to use these new resources assigned in this legislation to enhance enforcement, my friends on the other side of the aisle, in this bill, assign new private rights of actions to allow trial lawyers to run wild with enforcement capacities.

Madam Chair, I know that my friends, the Democrats, want both bigger government and an open house for trial lawyers. If they double the SEC's budget to ensure the necessary protections, then why would they also open this up to trial lawyers as well?

For these reasons, I have introduced amendment No. 2, which strikes the provisions creating a new private right of action against credit rating agencies. Despite the fact that the SEC is already handling regulatory disputes with no backlog, this new provision allows trial lawyers to take regulatory enforcement into their own hands in the form of frivolous, unnecessary lawsuits. When it comes to a case of fraud, investors already have the right to sue credit rating agencies.

This provision is completely unnecessary, and I encourage all of my colleagues to support my amendment to allow the SEC to do their job.

I yield the balance of my time to the gentleman, my friend from New Jersey (Mr. GARRETT) to control.

□ 1810

Mr. GARRETT of New Jersey. I thank the Chair. How much time do we have?

The Acting CHAIR. The gentleman has 3 minutes remaining.

Mr. GARRETT of New Jersey. I'll yield myself 2 minutes.

The American public has stated, and I said so on the floor the other night, that it's looking for Congress to do three things: first, make sure that we have no more bailouts; secondly, make sure that whatever legislation we do does not create anymore impediments

to job creation; and thirdly, let's make sure that we don't lead to a bigger, more expensive, more expansive government.

Well, we have seen over the past several days now that the legislation before us would do the wrong thing on each point. It'll create more bailouts. It will hurt job creation. And it will create larger government. Now, to the underlying portion of this bill here dealing with credit rating agencies, we all know that it was bipartisan action taken by this Congress back in 2006 when we passed the bipartisan Credit Rating Agency Reform Act. And what did that do? That formalized the registration process of credit rating agencies to become nationally recognized statistical rating organizations.

What are we about to do here? Throw that out the window before it's fully implemented, before we fully have had the opportunity to see it roll out and be played out as Congress intended it to in a bipartisan manner. We're about to throw that out. To what end?

Well, as the gentleman from Texas just pointed out, to the end that you will allow for less competition in the CRAs, credit rating agencies, with, furthermore, unintended consequences that will be detrimental to the market and investors. What does that mean to people back at home? That means that it will be harder for them to make the evaluations that are necessary for the industry. That means it will be harder for credit to be obtained in the marketplaces, and what that means for businesses, of course, harder for them to get the credit they need to expand and create jobs.

This amendment here is necessary to counter all the aspects of this bill so that we can work hard to make sure that we create jobs in this country, make sure that businesses that need credit can get the credit they need, make sure that businesses that need to be able and want to expand are able to expand.

This amendment is a positive amendment. I support this amendment.

I reserve my time.

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

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

Mr. SHERMAN. I now yield to the gentleman from Pennsylvania (Mr. KANJORSKI), the Chair of the relevant subcommittee, for 1 minute.

Mr. KANJORSKI. Madam Chairman, I rise in opposition to this amendment.

During the argument, my good friend, the ranking member of my subcommittee from New Jersey, made a point. Now I understand why we're at loggerheads here. His comment was that we were enacting this piece of legislation to prevent any further bailouts. I only want to call your attention to the promise I made to the American people that we have no more financial crises. The bailouts follow the crises. We won't have to have bailouts if we don't have crises.

And if we had responsible activity by rating agencies we wouldn't have had the tremendous failure last year of so many securitized operations that our friends around the world and most of the American people felt they were outright cheated by the American government, because there were agencies out there that had gave them 3-plus ratings to securities that didn't deserve it.

Now, what we're doing here is saying a simple thing. You want to make those bad ratings? You don't want to follow the decorum of your own plans? If you want to put at risk investors, you will suffer the consequences and pay for your gross negligence. This is an integral part of this amendment and absolutely essential.

Mr. GARRETT of New Jersey. I still reserve.

Mr. SHERMAN. Does the gentleman from New Jersey have only one more speaker? Then at this point I'll yield 2 minutes to the gentleman from Massachusetts (Mr. CAPUANO).

Mr. CAPUANO. Ladies and gentlemen, this amendment is actually quite simple. As Mr. KANJORSKI said, it's absolutely essential to this bill. Without this particular amendment, credit rating agencies will not be held accountable for anything they do. Simply put, the SEC has failed to do anything, and any limited action is limited by the First Amendment. They have got a decision in the courts of law that their provisions, that their expenditures have been protected by the First Amendment. You cannot sue them.

All this does—and it's a very high standard—it holds them to the same standards—and we'll read it—the same standards with respect to knowledge and recklessness as everybody else. If they know what they're saying is bad, or they know it is wrong, they should be held accountable. If they are reckless by not looking at an accounting report, they should be held accountable. That's all this does. It's actually a pretty high standard. I would actually like it a little lower because I have a lot of trial attorneys that need the work.

But more importantly, what Mr. KANJORSKI said is 100 percent right. All this does is protect the American economy, a minor little thing. And we have to go back many, many years. Tell me the last time a credit rating agency was held accountable for giving a AAA rating to a piece of junk. Enron, junk bonds, credit default swaps, credit default options squared; they're never held accountable. All this says is they have to actually look at the books, they have to use anything they know, and they cannot be reckless about it. That's all it says.

It doesn't say they're held accountable if they're wrong, nor should they be. A legitimate error is fine. All this says is they have to be held accountable to the American public when they basically don't do their job.

Mr. SHERMAN. I reserve the right to close.

Mr. GARRETT of New Jersey. I believe that it's our right to close. It's our amendment.

The Acting CHAIR. The gentleman from California has the right to close.

Mr. GARRETT of New Jersey. Then I will yield to the gentleman from Texas (Mr. SESSIONS) my remaining time.

Mr. SESSIONS. Madam Chairman, my friends who are arguing on behalf of trial lawyers usually argue on behalf of government, and now we're hearing about how government's really not empowered and really not going to do their job. But, at the same time, we look at a lower standard in this bill where we take it from knowingly or recklessly or grossly negligent to just gross negligence, a lower standard. This lower standard is there to help the trial lawyers. Trial lawyers do not build value in this country. They diminish the value.

We need to give the SEC the authority, the responsibility. We're already giving them the money. The SEC will double in size of the amount of money that they get as a result of this bill. We're empowering the SEC to do their job. We should not lower the standard and then allow the trial bar to come after what should be an enforcement action. An enforcement action is what this statute should be all about with the credit rating agencies.

I'll support my amendment.

Mr. SHERMAN. First, let's set the record straight. Republicans are coming to this floor calling this a bailout bill. They're quoting my statement that the original draft of the bill was TARP on steroids. The fact is this bill now reins in executive branch bailout authority, and the Republican substitute is the thing to vote for if you want to be a bailout nation.

Second, I want to thank the Chair of the committee for including my revisions of section 1109 in the manager's amendment. Now as to this amendment. The bill's language is designed to hold credit rating agencies accountable. These are the agencies that gave AAA to Alt-A; that is to say, they gave the highest ratings to bad mortgage bonds, and nothing did more to put us in this recession than the trillions of dollars that investors bet on these bad mortgages, only to see the whole thing unwind.

Now we provide that they will be held accountable. The SEC has taken no enforcement action. All of the incentives in the present system push in the wrong direction. The way a credit rating agency gets business is to get a reputation for being a liberal grader, so that one issuer after another will hire them to give the high rating to their bad bonds. It's like the umpire being selected by the home team. Instead, we need to put pressure on the other side and say that if you are grossly negligent in assigning a high rating to bad bonds that hurt investors and also hurt the entire economy, you will be held accountable.

Now is the time to change the system, to make sure that the economic

pressures on credit rating agencies are not all on the side of a liberal rating. We need to make it clear to credit rating agencies if you give AAA to Alt-A, you'll pay.

□ 1820

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

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

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

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

AMENDMENT NO. 3 OFFERED BY MR. PETERSON

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in House Report 111–370.

Mr. PETERSON. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. PETERSON:

Page 481, strike line 8 and all that follows through page 665, line 6, and insert the following:

TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Derivative Markets Transparency and Accountability Act of 2009''.

SEC. 3002. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.

(2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the Prudential Regulators.

(3) In developing and promulgating rules or orders pursuant to this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consider each other's views and the views of the Prudential Regulators.

(4) In adopting a rule or order described in paragraph (1) or (2), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities similarly.

(5) Paragraph (4) shall not be construed to require the Commodity Futures Trading Commission or the Securities Exchange Commission to adopt a rule or order that treats functionally or economically similar products or entities identically.

(b) LIMITATION.—

(1) CFTC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to their activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities.

(2) SEC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to their activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the Secretary of the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the rule, regulation, or order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) STANDARD OF REVIEW.—The court, giving deference to the views of neither Commission, shall determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court, as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order, until the date on which the determination of the court is final (including any appeal of the determination).

(d) DEFINITIONS.—In this section, the terms ''Prudential Regulators'', ''swap'', ''swap dealer'', ''major swap participant'', ''swap repository'', ''person associated with a swap dealer or major swap participant'', ''eligible contract participant'', ''swap execution facility'', ''security-based swap'', ''security-based swap dealer'', ''major security-based swap participant'', ''security-based swap repository'', and ''person associated with a security-based swap dealer or major security-based swap participant'' shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.

(e)(1) Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities Exchange Commission shall jointly adopt rules to—

(A) define the terms ''security-based swap agreement'' in section 3(a)(76) of the Securities Exchange Act of 1934 and ''swap'' in section 1a(35)(A)(v) of the Commodity Exchange Act;

(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services 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.

SEC. 3003. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of contracts of sale of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of swaps and security-based swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term ''Federal assistance'' means the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization, a clearing agency, or a subsidiary of either; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization, a clearing agency, or a subsidiary of either.

SEC. 3005. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this titleon excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(2) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by paragraph (1).

SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3007. ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

SEC. 3009. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest,

(B) resolving conflicts concerning overlapping jurisdiction between the two agencies, and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (12)(A)—

(A) in clause (vii)(III), by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(B) in clause (xi), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis'';

(2) in paragraph (29)—

(A) in subparagraph (D), by striking ''and'';

(B) by redesignating subparagraph (E) as subparagraph (G); and

(C) by inserting after subparagraph (D) the following:

''(E) a swap execution facility registered under section 5h;

''(F) a swap repository; and''; and

(3) by adding at the end the following:

''(35) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 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, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 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, and includes any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

''(iv) is, or in the future becomes, commonly known to the trade as a swap;

''(v) meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which 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) 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 any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any sale of a nonfinancial commodity 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 the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 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)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of the 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 foreign exchange forward;

''(x) any foreign exchange swap;

''(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and

''(xii) any security-based swap.

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

''(D) FOREIGN EXCHANGE SWAPS AND FORWARDS EXCEPTION.—

''(i) IN GENERAL.—Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act and the Secretary concurs with such determination.

''(ii) SCOPE OF AUTHORITY.—

''(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary may jointly amend any previously made determination under this subclause.

''(II) Notwithstanding clause (i), the Commission and the Secretary of the Treasury may determine that either foreign exchange swaps or foreign exchange forwards or both should not be regulated as swaps under this Act if such determination is jointly made.

''(iii) REPORTING.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and subparagraph (D)(ii), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap repository, or, if there is no swap 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) SECRETARY.—For purposes of this subparagraph only, the term 'Secretary' means the Secretary of the Treasury.

''(36) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(37) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.

''(38) 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 of swaps and their resale to customers in the ordinary course of a business; or

''(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

''(B) A person may be designated a swap dealer for a single type or single class or category of swap and considered not a swap dealer for other types, classes, or categories of swaps.

''(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.

''(39) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

''(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

''(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

''(B) DEFINITION OF SUBSTANTIAL NET POSTION.—The Commission shall define by rule or regulation the terms 'substantial net position', 'substantial net counterparty exposure', and 'significant credit losses' at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

''(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.

''(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.

''(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

''(42) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

''(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

''(i) a State-chartered bank that is a member of the Federal Reserve System; or

''(ii) a State-chartered branch or agency of a foreign bank;

''(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

''(i) a national bank; or

''(ii) a federally chartered branch or agency of a foreign bank; and

''(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.

''(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.

''(44) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

''(45) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

''(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.

''(47) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means any partner, officer, director, or branch manager of a swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a swap dealer or major swap participant, or any employee of a swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of the term other than for purposes of section 4s(b)(6).

''(48) SWAP REPOSITORY.—The term 'swap 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 EXECUTION FACILITY.—The term 'swap execution facility' means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract market, including any electronic trade execution or voice brokerage facility.

''(50) DERIVATIVE.—The term 'derivative' means—

''(A) a contract of sale of a commodity for future delivery; or

''(B) a swap.''.

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Commodity Futures Trading Commission shall adopt a rule further defining the terms ''swap'', ''swap dealer'', ''major swap participant'', and ''eligible contract participant'' for the purpose of including transactions and entities that have been structured to evade this title.

(c) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: ''The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act. Notwithstanding the preceding sentence, the Commodity Futures Trading Commission may exempt from any provision of the Commodity Exchange Act, pursuant to this subsection, an agreement, contract, or transaction that is entered into pursuant to a tariff approved by the Federal Energy Regulatory Commission, if the Commodity Futures Trading Commission determines that the exemption would be consistent with the public interest, and shall consider and not unreasonably deny any request made by the Federal Energy Regulatory Commission for such an exemption.''.

SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended—

(1) in the 1st sentence of subparagraph (A)—

(A) by striking ''(c) through (i)'' and inserting ''(c) and (f)'';

(B) by inserting ''swaps, or'' before ''contracts of sale'';

(C) by striking ''derivatives transaction execution facility'' and inserting ''swap execution facility''; and

(D) by striking ''5a'' and inserting ''5h''; and

(2) by adding at the end the following:

''(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Derivative Markets Transparency and Accountability Act of 2009 with regard to security-based swap agreements as defined pursuant to section 3002(e) of such Act, and security-based swaps.

''(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

''(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is—

''(I) not executed, traded, or cleared on a registered entity or trading facility; and

''(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.

''(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).''.

(b) ADDITIONS.—Section 2(c)(2)(A) of such 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''.

(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended—

(1) in paragraph (1)(B), by inserting ''or (3)'' after ''paragraph (2)'';

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a swap; and

''(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c) or 2(f) of this Act or title IV of the Commodity Futures Modernization Act of 2000 or exempted under section 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).''; and

(3) by adding at the end the following:

''(3) A swap may not be regulated as an insurance contract under State law.

''(4) The provisions of this Act relating to swaps that were enacted by the Derivative Markets Transparency and Accountability Act of 2009, including any rule or regulation thereunder, shall not apply to activities outside the United States unless those activities—

''(A) have a direct and significant connection with activities in or effect on United States commerce; or

''(B) contravene such rules or regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Derivative Markets Transparency and Accountability Act of 2009.''.

(d) Nothing in the Derivative Markets Transparency and Accountability Act of 2009 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.

(a) CLEARING AND EXECUTION TRANSPARENCY REQUIREMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (d), (e), (g), and (h).

(2)(A) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act.

(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act for up to one year after the effective date of this subtitle.

(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j), and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms 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.''.

(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

''(j) CLEARING REQUIREMENT.—

''(1) IN GENERAL.—

''(A) STANDARD FOR CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) that the swap is required to be cleared.

''(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

''(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

''(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

''(2) COMMISSION REVIEW.—

''(A) COMMISSION-INITIATED REVIEW.—

''(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

''(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

''(B) SWAP SUBMISSIONS.—

''(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

''(ii) The Commission shall—

''(I) make available to the public any submission received under clause (i);

''(II) review each submission made under clause (i), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

''(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

''(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

''(D) DETERMINATION.—

''(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2),

''(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

''(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

''(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

''(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

''(IV) The effect on competition, including appropriate fees and charges applied to clearing.

''(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant 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.

''(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

''(E) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

''(3) STAY OF CLEARING REQUIREMENT.—

''(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

''(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

''(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

''(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

''(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

''(D) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

''(4) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

''(5) REQUIRED REPORTING.—

''(A) IN GENERAL.—All swaps that are not accepted for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.

''(B) SWAP DEALER DESIGNATION.—With regard to swaps where only 1 counterparty is a swap dealer, the swap dealer shall report the swap as required by this paragraph.

''(6) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

''(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

''(i) 90 days after such effective date; or

''(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

''(7) CLEARING TRANSITION RULES.—

''(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(A).

''(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(B).

''(8) EXCEPTIONS.—

''(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to a swap if one of the counterparties to the swap—

''(i) is not a swap dealer or major swap participant;

''(ii) is using swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

''(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

''(B) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

''(C) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

''(k) EXECUTION TRANSPARENCY.—

''(1) REQUIREMENT.—A swap that is subject to the clearing requirement of subsection (j) shall not be traded except on or through a board of trade designated as a contract market under section 5, or on or through a swap execution facility registered under section 5h, that makes the swap available for trading.

''(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a swap if no designated contract market or swap execution facility makes the swap available for trading.

''(3) AGRICULTURAL SWAPS.—No person shall offer to enter into, enter into or confirm the execution of, any swap in an agricultural commodity (as defined by the Commission) that is subject to paragraphs (1) and (2) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

''(4) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

''(5) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for

the trading of such contracts, agreements or transactions on such a designated contract market.''.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of such Act (7 U.S.C. 7a-1) are amended to read as follows:

''(a) REGISTRATION REQUIREMENT.—

''(1) IN GENERAL.—It shall be unlawful for any entity, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to—

''(A) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

''(i) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); 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 swap.

''(2) EXISTING BANKS AND CLEARING AGENCIES.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. 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 other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

''(b) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.''.

(2) Section 5b of such Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

''(g) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection.

''(h) EXEMPTIONS.—

''(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

''(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.

''(i) DESIGNATION OF COMPLIANCE OFFICER.—

''(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

''(2) DUTIES.—The compliance officer—

''(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and

''(B) shall—

''(i) review compliance with the core principles in section 5b(c)(2).

''(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

''(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(iv) ensure compliance with this Act and the rules and regulations issued under this Act; and

''(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

''(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.''.

(3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

''(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.

''(B) FINANCIAL RESOURCES.—

''(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.

''(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would—

''(I) enable the organization to meet the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and

''(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.

''(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

''(i) The 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 organization) for members of and participants in the organization; and

''(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

''(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.

''(iii) The participation and membership requirements of the derivatives clearing organization shall be objective, publicly disclosed, and permit fair and open access.

''(D) RISK MANAGEMENT.—

''(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

''(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.

''(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

''(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.

''(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.

''(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization shall—

''(i) complete money settlements on a timely basis, and not less than once each business day;

''(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

''(iii) ensure money settlements are final when effected;

''(iv) maintain an accurate record of the flow of funds associated with each money settlement;

''(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and

''(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.

''(F) TREATMENT OF FUNDS.—

''(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

''(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.

''(iii) Assets and funds invested by the derivatives clearing organization shall be held

in instruments with minimal credit, market, and liquidity risks.

''(G) DEFAULT RULES AND PROCEDURES.—

''(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.

''(ii) The default procedures of the derivatives clearing organization shall be clearly stated, and they shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting the obligations of the organization.

''(iii) The default procedures shall be publicly available.

''(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

''(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the organization and for resolution of disputes; and

''(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of rules of the organization.

''(I) SYSTEM SAFEGUARDS.—The 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 the development of 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 the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and

''(iii) 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.

''(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

''(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

''(L) PUBLIC INFORMATION.—

''(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

''(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

''(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

''(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

''(II) clearing and other fees that the organization charges the members of, and participants in, the organization;

''(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

''(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

''(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

''(M) INFORMATION-SHARING.—The derivatives clearing organization shall—

''(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

''(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

''(N) ANTITRUST CONSIDERATIONS.—The derivatives clearing organization shall avoid—

''(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

''(ii) imposing any material anticompetitive burden.

''(O) GOVERNANCE FITNESS STANDARDS.—

''(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.

''(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this subparagraph.

''(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving the conflicts of interest.

''(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.

''(R) LEGAL RISK.—The derivatives clearing organization shall have a well founded, transparent, and enforceable legal framework for each aspect of its activities.''.

(4) Section 5b of such Act (7 U.S.C. 7a-1) is further amended by adding after subsection (i), as added by this section, the following:

''(j) REPORTING.—

''(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission all information determined by the Commission to be necessary to perform the responsibilities of the Commission under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. The Commission shall share the information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.

''(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).

''(3) A derivatives clearing organization shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.''.

(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the last sentence by inserting ''central bank and ministries'' after ''department'' each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

''SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

''(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

''(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and

''(2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.

''(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

''(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

''(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified banking product that—

''(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

''(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

''(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).''.

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:

''(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives

clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) derivatives clearing organizations pursuant to section 5b(j)(2);

''(B) swap repositories pursuant to section 21(c)(3); and

''(C) reports received by the Commission pursuant to section 4r.''.

SEC. 3105. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

''SEC. 21. SWAP REPOSITORIES.

''(a) REGISTRATION REQUIREMENT.—

''(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

''(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

''(b) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap 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 that clear swaps.

''(c) DUTIES.—A swap repository shall—

''(1) accept data prescribed by the Commission for each swap under subsection (b);

''(2) maintain the data in such form and manner and for such period as may be required by the Commission;

''(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

''(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(d) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

''(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that the swap repository 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 organization's home country.''.

SEC. 3106. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

''(a) IN GENERAL.—Any person who enters into a swap and—

''(1) did not have the swap cleared in accordance with section 2(j)(1); and

''(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

''(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.''.

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

''SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

''(a) REGISTRATION.—

''(1) It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

''(2) It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. The person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to the person's business as the Commission may require.

''(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

''(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for swap dealers and major swap participants.

''(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

''(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(c) RULES.—

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

''(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

''(d) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that:

''(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

''(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

''(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

''(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

''(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

''(2) RULES.—

''(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant for which there is a Prudential Regulator

''(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

''(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission

to set capital requirements for a registered futures commission merchant or introducing broker in accordance with section 4f.

''(e) REPORTING AND RECORDKEEPING.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant—

''(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of the person;

''(B) for which—

''(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(C) shall keep the books and records open to inspection and examination by any representative of the Commissionl and

''(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

''(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

''(f) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

''(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

''(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

''(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

''(5) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

''(g) BUSINESS CONDUCT STANDARDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

''(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

''(B) diligent supervision of its business as a swap dealer;

''(C) adherence to all applicable position limits; and

''(D) such other matters as the Commission shall determine to be necessary or appropriate.

''(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

''(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

''(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of—

''(i) information about the material risks and characteristics of the swap;

''(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and

''(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

''(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

''(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.

''(h) DOCUMENTATION STANDARDS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

''(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the standards described in paragraph (1) for swap dealers and major swap participants.

''(i) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

''(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

''(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning—

''(A) terms and conditions of its swaps;

''(B) swap trading operations, mechanisms, and practices;

''(C) financial integrity protections relating to swaps; and

''(D) other information relevant to its trading in swaps.

''(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

''(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

''(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.

''(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

''(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(B) address such other issues as the Commission determines appropriate.

''(5) ANTITRUST CONSIDERATIONS.—The swap dealer or major swap participant shall avoid—

''(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading.''.

SEC. 3108. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

''(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

''(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(2) address such other issues as the Commission determines appropriate.''.

SEC. 3109. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

''SEC. 5h. SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission as a designated contract market under section 5 or a swap execution facility under section 5.

''(b) REQUIREMENTS FOR TRADING.—

''(1) A swap execution facility that is registered under subsection (a) may make available for trading any swap.

''(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a swap to be traded through the facilities of a designated contract market or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a swap, notwithstanding section 2(k), if the swap is executed, reported, recorded, or confirmed in accordance with the rules of the designated contract market or swap execution facility.

''(3) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

''(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 swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

''(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

''(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

''(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

''(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

''(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

''(i) provide market participants with impartial access to the market; and

''(ii) capture information that may be used in establishing whether rule violations have occurred.

''(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING.—The swap execution facility shall—

''(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

''(B) monitor trading in 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) ABILITY TO OBTAIN INFORMATION.—The 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 Commission upon request; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) POSITION LIMITS OR ACCOUNTABILITY.—

''(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of its contracts made available for trading on the trading facility, where necessary and appropriate, position limitations or position accountability for speculators who establish positions in the contract.

''(B) For any contract of a swap execution facility that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility—

''(i) may set a position limitation at a level that is lower than the Commission limitation; and

''(ii) shall monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

''(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

''(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

''(9) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

''(10) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related 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 report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

''(11) ANTITRUST CONSIDERATIONS.—The swap execution facility shall avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading on the swap execution facility.

''(12) CONFLICTS OF INTEREST.—The 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) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

''(B) The financial resources of the swap execution facility shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of 1 year, calculated on a rolling basis.

''(14) SYSTEM SAFEGUARDS.—The 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 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 swap execution facility's responsibilities and obligation; 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.

''(15) DESIGNATION OF COMPLIANCE OFFICER.—

''(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

''(B) DUTIES.—The compliance officer—

''(i) shall report directly to the board or to the senior officer of the facility;

''(ii) shall—

''(I) review compliance with the core principles in this subsection;

''(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

''(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

''(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-testing, and closing of non-compliant issues.

''(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with this Act and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a 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 organization's home country.

''(f) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.''.

SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1 et seq.) are repealed.

(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

SEC. 3111. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by

striking paragraphs (1) and (2) and inserting the following:

''(1) 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 the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

''(2) COMPLIANCE WITH RULES.—

''(A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract market and the contract market's abusive trade practice prohibitions.

''(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.

''(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.''.

(b) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraphs (4) and (5) and inserting the following:

''(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 methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

''(A) 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 of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

''(B) 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 its position limitation at a level no higher than the Commission-established limitation.''.

(c) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (7) and inserting the following:

''(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) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade's electronic matching platform or other trade execution facility.''.

(d) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

''(9) EXECUTION OF TRANSACTIONS.—

''(A) 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 board of trade's centralized market.

''(B) The rules 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 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.''.

(e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17)) is amended by adding at the end the following: ''The board of trade shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.''.

(f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

''(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

''(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 give 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 board of trade's responsibilities and obligations; and

''(C) periodically conduct tests to verify that back-up 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) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

''(22) 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.''.

(g) Section 5 of such Act (7 U.S.C. 7) is amended by striking subsection (b).

SEC. 3112. MARGIN.

(a) Section 8a(7)(C) of the Commodity Exchange Act (7 U.S.C. 12a(7)(C)) is amended by striking '', excepting the setting of levels of margin''.

(b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is amended by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:

''(D) margin requirements, provided that such 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 in order to protect the financial integrity of transactions; and

''(iii) not set specific margin amounts.''.

SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting ''(1)'' after ''(a)'';

(2) striking ''on electronic trading facilities with respect to a significant price discovery contract'' in the first sentence and inserting ''swaps that perform or affect a significant price discovery function with respect to registered entities'';

(3) inserting '', including any group or class of traders,'' in the second sentence after ''held by any person'';

(4) striking ''on an electronic trading facility with respect to a significant price discovery contract,'' in the second sentence and inserting ''swaps that perform or affect a significant price discovery function with respect to registered entities,''; and

(5) inserting at the end the following:

''(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

''(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

''(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

''(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

''(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

''(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

''(B) to the maximum extent practicable, in its discretion—

''(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

''(ii) to deter and prevent market manipulation, squeezes, and corners;

''(iii) to ensure sufficient market liquidity for bona fide hedgers; and

''(iv) to ensure that the price discovery function of the underlying market is not disrupted.

''(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).

''(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—

''(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;

''(ii) 7 predominantly commercial long hedgers of the actual physical commodity for future delivery;

''(iii) 4 non-commercial participants in markets for commodities for future delivery; and

''(iv) each designated contract market upon which a contract in the commodity for future delivery is traded.

''(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.

''(5) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

''(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon 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 swap is sufficiently related to the price of another contract traded on a regulated market based upon 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 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 regulated market 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 swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

''(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

''(6) ECONOMICALLY EQUIVALENT CONTRACTS.—

''(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

''(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

''(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

''(ii) establish the limits simultaneously with limits established under paragraph (2).

''(7) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon 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 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 its electronic trading and order matching system; and

''(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

''(8) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.''.

(b) Section 4a(b) of such 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 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 swap execution facility''.

(c) Section 4a(c) of such Act is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding after and below the end the following:

''(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

''(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

''(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

''(iii) arises from the potential change in the value of—

''(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

''(II) liabilities that a person owns or anticipates incurring; or

''(III) services that a person provides, purchases, or anticipates providing or purchasing; or

''(B) reduces risks attendant to a position resulting from a swap that—

''(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

''(ii) meets the requirements of subparagraph (A).''.

(d) This section shall become effective on the date of its enactment.

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended—

(1) in paragraph (1), by striking ''5a(d) and 5b(c)(2)'' and inserting ''5b(c)(2) and 5h(e)''; and

(2) in paragraph (2), by striking ''shall not'' and inserting ''may''.

(b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting ''or swap execution facility'' after ''contract market'' each place it appears.

(c) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1)) is amended—

(1) by inserting ''(A)'' after ''IN GENERAL.—''; and

(2) by adding at the end the following:

''(B) The new rule or rule amendment shall become effective, pursuant to the registered entity's certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission's receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

''(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.

''(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.''.

(d) Section 5c(d) of such Act (7 U.S.C. 7a–2(d)) is repealed.

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:

''(e) FOREIGN BOARDS OF TRADE.—

''(1) IN GENERAL.—The Commission may not permit 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—

''(A) 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

''(B) 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, taking into consideration the relative sizes of the respective markets, 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—

''(I) the information that the foreign board of trade will make publicly available;

''(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(III) 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

''(IV) 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 with information 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 the 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.

''(2) EXISTING FOREIGN BOARDS OF TRADE.—Paragraph (1) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

''(3) PERSONS LOCATED IN THE UNITED STATES.—''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of such Act (7. U.S.C. 6(a)) is amended by inserting ''or by subsection (f)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) Section 4 of such Act (7 U.S.C 6) is further amended by adding at the end the following:

''(f)(1) 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—

''(A) 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 is—

''(i) legally organized under the laws of a foreign country;

''(ii) authorized to act as a board of trade by a foreign futures authority; and

''(iii) subject to regulation by the foreign futures authority; and

''(B) has not been determined by the Commission to be operating in violation of subsection (a).

''(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).''.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

''(5) 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. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

''(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a 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; and

''(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an 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 to meet the definition of a swap set forth in section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursuant to 2(j)(1) or regulations of the Commission pursuant thereto.''.

SEC. 3117. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.

SEC. 3118. ENFORCEMENT AUTHORITY.

(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:

''SEC. 4b–1. ENFORCEMENT AUTHORITY.

''(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

''(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

''(c) REFERRAL.—(1) If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(2) If the Commission has cause to believe that a swap dealer or major swap participant that has a Prudential Regulator may have engaged in conduct that constitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.''.

(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

''(3) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading or practice on or subject to the rules of a registered entity that—

''(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);

''(B) is, is of the character of, or is commonly known to the trade as 'marking the close' (bidding or offering during or near the market's closing period with the intent to influence the settlement price);

''(C) is, is of the character of, or is commonly known to the trade as 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution); or

''(D) constitutes uneconomic trading (trading that has no legitimate economic purpose but for the effect on price).

''(4) The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit any other trading practice that is disruptive of fair and equitable trading.''.

(2) The amendment made by paragraph (1) shall become effective upon enactment.

SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is amended by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by inserting ''or swap'' before ''if the transaction is used or may be used''.

(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting ''or of any swap,'' before ''or to corner''.

(e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4)) is amended by inserting ''swap repository,'' before ''or futures association''.

(f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1)) is amended by inserting ''swap repository,'' before ''or registered futures association'' and by inserting '', or swaps,'' before ''on the basis''.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and inserting after paragraph (5) the following:

''(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, security-based swap repository, or swap execution facility, whether or not it 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 Derivative Markets Transparency and Accountability Act of 2009.''.

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

(a) Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking ''(other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))'' and inserting ''(other than section 5b or 12(e)(2)(B))''; and

(2) in paragraph (2), by inserting after subparagraph (C) the following:

''(D) RETAIL COMMODITY TRANSACTIONS.—

''(i) This subparagraph shall apply to, and the Commission shall have jurisdiction over, 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) Clause (i) 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 their line of business.

''(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)); or

''(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

''(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

''(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

''(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

''(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.''.

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this section.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 3107 of this Act) the following:

''SEC. 4t. LARGE SWAP TRADER REPORTING.

''(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to registered entities if—

''(1) the person directly or indirectly enters into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

''(2) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless 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 paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, the person keeps books and records of all such 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) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

''(c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.

''(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include the transactions and positions of any persons directly or indirectly controlled by the person.

''(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).''.

SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4t the following:

''SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

''(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

''(b) FURTHER AUDIT REPORTING.—If a swap dealer does not segregate funds pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 3123. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3124. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term ''antitrust laws'' has the same meaning given the term in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

SEC. 3125. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this title.

SEC. 3126. EXPEDITED PROCESS.

The Commodity Futures Trading Commission may use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this title if, in its discretion, it deems it necessary to do so.

SEC. 3127. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. 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 (5)(A) and (B), by inserting ''(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)'' after the word ''securities'' in each place it appears;

(2) in paragraph (10), by inserting ''security-based swap,'' after ''security future,'';

(3) 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.'';

(4) 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.'';

(5) in paragraph (39)—

(A) by striking ''or government securities dealer'' and adding ''government securities dealer, security-based swap dealer or major security-based swap participant'' in its place in subparagraph (B)(i)(I);

(B) by adding ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (B)(i)(II);

(C) by striking ''or government securities dealer'' and adding ''government securities dealer, security-based swap dealer or major security-based swap participant'' in its place in subparagraph (C); and

(D) by adding ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (D); and

(6) by adding at the end the following:

''(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

''(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

''(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, and—

''(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

''(ii) whose outstanding security-based swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

''(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.—The Commission shall define by rule or regulation the terms 'substantial net position', 'substantial net counterparty exposure', and 'significant credit losses' at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

''(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

''(68) SECURITY-BASED SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that—

''(i) is priumarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

''(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or

''(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

''(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

''(C) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because it references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

''(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

''(71) SECURITY-BASED SWAP DEALER.—

''(A) IN GENERAL.—The term 'security-based swap dealer' means any person that—

''(i) holds itself out as a dealer in security-based swaps;

''(ii) makes a market in security-based swaps;

''(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or

''(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

''(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated a security-based swap dealer for a single type or single class or category of security-based swap and considered not a security-based swap dealer for other types, classes, or categories of security-based swaps.

''(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a security-based swap dealer an entity that engages in a de minimus amount of security-based swap dealing in connection with transactions with or on the behalf of its customers.

''(72) 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)).

''(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(74) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

''(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a State-chartered bank that is a member of the Federal Reserve System; or

''(ii) a State-chartered branch or agency of a foreign bank;

''(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a national bank; or

''(ii) a federally chartered branch or agency of a foreign bank; and

''(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.

''(75) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

''(76) SECURITY-BASED SWAP AGREEMENT.—

''(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term 'security-based swap agreement' means a 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.

''(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.

''(76) SECURITY-BASED SWAP REPOSITORY.—The term 'security-based swap 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.

''(77) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a national securities exchange, including any electronic trade execution or voice brokerage facility.''.''''.

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Securities and Exchange Commission may adopt a rule further defining the terms ''security-based swap'', ''security-based swap dealer'', ''major security-based swap participant'', and ''eligible contract participant'' with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this title.

SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended by striking

''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting ''(including security-based swaps)'' after ''securities''; and

(ii) by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''; and

(B) in subsection (d), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

''(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement 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, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement 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 one or more persons conducted for the purpose of raising or depressing the price of such security.

''(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, 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, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement 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 one or more persons conducted for the purpose of raising or depressing the price of such security.''.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(4) Section 10 (15 U.S.C. 78j) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(B) in subparagraphs (B) and (C), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' in each place that the term appears.

(6) Section 15(i) (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) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking ''(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))'';

(B) in subsection (b), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' in each place that the term appears; and

(C) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (f), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(9) Section 21A (15 U.S.C. 78u–1) is amended—

(A) in subsection (a)(1), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

''SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

''(a) IN GENERAL.—

''(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.

''(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

''(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

''(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

''(b) COMMISSION REVIEW.—

''(1) COMMISSION-INITIATED REVIEW.—

''(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

''(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

''(2) SWAP SUBMISSIONS.—

''(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

''(B) The Commission shall—

''(i) make available to the public any submission received under subparagraph (A);

''(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

''(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

''(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(B) not later than 90 days after receiving a submission made under paragraph (2)(A), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

''(4) DETERMINATION.—

''(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 5b(c)(2).

''(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

''(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

''(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

''(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

''(iv) The effect on competition, including appropriate fees and charges applied to clearing.

''(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant 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.

''(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

''(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

''(c) STAY OF CLEARING REQUIREMENT.—

''(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

''(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

''(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

''(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

''(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

''(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

''(d) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.

''(e) REQUIRED REPORTING.—

''(1) IN GENERAL.—All security-based swaps that are not accepted for clearing by any clearing agency shall be reported either to a security-based swap repository described in subsection 13(n) or, if there is no security-based swap repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe. Counterparties to a security-based swap may agree which counterparty will report the security-based swap as required by this paragraph.

''(2) SWAP DEALER DESIGNATION.—With regard to security-based swaps where only 1 counterparty is a security-based swap dealer, the security-based swap dealer shall report the security-based swap as required by this subsection.

''(f) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

''(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

''(A) 90 days after such effective date; or

''(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

''(g) CLEARING TRANSITION RULES.—

''(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).

''(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (f)(2).

''(h) EXCEPTIONS.—

''(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—

''(A) is not a security-based swap dealer or major security-based swap participant; and

''(B) is using security-based swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

''(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

''(2) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

''(3) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion the counterparty to the swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).''.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

''(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

''(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

''(i) EXISTING BANKS AND DERIVATIVES CLEARING ORGANIZATIONS.—A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

''(j) REPORTING.—

''(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

''(k) DESIGNATION OF COMPLIANCE OFFICER.—

''(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

''(2) DUTIES.—The compliance officer shall—

''(A) report directly to the board or to the senior officer of the clearing agency;

''(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

''(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

''(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

''(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(l) STANDARDS FOR CLEARING AGENCIES CLEARING SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in

establishing the manner in which it complies with any such standards.

''(m) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.

''(n) EXEMPTIONS.—

''(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

''(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.''.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

''(a) EXECUTION TRANSPARENCY.—

''(1) REQUIREMENT.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.

''(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a security-based swap if no national securities exchange or swap execution facility makes the security-based swap available for trading.

''(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of paragraph (1).

''(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges of contracts, agreements, or transactions that would be swaps but for the trading of such contracts, agreements or transactions on such a national securities exchange.''.

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding after section 3B (as added by subsection (a)) the following:

''SEC. 3C. SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as a swap execution facility under this section.

''(b) REQUIREMENTS FOR TRADING.—

''(1) IN GENERAL.—A swap execution facility that is registered under subsection (a) may list for trading any security-based swap.

''(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a security-based swap to be traded through the facilities of an exchange or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a security-based swap, notwithstanding section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.

''(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

''(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

''(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

''(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

''(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

''(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

''(i) provide market participants with impartial access to the market; and

''(ii) capture information that may be used in establishing whether rule violations have occurred.

''(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING.—The swap execution facility shall—

''(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

''(B) monitor trading in 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) ABILITY TO OBTAIN INFORMATION.—The 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 Commission upon request; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps pursuant to section 3B.

''(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

''(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

''(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related 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 report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

''(10) CONFLICTS OF INTEREST.—The 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.

''(11) FINANCIAL RESOURCES.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.

''(12) SYSTEM SAFEGUARDS.—The 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 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 swap execution facility's responsibilities and obligation; 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.

''(13) DESIGNATION OF COMPLIANCE OFFICER.—

''(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

''(B) DUTIES.—The compliance officer—

''(i) shall report directly to the board or to the senior officer of the facility; and

''(ii) shall—

''(I) review compliance with the core principles in section 3B(e).

''(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

''(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

''(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

''(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints and to establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

''(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

''(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

''(f) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.''.

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b) the following:

''SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

''(a) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a derivatives clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a security-based swap counterparty is a security-based swap dealer or major security-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the security-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

''(b) FURTHER AUDIT REPORTING.—If a security-based swap dealer does not segregate funds pursuant to the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''.

(f) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(l) 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).''.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

''(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 security-based swap involving the security or the issuer of the security; or

''(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 security-based swap; or

''(3) any transaction in any security for the account of any person who he has reason to believe has, and who 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 security-based swap involving such security or the issuer of such security.''.

(h) 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 by adding at the end the following:

''(i) 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 the purposes of this paragraph, by rules and regulations 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.''.

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

''SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

''(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

''(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

''(2) any security-based swap and (A) 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 as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

''(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

''(c) SRO RULES.—

''(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

''(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

''(i) any member of such self-regulatory organization; or

''(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

''(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (c)(1)(A).

''(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

''(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

''(B)(i) any security-based swap; and

''(ii) any security-based swap and any other instrument relating to the same security or group or index of securities.

''(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or

loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.''.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) clearing agencies pursuant to section 3A;

''(B) security-based swap repositories pursuant to subsection (n); and

''(C) reports received by the Commission pursuant to section 13A.

''(n) SECURITY-BASED SWAP REPOSITORIES.—

''(1) REGISTRATION REQUIREMENT.—

''(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

''(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

''(2) STANDARD SETTING.—

''(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

''(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

''(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

''(3) DUTIES.—A security-based swap repository shall—

''(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

''(B) maintain such data in such form and manner and for such period as may be required by the Commission;

''(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

''(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

''(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.''.

SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

''SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

''(a) REGISTRATION.—

''(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

''(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

''(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

''(4) RULES.—Except as provided in subsections (c) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.

''(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

''(c) RULES.—

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.

''(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

''(d) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that—

''(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

''(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

''(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

''(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

''(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

''(2) RULES.—

''(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

''(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

''(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a broker or dealer registered in accordance with section 15 of this Act.

''(e) REPORTING AND RECORDKEEPING.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

''(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

''(B) for which—

''(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

''(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

''(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

''(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

''(f) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

''(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

''(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

''(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

''(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

''(g) BUSINESS CONDUCT STANDARDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

''(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

''(B) diligent supervision of its business as a security-based swap dealer;

''(C) adherence to all applicable position limits; and

''(D) such other matters as the Commission shall determine to be necessary or appropriate.

''(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

''(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

''(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:

''(i) information about the material risks and characteristics of the security-based swap;

''(ii) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency, and for non-cleared security-based swaps, upon request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

''(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

''(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

''(h) DOCUMENTATION STANDARDS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

''(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.

''(i) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

''(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

''(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

''(A) terms and conditions of its security-based swaps;

''(B) security-based swap trading operations, mechanisms, and practices;

''(C) financial integrity protections relating to security-based swaps; and

''(D) other information relevant to its trading in security-based swaps.

''(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

''(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

''(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

''(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

''(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(B) address such other issues as the Commission determines appropriate.

''(j) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

''(k) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) PRIMARY ENFORCEMENT AUTHORITY.—

''(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

''(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

''(C) REFERRAL.—

''(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a violation of the prudential requirements of section

15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

''(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

''(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

''(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

''(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

''(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

''(4) UNLAWFUL CONDUCT.—It shall be unlawful—

''(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

''(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.''.

SEC. 3205. REPORTING AND RECORDKEEPING.

(a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

''SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

''(a) IN GENERAL.—Any person who enters into a security-based swap and—

''(1) did not clear the security-based swap in accordance with section 3A; and

''(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

''(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).''.

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and'' after ''Alaska Native Claims Settlement Act,''; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule'' after ''subsection (d)(1) of this section''.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule,'' after ''subsection (d)(1) of this section''.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(2) in subparagraph (F), by adding '', or security-based swap dealer, or a major security-based swap participant'' after ''or dealer''.

(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.''.

SEC. 3206. 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) 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 one or more actions, a total amount in excess of his actual damages 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. 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 (1) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel 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, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based

swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.''.

SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) 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 is referenced, 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

(3) by adding at the end the following:

''(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) 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, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

''(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.''.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

''(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).''.

SEC. 3208. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3209. JURISDICTION.

(a) Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

''(c) DERIVATIVES.—The Commission shall not grant exemptions from the security-based swap provisions of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.''.

(b) Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:

''(c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.''.

SEC. 3210. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.

Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability

SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.

(a) INCLUSION IN CERTAIN DEFINITIONS.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking ''or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;'' and inserting ''the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;''; and

(2) in paragraph (2), by striking ''or the Commissions established under section 15301 of title 40, United States Code,'' and inserting ''the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency,''.

(b) EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking ''the Board of Governors of the Federal Reserve System,'';

(2) by striking ''the Commodity Futures Trading Commission,'';

(3) by striking ''the National Credit Union Administration,''; and

(4) by striking ''the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,''.

SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO PERSONNEL.

(a) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8L the following:

''SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ESTABLISHMENTS.

''(a) DEFINITION.—For purposes of this section, the term 'covered establishment' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.

''(b) PROVISIONS RELATING TO ALL COVERED ESTABLISHMENTS.—

''(1) PROVISIONS RELATING TO INSPECTORS GENERAL.—In the case of the Inspector General of a covered establishment, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110–409) shall apply in the same manner as if such covered establishment were a designated Federal entity under section 8G. An Inspector General who is subject to the preceding sentence shall not be subject to section 3(e).

''(2) PROVISIONS RELATING TO OTHER PERSONNEL.—Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.

''(c) PROVISION RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.

SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.

(a) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect 30 days after the date of the enactment of this subtitle.

(b) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission on the effective date of this subtitle pursuant to an appointment made under section

8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and

(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike ''a designated Federal entity'' and insert ''an establishment''.

In the table of contents, strike the items relating to title III, subtitles A, B, and C of title III, and sections 3001 through 3304 and insert the following:

The Acting CHAIR. Pursuant to House Resolution 964 the gentleman from Minnesota (Mr. PETERSON) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Minnesota.

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

I rise today in support of the Peterson-Frank amendment to H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

Madam Chair, while much of the attention of this financial reform package is focused on the mortgage and credit crisis of last year, this amendment is the product of years of public debate about the regulation of derivatives markets in the United States.

It began with the price volatility we saw in energy futures markets, first with natural gas, then for crude oil. We examined in our committee the influx of new kinds of traders in these markets, like hedge funds and index funds. We looked at the relationship between what was occurring on the regulated markets and the even larger unregulated, over-the-counter market. More aptly, this probably should have been called the under-the-counter market because trillions of dollars in transactions affecting commodity prices were being conducted out of sight and out of reach of market regulators.

Last year, the House of Representatives responded, approving bipartisan legislation to give the Commodity Futures Trading Commission greater authority over these ''dark markets'' in an attempt to restore the price discovery and hedging utility of unregulated markets. Unfortunately, it was only after the House passed this bill that we learned the real consequences of what can happen in unregulated markets with the near collapse of our financial system.

As Warren Buffett correctly pointed out in his 2003 annual letter to shareholders, the large amount of credit risk concentrated in the hands of the relatively few meant that ''the troubles of one could quickly infect the others.'' Last year's collapse proved him right.

Madam Chair, the House Agriculture Committee acted very early on this year to get a handle on these swaps and minimize the very real systemic risk to the economy that they posed. A key part of that legislation was a requirement that swap contracts be cleared.

The clearing requirement has served the futures market well for decades. It increases transparency and effectively manages risk, not just for the public, but for all participants in the market.

Equally important, Madam Chair, our committee said that exemptions to the clearing requirement should be available because not every swap is appropriate for clearing and not every market participant should have to bear the burdens of clearing.

These two key principles of required clearing and exemptions are carried over from that previous work from our committee and are expanded upon in the Peterson-Frank amendment.

Madam Chair, our target for greater regulation and oversight is not the end user but their swap dealer or major swap participant counterparty. End users did not get a bailout of billions of dollars. End users are not responsible for what happened in the markets last year.

Under this amendment, swaps will be centrally cleared if a clearinghouse will accept the transaction and when regulators determine clearing is necessary. Cleared, listed swaps must be traded on an exchange or registered swap execution facility. And all swap trades must be reported, with counterparties adhering to recordkeeping and reporting requirements.

This amendment will hold swap dealers like large financial institutions accountable to new standards for capital, margin, business conduct and other requirements to reduce their ability to again place our financial system in such dire straits.

In addition, Madam Chair, this amendment contains many strong provisions regarding market transparency and makes progress solving some of the jurisdictional issues that have plagued financial regulation in the past. The amendment strengthens confidence in trader position limits on physically deliverable commodities as a way to prevent excessive speculation trading. And it will call for international harmonization by requiring foreign boards of trade to share trading data and adopt speculative position limits on contracts that trade U.S. commodities similar to U.S.-regulated exchanges.

Madam Chair, we have come a long way to get here. The situation I described earlier with AIG might make you wonder if we could have ever allowed such a reckless trading environment to have existed and that those involved would have learned their lesson. But believe it or not, the big banks on

Wall Street don't think that they did anything wrong. In fact, they'd like to keep doing what they've been doing. They already got their bailout, and they wouldn't mind topping it off by avoiding any new regulation or oversight. To me, that is an unacceptable outcome.

I urge my colleagues to approve the Peterson-Frank amendment to finally bring real accountability and oversight to the over-the-counter derivatives market.

Could I ask how much time I have remaining?

The Acting CHAIR. The gentleman has 11½ minutes remaining.

Mr. PETERSON. I reserve the balance of my time.

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

The Acting CHAIR. The gentleman is recognized for 15 minutes.

Mr. GARRETT of New Jersey. I yield myself 2 minutes.

Madam Chair, if there is anything that the last few months have taught us, it is the American people telling us that we don't need more government to overreach in big government solutions when targeted reforms are more appropriate and effective.

When thinking about how to draft a legislative response to the recent financial crisis in regards to this issue of derivatives, we must ask ourselves one seminal question: What are we actually trying to resolve here. The vast majority of the OTC derivative marketplace had absolutely nothing to do with the crisis. It provides critically important risk management tools for virtually all large companies and many small- and medium-sized companies as well.

When you think about the AIG situation, even the problem there with the derivatives had much more to do with the extremely bad bets on the housing market along with failed prudential regulators who were supposed to be overseeing them than they had anything specifically to do with the derivatives themselves.

So quite honestly, Madam Chair, we don't think it's appropriate to set up a truly cumbersome and Byzantine dual regulatory regime that would require the CFTC and the SEC, two entities that have not shown the ability to cooperate in the past, that they have two very different missions and reasons for being to approach very different marketplaces and derivatives and to do so now in the same manner.

The Democrats' underlying bill sets these two entities up to perform as prudential regulators, setting capital requirements, margins, and other prudential requirements when they were never envisioned to play this role. When you think about this, also, the SEC has failed miserably as a prudential regulator when it tried to do the consolidated regulator for investment banks.

The proposal contains in the underlying bill an overly broad definition, new capital and margin requirements and broad authority for regulators to determine which transactions are standardized and subject to mandatory clearing and exchange trading.

These are unnecessary government burdens that could impair the usefulness of derivatives as an innovative risk management tool, thereby increasing the exposure to the marketplace and the participants in them, which all gets to the last point.

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

Mr. GARRETT of New Jersey. I will yield myself 15 more seconds to make the final point.

All of these points in the underlying bill will lead to one thing: a loss of credit and therefore a loss of jobs in America today and in the future as well. The American people have spoken loud and strong: Do not pass any legislation that is going to create hardships for the creation of jobs in this country, and this underlying legislation with its language on derivatives would do just that.

With that, I yield such time as he may consume to the gentleman from Oklahoma (Mr. LUCAS).

□ 1830

Mr. LUCAS. I thank the gentleman.

Madam Chairwoman, I rise in support of the Peterson-Frank amendment. It represents a year-long attempt to balance the needs for stronger regulation and a need to manage legitimate financial risk.

Under this amendment, end users will not be regulated as though they were a major financial house residing on Wall Street. They are not systematically risky, they did not cause the financial collapse, and they should not be regulated as if they did.

Not all concerns, however, have been resolved. And I would have preferred language that would have made clear only those that can cause a significant, adverse impact on the U.S. financial system to be regulated as major swap participants.

For that purpose, I am supporting Congressman MURPHY's amendment that we will see shortly to cure that deficiency.

Similarly, I don't understand why market makers that only deal in cleared products need to have additional capital and margin requirements imposed on them by the Federal Government.

Instead, this amendment allows the appropriate financial regulator to more closely monitor the markets and those that may accumulate or generate too much risk for a healthy and robust financial system. It then gives the regulators the appropriate tools to reduce the risk before it can negatively affect our economy.

I have other concerns about this amendment. I am sure we would all do things differently if we could. This amendment isn't perfect, but it is a marked improvement over other legislative efforts either proposed or considered. This amendment is worthy of our support.

Now I will also admit, unfortunately, all of the hard work that went into the creation of this amendment may very well be overwhelmed by the massive overreach of the rest of the bill, but we should vote for and support this amendment.

The Acting CHAIR. As a reminder from the Chair, the gentleman from Minnesota has 10½ minutes remaining.

Mr. PETERSON. Madam Chair, I'm now pleased to recognize the gentleman from Iowa, the chairman of the General Farm Commodities and Risk Management Subcommittee that deals with this issue and is a leader on this issue for us on the Agriculture Committee, Mr. BOSWELL, for 3 minutes.

(Mr. BOSWELL asked and was given permission to revise and extend his remarks.)

Mr. BOSWELL. I first have to say on opening to Mr. GARRETT, my friend across the aisle, you often say that we don't need more government. Well, maybe so, if under the previous administration and our friends, that you would have done the job that we have to try to do cleanup on now.

I would like to personally thank Chairman PETERSON for his leadership in bringing oversight to the over-the-counter derivatives markets.

For too long, regulators did not have the tools necessary to police these markets. As a consequence, large financial institutions like Bear Stearns, Lehman Brothers, and AIG got into trouble before anyone knew it. Had these provisions been in place, the government would not have had to spend billions to rescue AIG to prevent its collapse from sending shock waves throughout the financial system.

The compromise which the Agriculture and Financial Services Committees reached will bring greater transparency and oversight to the over-the-counter derivatives markets. We must provide necessary oversight of these markets without hindering legitimate consumers from operating within them.

This compromise strikes a careful balance that protects the use of derivatives by so-called ''end users'' who utilize these markets to hedge the cost of their operations. Whether dealing with grain, energy, steel, or financing, American companies use derivatives to lock in prices to effectively plan for the future.

When the Agriculture Committee first considered the regulation of over-the-counter derivatives markets, I offered an amendment to require mandatory clearing. And I'm pleased to see that this compromise, which the chairman will be offering today, maintains this concept.

Clearing exposes and mutualizes the counterparty credit risk which, up until now, has been hidden behind closed doors. While every derivative does not need to be cleared, the compromise will ensure that regulators

look at all derivatives to identify what classes should require clearance.

The notional value of the over-the-counter derivatives markets ranges from $400 to $600 trillion. To allow something this massive that impacts every American to continue to operate unregulated is simply not acceptable. This legislation will strike a good balance of consumer protection without obstructing individuals and companies from conducting their business and managing their risk.

I urge support for this amendment.

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

I appreciate the underlying amendment that we're discussing here right now. Let me just point out that the Republicans have submitted a substitute to address this overall issue. Republicans, however, have done so in a targeted approach addressing actual problems, and it's really the more sensible approach to the whole derivative reform issue.

The centerpiece of the Republican alternative is something also found in the chairman's bill, which is a trade repository where all OTC trades would be required to be reported to. The repository then will provide valuable transparency, something we are all trying to achieve, to the entire OTC marketplace and will give the regulators the ability to analyze the appropriate data for their purposes as well as provide aggregated data to the broader marketplace.

We don't set up a Byzantine regulatory regime over the many market participants. While we don't do that because we don't preassume, without any relevant supporting data, that these entities needed to be micromanaged in this manner, we do require that the regulators review the data and regularly report back to Congress if an entity who is not already regulated by a prudential regulator, whether they should be more heavily regulated due to its size or its scope or its activities in the OTC marketplace.

So the Republican substitute does not have broad requirements for mandatory clearing, but it does codify the commitments that the private sector has already made. And they have done so working responsibly and cooperatively with the appropriate regulators, and they do so to engage in an ever more and greater amounts of central clearing now and into the future as well.

But when you think about it, these changes all take time. And they need to be done in a responsible manner. If you were going to force central clearing through some sort of central counterparties and have adequate counterparties for risk they are unfamiliar with, it could exacerbate the systemic risk.

So central clearing should be opened up over time to as many participants as possible, again, in a responsible manner so as not to do more harm than good, which is what we are all trying to achieve at the end of the day with the amendments and otherwise.

We also require margin requirements between dealers and major market participants, and that would address a major issue with the AIG-related problems that I discussed earlier.

In regards to the capital requirements, prudential regulators—look at them for a moment. Prudential regulators are really required by our substitute to take the swap activities of supervised entities into account when setting capital requirements for those entities. Let me step back for a minute and say that again.

What you're basically saying here in the AIG situation is what we should have had occur there is prudential regulators should have been looking at those swap requirements when they set the capital requirements over at AIG or other like situations. But again, it is not appropriate to set these bank-like cap requirements on nonfinancial entities, so our Republican substitute would not do so.

Finally, we generally agree with the overall chairman's regard to segregating——

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

Mr. GARRETT of New Jersey. I yield myself 30 additional seconds.

Finally, we agree with the chairman in regards to segregating margin for OTC swaps, although we exempt various margining for segregation requirements based on input from both the buy and the sell side.

Margins should be treated as such, especially if a dealer's counterparty wishes it to be so, and should not be commingled with the dealer's funds. Many of the problems associated with the Lehman bankruptcy, I am told and I understand, are related to this very issue. And so requiring margin segregation, we believe, would be an appropriate response to that issue and that problem and would solve it for the future.

I reserve the balance of my time.

Mr. PETERSON. Madam Chair, I'm pleased to yield 2 minutes to the gentlewoman from Illinois (Ms. BEAN).

Ms. BEAN. I want to thank Chairmen FRANK and PETERSON of both committees and the committees for their diligent efforts on derivatives reform and appreciate the conciliatory and open nature in which we have worked on this piece of legislation.

I have the honor to serve as the vice Chair of the New Dem Coalition and co-Chair of the New Dem Financial Services Task Force, and derivatives reform is an area where New Dems have worked diligently with both committees of jurisdiction.

I want to specifically recognize the hard work of MIKE MCMAHON, who drafted the New Dem derivatives bill in July, and recognize JIM HIMES and SCOTT MURPHY, whose private sector experience and perspective was so constructive. The New Dems, our caucus and our country, have benefited greatly from their thoughtful and knowledgeable insights.

Lacking and lagging regulation of OTC derivatives was a major contributing factor to last year's crisis, including the highly leveraged credit default swaps at AIG that prompted government intervention. For the first time, we are going to regulate the over-the-counter derivatives market, which is a multitrillion dollar unregulated market.

This amendment brings necessary transparency by requiring that all derivatives will be exchanged, traded, cleared, or reported, and it gives regulators the tools they need to effectively oversee this industry.

□ 1840

This amendment and underlying bill attempts to strike the right balance that will bring transparency and accountability to the derivatives market while preserving the ability of end user businesses to legitimately hedge their risk in order to protect their businesses.

We are taking an important step today in moving forward with strong regulatory reform legislation that will better protect our financial system, our economy, and the American taxpayers.

To my colleague across the aisle who suggested that the underlying bill would create a loss of credit or jobs, I would question whether he's been paying attention to the loss of jobs and credit following the financial crisis last year.

I urge my colleagues on both sides of the aisle to support this amendment and the underlying bill.

Mr. PETERSON. Madam Chair, I yield 3 minutes to the gentleman from Connecticut (Mr. HIMES).

Mr. HIMES. I thank Chairman PETERSON for his leadership on the bill and Chairman FRANK for his good work on this terribly important work that we now do to try to restore a sense of faith and trust in the financial system, which American companies and families rely on for the credit that allows them to create jobs and offer employment.

One of the least understood portions of this bill, Madam Chair, but one of the most important is the work that has been done on derivatives, instruments that allow our farmers to get rid of the risk of future soybean prices if they don't want to bear those risks, that allow our exporters to get rid of currency risk that they don't want to bear, but instruments that, despite the comments of my good friend from New Jersey, were very, very much at the core of the financial meltdown that we have seen and are now living through.

My friend seems to forget three letters: AIG. He forgets that that great enemy of American capitalism, that wild-eyed critic of markets, Warren Buffett, called credit default swaps ''weapons of financial mass destruction.'' And in reviewing some of these, he said these must have been contracts that were devised by madmen. This is Warren Buffett.

The Democratic amendment would do several market-friendly things. One, it would say that these contracts will trade in the light of day, that they will clear in clearinghouses. This is an idea that is thousands of years old, Economics 101. Markets are healthier if we know who is selling what to whom and for what price, if we can see who is taking on what risk, something that if the market had known in the AIG experience, we might have been saved the awful spectacle of taxpayer dollars being injected into private companies. The Democratic amendment says it will trade in the light of day. That is not a radical, heavy-handed, Byzantine, or cumbersome idea; it's plain good market economics.

The Democratic amendment would say that if you take big bets, we're going to make sure you've got the capital to make good on those bets. Again not a terribly radical idea. But if you are going to insure somebody, we will make sure you've got the capital to make good on the insurance that you have sold.

Lastly and importantly, a derivative contract always involves somebody getting rid of risk, that farmer, that company. We protect those end users and say you will not be subject to regulation. But the people who buy that risk, the financial entities that brought us to this place, will be subject to oversight.

So, my colleagues, this is a good, smart, market-friendly amendment, and I urge its passage and support.

Mr. PETERSON. Madam Chair, our committee has spent a lot of time on this, and I want to thank all the Members for the many, many hours that they put in working on this, also the members of the banking committee. I also want to especially thank my ranking member, Mr. LUCAS, and his staff, Kevin Kramp, Bill O'Conner, and Josh Mathis, for engaging with us in a cooperative process to bring this together.

I want to thank Chairman FRANK and his staff, Peter Roberson and Luranne Stewart, for working with us in a spirit of compromise that allowed us to reach an agreement in a relatively short amount of time. And I want to thank Ranking Member BACHUS and his staff, Kevin Edgar and Jason Spence, who, despite their concerns with the legislation, were willing to thoughtfully contribute to our discussions. So we appreciate that.

Finally, I want to thank my own staff, Andy Baker, Rebekah Solem, Matt Forbes, and Clark Ogilvie, for their hard work and long hours to bring this amendment to fruition.

This is a good amendment and I encourage Members to adopt it.

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

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 30 seconds.

I rise once again to point out that the underlying legislation was misdirected by setting up a Byzantine process and addressed a problem that really was not the underlying cause of the financial situation we have today.

I will also point out before I yield to the ranking member that the amendment that's before us today, it does one thing that's better than the underlying bill, which is to say that there should not be a margin requirement on end users, which is better in the sense that they will not have to post those, which will maybe address the issue of overall job creation in the future.

But I will close on this point: The underlying bill is still problematical to the larger issue of saying that if you create a system like this and address a problem of the OTC market in such a Byzantine manner and create additional burdens on it than are unnecessary, we will create fewer jobs in the future.

Madam Chair, I yield the balance of my time to the gentleman from Alabama (Mr. BACHUS), the ranking member.

Mr. BACHUS. Madam Chair, although I'm not opposed to the amendment as such, I am opposed to what the underlying bill does.

Chairman PETERSON and I think most on our side have a disagreement with that underlying regulation. Unfortunately, the amendment is a step in the right direction, but we feel like even with the amendment substituting the original language that we still have our objections, and it's those objections I wish to speak on. Although we don't, or at least I don't personally, plan to oppose the amendment itself, as the gentleman from Oklahoma said, we do believe that it is some improvement.

But the regulation of the derivatives market created in the underlying legislation we think creates unnecessarily burdensome requirements on thousands of American companies that have used derivatives to manage price fluctuations and hedge against business risk, and they've done that successfully and safely.

The underlying legislation, even with this amendment in it, is going to empower our government regulators to institute what appears to be a fairly complex and sweeping new regulatory regime to govern, as I said, a sector of the marketplace that has functioned well and I think helped most American companies and has not contributed to the financial crisis but actually helped moderate it. And I think the derivatives market has allowed companies in many cases to insulate themselves from uncertain market conditions.

Several in the majority have alluded to the failure of Lehman Brothers as a reason for the needed reform of the over-the-counter derivatives market. And we do propose some reform, and I'm going to discuss those in a minute. The gentleman from New Jersey also discussed them. So there are some points on which we do agree with Chairman PETERSON and even Chairman FRANK.

□ 1850

But Lehman, I don't believe, can be used as an excuse to inject the government into a derivatives market that is used primarily by thousands of small and medium size and even large companies to hedge against business risk, and as I've said, have done that safely.

The reality is that Lehman's portfolio, including its derivatives positions, without any government assistance was unwound with relative ease. It was unwound. The real problem with Lehman's derivative business was the lack of segregation of collateral, a problem that is addressed by our Republican substitute.

The comprehensive Republican substitute we plan to offer provides a commonsense approach to oversight of the over-the-counter derivatives marketplace without what we consider an excessive overreach by the Federal Government and its regulators into the capital market, a theme that, unfortunately, we think is being repeated many times in this legislation.

The substitute promotes strong transparency of over-the-counter derivatives activities conducted by all market participants. It also addresses the two derivative problems identified by the majority and the administration, and that was AIG and Lehman. The isolated behavior of these two large corporations and a few others like them was, as I said, an isolated behavior, and that type of behavior would be detected under the Republican substitute, the trading activity and positions they took.

The Republican substitute also holds dealers accountable to improve operational inefficiencies with the over-the-counter derivatives marketplace, provides vital transactional information to regulators on a real-time basis, and ensures the Treasury Department cannot become a de facto regulator. Additionally, our substitute does not punish those Main Street end users of derivatives.

Finally, in conclusion, our substitute addresses another need in the derivative marketplace, which is to provide timely and accurate information to market participants and regulators in order to ensure market transparency.

Madam Chair, we have to curb abuses of the past and promote responsible approaches to oversee the use of over-the-counter derivatives. We all agree on that. However, we believe the underlying bill, even with this amendment, is fundamentally the wrong approach and is a very expensive way to address the problem.

So I urge my colleagues, even though we don't oppose this amendment, to oppose the underlying legislation. And this is just one more reason, and that is that we increase the cost of any end user of derivatives. As we said last night, John Deere said it would cost them about $1 billion. Cargill said that they probably wouldn't complete a new facility in Kansas City if we impose these costs.

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

The question is on the amendment offered by the gentleman from Minnesota (Mr. PETERSON).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. PETERSON

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in House Report 111–370.

Mr. PETERSON. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. PETERSON:

At the end of title III, insert the following new section:

SEC. _____. AUTHORITY OF THE COMMODITY FUTURES TRADING COMMISSION TO DEFINE "COMMERCIAL RISK", "OPERATING RISK", AND "BALANCE SHEET RISK".

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the preceding provisions of this Act, is amended by adding at the end the following:

''(51) COMMERCIAL RISK; OPERATING RISK; BALANCE SHEET RISK.—The terms 'commercial risk', 'operating risk', and 'balance sheet risk' shall have such meanings as the Commission may prescribe.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in subtitle A.

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

The Chair recognizes the gentleman from Minnesota.

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

This amendment puts forth a process where we can obtain some clarity regarding limited exception to clearing requirements. Specifically, it requires the CFTC to define the terms ''commercial risk,'' ''operating risk,'' and ''balance sheet risk,'' which are used in the statute to define what types of risk a company may hedge and remain eligible for limited exception to clearing.

I understand how some could be concerned that balance sheet risk could be interpreted more broadly to encompass financial risk, but not commercial risk. That is why I introduced this amendment directing the regulator to define these terms.

By providing for the agency to define these terms, the burden will be placed upon them to ensure the companies seeking the limited exception to the clearing requirement do not abuse that exception. And if we think the CFTC gets it wrong, between the Agriculture Committee and the Agriculture appropriations subcommittee, we have lots of opportunities to haul them up here and show them the error of their ways.

This amendment is supported by the Commodity Markets Oversight Coalition and many other groups. I urge my colleagues to adopt the amendment.

Madam Chair, I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I rise to claim time in opposition, although I am not opposed to the amendment.

The Acting CHAIR. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. GARRETT of New Jersey. I yield myself such time as I may consume.

I appreciate the work of the chairman with regard to clarifying some of the definitions here. I think this goes to the overall issue of the complexity of the issues that are before the House tonight on this matter and on the broader matter of the derivative regulations that we are discussing with the previous amendment and this amendment as well. It goes to the point that I raised just a moment ago in my previous remarks, that if we are going to try to answer to the American public to the three most important questions that they are asking of Congress—no more bailouts, no more legislation that destroys jobs, and no more expansive, larger and spending government—we have to look to what we're doing in the derivative area as well.

In the derivative area that we see in the underlying legislation, what we have done is create a Byzantine piece of regulation combining the two, working with two entities that have never worked together in the past before, setting in the underlying legislation margin requirements that potentially end users—although I recognize the previous amendment just addressed that point—margin requirements on them which basically, at the end of the day, if we think about it in basically simple terms, means it will be more costly in this country to do business. It will be more difficult for entities to hedge their risk. And if businesses can't hedge their risk, the other fundamental purpose of this legislation that we hear from the other side to end the idea of systemic risk will be thwarted as well.

So think about that. We will be thwarting one of the basic functions that they say is the underlying legislation to end systemic risk because we cause hardship on companies to hedge their risk on the one end, and not addressing one of the major problems this country is faced with today, high unemployment. We must do a better job than that.

As I stated before, Republicans have offered a better solution to all of those issues. We have offered a solution with regard to the bailouts, to end taxpayer-funded bailouts. We have offered a solution to end the prospects of less jobs in this country. And we offered a solution respectively to the whole derivative market, as I set forth before. The centerpiece of that solution is something that was actually found in the chairman's bill, and that was the repository idea. We can get all the transparency that we need right now through a trade repository where the OTC trades are reported. We can get the accountability and the transparency that the American public looks for as well through the initiatives that are in the Republican substitute. But we can do so in a manner, therefore, that will not impose additional risk or cumbersomeness or a Byzantine structure, and therefore not affect the hedging abilities or the cost of doing business of companies in this country. We can do so in a manner that will not hurt the creation of jobs.

When you think about it, we will have probably discussed three different areas, three different titles of this bill that actually will be hurting jobs. What are they? We haven't talked about the first one too much, CFPA, the Consumer Financial Products Agency. It has already been documented that that will cost literally a million jobs. The wind-down authority, we have already talked about that previously, that will also cost jobs. And here, if you do not handle the derivative situation correctly, that potentially can cause job loss in this country as well. We suggest that the Republican substitute should be considered in this area as in other areas as well.

With that, I reserve the balance of my time and commend the gentleman for his work on the underlying amendment that we have here before us today.

□ 1900

Mr. PETERSON. Madam Chair, I yield 1 minute to the distinguished chairman of the Financial Services Committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Chair, working with the chairman of the Agriculture Committee has been very constructive, and we have enjoyed that working relationship, and I am very proud that our committees have avoided the kind of jurisdictional disputes that too often plague this place.

We have a couple of issues here: One, should there be an end user exemption, et cetera? Two, whether you agree or not, it certainly shouldn't be one that could be manipulated. So this is to make sure that this is there.

Finally, I do want to respond to the gentleman from New Jersey. Apparently, they discovered that jobs are being lost. In fact, the reason that jobs are being lost now and were being lost at an even greater rate last year is the economic disaster that came from a lack of regulation. So the argument that by putting in place regulations that will prevent the enormous economic disaster, which officially began with the recession in 2007, will somehow cause job loss is bizarre-o-world. Job loss was brought about by the lack of regulation, which we are trying to correct.

It is true that the Republican position is: Leave business alone. Let them continue to do whatever they think is right. Don't have any regulation.

That's how we got into this mess.

Mr. PETERSON. Madam Chair, I have no further speakers, so I yield back the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 1½ minutes, the balance of my time.

The American public, quite honestly, if they watch what goes on tonight and have watched in the days before and after, really are not looking for anyone to be pointing fingers of blame at this administration or at the last administration. This should not be a partisan issue. The other side always wants to point back several years to the Bush administration.

We could point back that it was the Democrat majority for 2007, 2008 and now 2009 that has been running this House and that, during that time, we have seen the catastrophe in the financial markets, and that it was during their tenure that we saw the catastrophe of unemployment soaring through the roof. Yet pointing fingers at the Democrats and at the fact that they have done the job that they have done and that we have seen the results of their legislation over the last 3 years will not solve the problem.

What we need to do, however, is pass legislation that will end the pattern of elimination of jobs, that will end the pattern of the bailout mentality, that will end the pattern of expansive government. That's why we come here tonight to offer Republican solutions to a lot of these things, and it's why we ask the majority party to consider some of those proposals as we go forward.

I yield back the balance of my time.

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

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MR. LYNCH

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in House Report 111–370.

Mr. LYNCH. Good evening, Madam Chair. I believe I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. LYNCH:

At the end of title III, insert the following new section:

SEC. _____. CONFLICTS OF INTEREST IN CLEARING ORGANIZATIONS.

(a) COMMODITY EXCHANGE ACT.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

''(51) RESTRICTED OWNER.—The term 'restricted owner' means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.''.

(2) CONFLICTS OF INTEREST.—

(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end of such subparagraph the following: ''The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.''.

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended—

(i) by striking ''and'' at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:

''(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and''.

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

''(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

''(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.''.

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

''(15) CONFLICTS OF INTEREST.—

''(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

''(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

''(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

''(78) RESTRICTED OWNER.—The term 'restricted owner' has the same meaning as in section 1a(51) of the Commodity Exchange Act.''.

(2) CONFLICTS OF INTEREST.—

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

''The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.''.

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended—

(i) in subparagraph (C), strike ''and''; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

''(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and''.

(C) Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

''(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

''(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

''(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.''.

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

''(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

''(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.''.

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

The Chair now recognizes the gentleman from Massachusetts.

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

Madam Chair, firstly, I would like to thank Chairman FRANK, Chairman PETERSON and also Chairman WAXMAN for their great work on this bill, and I want to thank those three chairmen for supporting this amendment.

My amendment addresses a fundamental problem in the derivatives industry, and it seeks to close a gap in the underlying legislation.

Madam Chair, what many Members of Congress and the public don't realize is that the U.S. derivatives market is about $605 trillion, which is more than five times the value of the stocks traded on the New York Stock Exchange.

More important than simply the scale of the derivatives industry is the fact that, according to the Comptroller of the Currency, a total of 97 percent of the derivatives trading in this country is controlled by just five banks. So it's a near monopoly. Four of those five banks were top recipients. During their recent financial meltdown, these same banks engaged in very risky behavior involving complex derivatives, which endangered the entire financial system. They had to be bailed out by the taxpayers. As a result of all of these banks—Citigroup, Bank of America, Goldman Sachs, JPMorgan, and Morgan Stanley—as well as major swap participants, such as AIG, they received $200 billion in taxpayer money.

The Wall Street Reform and Consumer Protection Act attempts to prevent that from happening again. The bill would require over-the-counter trading to be conducted through clearinghouses, which are set up to police derivatives trading and to make sure there is sufficient protection from the reckless behavior that these ''too big to fail'' banks have engaged in. Clearinghouses are a good idea. Think of them as financial police stations. That's the function they are intended to serve. Some describe them as a blast wall that will prevent the failure of a derivatives deal from impacting the real economy.

However, the problem is—and in my view, this is a huge problem with the bill—the bill would allow these same big banks to purchase the clearinghouses that are being created to police the big banks in their derivatives trading. The big banks would be allowed to own and control the clearinghouses and to set the rules for how their own derivatives deals are handled.

My amendment would prevent those big banks and major swap participants, like AIG, from taking over the police station—these new clearinghouses. It would do so by limiting to a 20 percent voting stake the ownership interest in those banks and the governance of the clearing and trading facilities. Essentially, by providing entry to the market, it would introduce competing commercial interests to bring competition and transparency to the derivatives industry and to keep those banks honest.

At this time, I reserve the balance of my time.

Mr. GARRETT of New Jersey. I rise and seek to claim the time in opposition.

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

Mr. GARRETT of New Jersey. Madam Chair, I yield 2 minutes to the gentleman from New York (Mr. MCMAHON).

Mr. MCMAHON. I thank the gentleman from New Jersey.

Madam Chair, I rise in opposition to this amendment and in support of the underlying legislation. I commend the work of Chairman FRANK, of Chairman PETERSON, and of all involved, and I commend also the work of the gentleman from Massachusetts, who is a great friend and colleague, although I disagree with him on this amendment.

This legislation is trying to minimize systemic risk, but the amendment will increase it, so I speak in opposition to it.

By limiting to 20 percent the total combined, collective ownership of clearinghouses, exchanges and execution facilities, it will limit what facilities can ultimately clear trades. Less choice. Not more choice.

The way to deal with concerns about conflicts of interest are through changes in governance, not through restricting ownership and investments. By concentrating the derivative trading market share in the hands of a very few inevitably large institutions, we are more likely to be creating systemic risk than we are to be mitigating it. Virtually all clearinghouses and exchanges are jointly owned, in which their vast majority of investors are swap participants.

The underlying bill grants regulators the strongest authority to police the markets and to enforce capital standards. Support the strong standards in this bill. Support the regulations and transparency in this bill. Oppose this business grab through legislative fiat.

The amendment is strongly opposed by the New York Stock Exchange, by the Depository Trust and Clearing Corporation, by LCH Clearnet, and by almost every single exchange and clearinghouse. It will cost jobs in New York in my district.

This bill should be about improving transparency and enforcement, and about bringing fair and prudent regulation to the derivatives market while minimizing systemic risk. Instead, the proponents of this amendment are using the legislative process to promote one marketplace over the others, and it will cost jobs and capital formation from other exchanges.

We are here today to reform American financial services and our regulatory structure, not to drive companies out of business, costing American exchanges jobs and money. The amendment will give an unfair advantage to one exchange, and it just isn't practical.

I urge my colleagues to vote ''no'' on this amendment.

Mr. LYNCH. Madam Chair, I yield 1 minute to the chairman of the Financial Services Committee, my friend,

the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Chair, I disagree with the premise that the large financial investment houses and large financial institutions have earned the degree of trust that our voting against this amendment would require.

We were fairly careful, and there were many who were critical because we were too willing to separate out end users, legitimate end users, and not sweep them all in; but for that to be justified, there has to be integrity in the administration of the process. That is what the last amendment by the gentleman of Minnesota did, and that is what this amendment does.

If you let people who have a financial interest in there not being clearing be in charge of clearing, it would take an extraordinarily selfless group of people not to give in to temptation.

□ 1910

While people on Wall Street have been giving varying descriptions, some good and some bad, no one has yet compared any of them to Mother Teresa. The fact is that if you reject this amendment, you are giving people who have an incentive to make these things not work well control over them.

Mr. GARRETT of New Jersey. At this time I would like to yield 1½ minutes to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. I thank my friend from New Jersey for his leadership on this issue and trying to bring focus to really the underlying nature of this bill, which is the underlying nature of this amendment as well, and that is that government knows best how to define what the market ought to look like and not the market. Madam Chair, as you well know, that's one of the things that got us into these significant problems in the first place.

I know that there is one group that supports this. There are all sorts of folks who don't support this, the people who know about the issue of trading in this area. The ABA Securities Association, one of the largest securities associations, opposes this amendment because they believe that it would significantly limit competition and undermine the ultimate goal that all of us ought to have, and that is to make certain that the market is, in fact, able to work for more individuals across this land. More choices, not fewer choices.

New York Stock Exchange, Euronext, Securities Industry and Financial Markets Association, on and on and on, folks who, in fact, oppose this amendment because they believe strongly that it will decrease the choices available to the American people.

Over-the-counter trades, hundreds of trillions of dollars literally in trades, will be markedly limited again, decreasing the ability of the American people to have the choices available to them.

What this amendment does, Madam Chair, is what really what the underlying bill does. It says government knows best, that we ought to limit the ability of creative thinking and jobs to be formed out there across this land, because government knows best. We are going to limit the choices available to the American people.

Vote ''no'' on the Lynch amendment.

Mr. LYNCH. The gentleman should perhaps read the amendment. This does not interpose government into the clearinghouses.

Ironically, this is very light regulation. The people who are against this amendment are the five banks, the five big banks. They are the ones that are against this.

What this does, instead of inserting the government in here, what we are doing is allowing competitive commercial interests to balance out, rather than allow these five banks. These five banks control 97 percent of the market here; 97 percent. And the gentleman is complaining that it might reduce competition? It's a monopoly now. We are trying to break it open and allow more companies in and lower the costs of operating.

Look, this is a pretty simple issue. The ''too big to fail'' banks caused huge damage to the taxpayer, the way they operated this derivatives market.

We are creating a clearinghouse. They are trying to buy the clearinghouse.

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

The Chair recognizes the gentleman from New Jersey.

Mr. GARRETT of New Jersey. I presume I am to close?

The Acting CHAIR. The gentleman has the right to close. The gentleman has 1½ minutes remaining.

Mr. GARRETT of New Jersey. I thank the Chair.

The gentleman from Massachusetts says the government is not interposing or getting involved here. Of course they are, and that's what the whole fundamental purpose of the underlying bill is, is to set up this whole Byzantine arrangement of new regulations specifically in this area. Yes, I have read the amendment; and, yes, I recall it coming through committee and the problems that were raised there. When you centralize risk and clearing entities, as made mandatory by the underlying bill, it's important that we ensure that there is some independence in the clearinghouses from the dealers who play such a large role, like he says. But that's why in committee I offered an amendment that would have required that the majority of the directors of the derivatives of the clearing organization must not be associated with swap dealers. This goes much further than what's already on the books right now.

The SEC has a current policy of limiting a position of 20 percent ownership of a single broker dealer in an existing exchange. This amendment goes way farther than that, saying that that 20 percent applies in the aggregate. Yes, I read the amendment.

You have to remember that dealers are among the most likely sources of investment capital to establish these new clearinghouses. If you are going to come up tonight now with a really overly restrictive limit on ownership, as we have in this amendment, you are going to have potentially some negative consequences. Some of those will be in competition.

At the end of the day, what will you have? The amendment could very well exacerbate risk by forcing more derivative transactions that are out there, and who knows how many will be out there after this legislation passes, to fewer and to fewer and to fewer clearinghouses, basically concentrating risk and doing the opposite of what the American public wants, to avoid risk burdens and additional bailouts.

Ms. WATERS. Madam Chair, I rise in strong support of the amendment offered by the gentleman from Massachusetts. H.R. 4173 is designed to address the lack of regulation in the over-the-counter derivatives market that allowed AIG to write billions of dollars in risky credit default swaps. H.R. 4173 fixes this by subjecting over-the-counter derivatives to a comprehensive regulatory structure and requiring derivatives to be traded through clearinghouses.

However, the derivatives market is currently dominated by a handful of large institutions. And these institutions will simply buy the clearinghouses to make sure that they once again control this market. If this happens, these institutions will be in the conflicted position of ''clearing'' their own derivative deals. The result will be more AIGs. Mr. LYNCH's amendment would prevent this by preventing any institution from controlling more than 20 percent of a clearinghouse.

If we don't close this loophole, the over-the-counter derivatives market will continue to be unregulated. Therefore, I strongly urge a ''yes'' vote on this amendment.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts (Mr. LYNCH).

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

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

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

AMENDMENT NO. 6 OFFERED BY MR. MURPHY OF NEW YORK

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in House Report 111–370.

Mr. MURPHY of New York. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. MURPHY of New York:

At the end of title III, insert the following new section:

SEC. _____. DEFINITIONS OF MAJOR SWAP PARTICIPANT AND MAJOR SECURITY-BASED SWAP PARTICIPANT.

(a) MAJOR SWAP PARTICIPANT.—Section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceding provisions of this Act, is amended to read as follows:

''(39) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

''(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

''(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.

''(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term 'substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

''(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.''.

(b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended to read as follows:

''(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, and—

''(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

''(ii) whose outstanding security-based 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.—The Commission shall define by rule or regulation the term 'substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps.

''(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.''.

(c) EFFECTIVE DATES.—

(1) MAJOR SWAP PARTICIPANT.—The amendment made by subsection (a)(1) shall take effect as if included in subtitle A.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The amendment made by subsection (a)(2) shall take effect as if included in subtitle B.

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

The Chair recognizes the gentleman from New York.

Mr. MURPHY of New York. I yield myself 1 minute.

This amendment would substitute the definition of a major swap participant that is in the current draft back to the language that was in the draft that came out of the Agriculture Committee.

Chairman PETERSON and Ranking Member LUCAS worked with the whole committee to develop the definition that was used in the Ag Committee, and it's different from the version that is on the floor now in two ways: It's more restrictive in terms of allowing financial companies to be exempt from being classified as a major swap participant. So more companies would be held to a higher regulatory standard. And it is a little bit less restrictive with respect to manufacturing companies being classified as a major swap participant. I think that's very important because we want people who are systemically risky to be held to a higher standard of accountability, but we don't want to capture our manufacturing companies, the kind that are represented by the National Association of Manufacturers, the kind that are supporting this amendment, to be captured in that regulation.

We want them to be able to do their business and use derivatives to hedge their actual risk. That's why there was such broad bipartisan support for this when it was in the Agriculture Committee, and that's why we want to support it now.

Mr. FRANK of Massachusetts. Madam Chair, I rise to take the time in opposition to the amendment.

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

Mr. FRANK of Massachusetts. The gentleman from New Jersey has fairly laid this out. Here is the difference: We have agreed that end users should have an exemption from these requirements, but there is an exemption to the exemption.

If an end user is engaged in an activity that can cause financial problems, then we want them not to be exempt from regulation, but here is the difference. The bill that is in there now, and it differs from the Agriculture bill, says if the end user is causing financial losses and problems at a particular counterparty, then you should not have the exemption.

The alternative is to say no, let's not step in if this or that or many counterparties are in problems until it could become a systemic risk. We don't want to wait for systemic risk. I don't want to wait until people are at the edge of the cliff to start to pull them back.

It is clear to many of us that a lack of regulation of derivatives was the problem. I support an end user exemption. But when an end user is employing that exemption in a way that puts counterparties at risk, I don't want to have to wait until a cataclysm impends. I would like there to be the ability to step in and stop it at that point.

For the end user, it is very simple. They can avoid this regulation by being careful about what they do with the counterparties. This does not take it away; it simply says to the end user, please be careful and use some prudence before you engage in a transaction with a counterparty who will be at risk and could begin the kind of chain that we hope would not happen.

I reserve the balance of my time.

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Mr. MURPHY of New York. Madam Chairman, I'd like to yield 1 minute to the gentleman from New York (Mr. MCMAHON).

Mr. MCMAHON. Madam Chairwoman, I urge all of you to support the Murphy-McMahon-Kratovil amendment, which would protect end users and to be sure we better regulate the big investors as major swap participants.

Although the regulation of derivatives is complex, the issue is extremely important to the proper functioning of our capital markets and to almost every business in America, and we need to get this right.

Because derivatives are financial instruments that help all of us, they help keep our energy costs low and stable, if they're overregulated, it will cost my constituents back home more money for their electricity. They help insurance companies keep premiums low. They help companies complete construction projects on time and under budget. And despite the negative press and lack of understanding of the derivatives market, for the most part, the market works well. We cannot throw the baby out with the bathwater.

We must work to protect the end users, good American businesses that are just trying to manage their cash flows and hedge against uncertain risks beyond their control in a cost-effective manner. To do otherwise would cripple American industries and jobs in this country.

Mr. FRANK of Massachusetts. Madam Chairman, I have only one more speaker, and I have the right to close, so I reserve.

Mr. MURPHY of New York. I yield 1 minute to the gentleman from Maryland (Mr. KRATOVIL).

Mr. KRATOVIL. Madam Chairman, I rise in support of the Murphy-McMahon-Kratovil amendment to H.R. 4173.

As we improve stability and transparency in the derivatives market and attempt to address the true underlying issues causing the financial crisis, we must also ensure that we are not limiting the ability of responsible companies to access the over-the-counter derivatives they need to keep their businesses up and running.

These derivatives are not just used by the larger broker and dealer banks who do, in fact, present a systemic

threat to the market, but also by smaller companies who use them to manage the risk associated with running an effective business. The fact of the matter is the legislation needs to distinguish between the two.

Without this amendment, H.R. 4173 could subject some end users to burdensome costs and penalties that were primarily aimed at companies whose activities do, in fact, present a real risk to the stability of the financial system. Our amendment clarifies that end users do not pose a systemic risk and should not be designated as ''major swap participants'' and incur the unintended costs.

Mr. FRANK of Massachusetts. Madam Chairman, I apologize to the body. I do have an additional speaker, so I now yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON).

Mr. PETERSON. Madam Chairman, I rise in opposition to this amendment, and I do so reluctantly because what the gentleman from New York is trying to accomplish is simply restore one piece of the bill to the way that it came out of the House Agriculture Committee.

Defining the term ''major swap participant'' has been one of the most significant challenges since Treasury first coined the term in its own derivatives reform proposal last August. We were trying to define it in ways that would generally exempt end users while ensuring we are capturing the financial players to whom we believe the new rules and regulations should apply.

We often heard from some in the end user community who wanted an absolute, guaranteed exemption that they never would be considered a major swap participant. We wouldn't do that because we don't know what the future will bring and because one of these end users could, one day, get so large with regard to their swap activity so as to have an impact on the financial system.

So, through painstaking work, we crafted the definition that is now in the Peterson-Frank amendment. Now, most end users feel that definition is adequate because they are supporting that amendment, but they would be more comfortable with the definition we had in the Ag Committee reported bill. I believe the new definition we crafted accomplishes our goal of protecting end users.

And so while I thank the gentleman for his appreciation for our work product in the Agriculture Committee, I most reluctantly oppose this amendment.

Mr. MURPHY of New York. Madam Chairman, I'd like to yield 1 minute to the gentleman from Oklahoma (Mr. LUCAS).

Mr. LUCAS. Madam Chairman, I rise in support of the Murphy amendment which would, indeed, insert into the bill the House Agriculture Committee passed definition of ''major swap participant'' and ''major security-based swap participant.''

Like the definition of the same term in the Frank-Peterson amendment, the definition in this amendment excludes those positions held primarily for hedging, reducing, or otherwise mitigating commercial risk. Unlike the Peterson-Frank amendment, this definition in this amendment focuses the regulation on swap positions that could have a serious adverse effect on the financial stability of the United States banking system or financial markets.

In other words, Mr. MURPHY's definition focuses on the big boys, the big guys, those market participants that the regulatory enhancements in this bill are aimed at. It excludes the commercial users that are using over-the-counter markets to risk management, not to try and create wealth.

Once again, though, I have to note, the good effect of this amendment may well be lost in the massive overreach of the entire bill.

Mr. FRANK of Massachusetts. Now I am going to close. I reserve.

Mr. MURPHY of New York. In closing, I just want to say that I think that what we have here is an amendment that will take us back to the commonsense solution that we found on a bipartisan basis in the Ag Committee. It's a solution that does get at the root of the problem.

We've got large financial institutions who need to have additional accountability and regulation. That's what we're trying to do with our major swap participants. But it carves out our manufacturers and our energy companies that use derivatives to hedge their risk. That's why we've got support for this amendment from the American Wind Energy Association, the National Association of Manufacturers, the National Rural Electric Cooperatives.

Our businesses that are using derivatives to hedge risks need not be subjected to the same rules and requirements as the large guys and the dealers. We need to make sure our end users are protected so they can use derivatives successfully to hedge their risk and stabilize their business. That's what's going to protect jobs. That's what we need to get our economy moving. That's why people need to support this amendment.

I yield back my time.

Mr. FRANK of Massachusetts. Madam Chairman, how much time have I remaining?

The SPEAKER pro tempore. The gentleman has 2 minutes remaining.

Mr. FRANK of Massachusetts. I'm afraid my friend from New York has greatly overstated the case. There is no debate here—there is elsewhere—about whether or not there should be an end user exemption.

As he knows, our bill gives an end user exemption. The gentleman from Minnesota and I worked hard to do that, and we are not trying to take it away. In fact, both versions of this say that an end user exemption can be forfeited for certain economic circumstances.

So the question is not whether there should be an end user exemption. Yes, there should be. It is what should trigger that not to be there. The amendment says a systemic risk. We say, given the volatility of this instrument, derivatives, given the uncertainty, that waits too long to say no. That allows caution to be absent for too long a time. We should not wait until the car's about to go over the cliff to test the brakes. We say let's stop a good ways back. And it's entirely within the control of the end user.

What this says is, if you are an end user, do not impose on your counterparty the likelihood of significant loss, because a loss here and a loss there and a loss in another place cumulates to a problem. And if they say, well, it's too hard to tell, that's exactly our point. Don't make it hard to tell. Know who you're dealing with. Don't engage in transactions with counterparties when you aren't in a position to gauge their financial responsibility. Don't use the exemption you have from our regulation that applies to the financial speculators to engage in imprudent transactions, not just imprudent for you, but imprudent for the other guy, because what we've learned is it is important these are mutual events, and that's precisely the issue. Yes, there should be an end user exemption, but end users who disregard prudence and engage in transactions with people who don't have the money to back that up are potentially inflicting a harm on the system.

Now, the proponents of the amendment agree that we should take away that exemption if the system is harmed, but they wait too late to avert disaster.

□ 1930

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

The question is on the amendment offered by the gentleman from New York (Mr. MURPHY).

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

Mr. MURPHY of New York. Madam Chairman, I demand a recorded vote.

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

AMENDMENT NO. 7 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in House Report 111–370.

Mr. FRANK of Massachusetts. I offer amendment No. 7.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. FRANK of Massachusetts:

At the end of title III, add the following new section:

SEC. _____. AUTHORITY TO SET MARGIN OR COLLATERAL REQUIREMENT FOR SWAPS AND SECURITY-BASED SWAPS INVOLVING END USERS.

(a) IN GENERAL.—Subject to subsection (b):

(1) PRUDENTIAL REGULATORS.—A Prudential Regulator may impose a margin or collateral requirement with respect to a swap or security-based swap a counterparty to which is an end user which is a bank or bank holding company subject to regulation by the Prudential Regulator.

(2) COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission may impose a margin or collateral requirement with respect to a swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a swap dealer or major swap participant for which there is no Prudential Regulator.

(3) SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission may impose a margin or collateral requirement with respect to a security-based swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a security-based swap dealer or major security-based swap participant for which there is no Prudential Regulator.

(b) REQUIREMENTS.—Any margin or collateral requirement imposed under subsection (a) with respect to a transaction shall be commensurate with the risk involved in the transaction, and allow for the use of non-cash collateral.

(c) LIMITATION ON APPLICABILITY.—This section shall not apply to a swap or security-based swap entered into before the end of the 90-day period that begins with the effective date of this section.

(d) DEFINITIONS.—In this section:

(1) END USER.—The term ''end user'' means a person who is not a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant.

(2) OTHER TERMS.—The other terms shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

(e) EFFECTIVE DATE.—

(1) PRUDENTIAL REGULATORS.—Subsection (a)(1) shall take effect—

(A) with respect to swaps, as if included in subtitle A; and

(B) with respect to security-based swaps, as if included in subtitle B.

(2) COMMODITY FUTURES TRADING COMMISSION.—Subsection (a)(2) shall take effect as if included in subtitle A.

(3) SECURITIES AND EXCHANGE COMMISSION.—Subsection (a)(3) shall take effect as if included in subtitle B.

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

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chair, this amendment was something that was requested very much by the regulators who administer this approach, and it would allow them, but not mandate, that margin or collateral requirements be set.

Once again, we have accepted here an exemption for end users over the objection of many who think we have gone too far. But we are dealing here with an inexact science, and we would have the regulators be able—under this amendment, not required, but able—to set margin requirements. It would allow them to be set, margin or collateral requirements, in noncash. That's very important. It would not require people who are using this to hedge commercial risks to sell things to come up with the cash. And if, in fact, they were doing this in a prudent way and they posted noncash collateral, there would be no great problem because this noncash collateral could be still used for its other purposes.

So the question is should we say that the regulators, the CFTC and the SEC, should be denied what they have asked for, which is the right to impose the margin or collateral requirements in those cases of lighter regulation where they think this is important to avoid the kind of imbalances we had before.

The purpose is, of course, to prevent again the situation where one party or the other makes commitments it is unable to live up to. And this is a requirement—this is an empowerment of the regulators to act where they think there's a problem to prevent this from happening.

I reserve the balance of my time.

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

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

Mr. GARRETT of New Jersey. I yield myself 1 minute.

This probably is the most critical amendment that we will consider today that addresses the derivative portion of the legislation to the chairman's question of whether we should say ''yes'' or ''no'' to the claim for more power to these entities.

I would say we should tell them ''no,'' and the reason is because neither the administration nor the majority nor the chairman has provided any substantial evidence whatsoever of any specific OTC derivatives, how they cause a financial crisis.

Derivatives are something that the companies use to try to hedge the risk. Clearly, we must make sure there's transparency and accountability—and I have already spoken about that—and we can do so in a way, however, that will not hamper their ability to control costs, not to manage risks, compete in the global marketplace. This would all hurt that.

And when you talk about the end users in this and what they're doing, remember it was the end users, large and small, the public and private American businesses, they, they were the victims, not the cause, of the financial crisis.

Derivative dealers and their customers, the end users, they're in the best position to determine what are the appropriate margin requirements, not giving more authority to the SEC or the CFTC or any other financial regulators.

I reserve my time.

Mr. FRANK of Massachusetts. I will yield myself 1 minute to say I'll accept the way the gentleman from New Jersey put it. Should we give the regulators more power? That is the constant theme dividing us.

We look, many of us, at what happened over the past 15 years and say there was too little regulatory action, partly because some regulators who had the power wouldn't use it, like Mr. Greenspan at the Federal Reserve and some in the SEC, but partly because there was not sufficient regulatory powers. This is discretionary with the CFTC and SEC.

Every trade has to be margined. It does say that to assume that no trade has to be margined is a mistake, and it is, therefore, a discretionary grant of authority to the regulators.

And yes, if you think that what we should do is to continue a relatively wholly unregulated regime, and if you distrust the notion of regulation to the point where you would not give them discretionary authority—again, they have no authority under this to take away the end user exemption. We have decided that regulators, CFTC, the current incumbent, didn't like that. We have accepted the legitimacy of the end user exemption. But to say that never should there be a margin requirement we think is a grave error, and that's why I support this amendment.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. I now yield 2 minutes to the gentleman who also distrusts regulations as we have seen and the SEC and their handling of the SEC situation and the OTS and the regulation of the AIG situation, the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Madam Chairman, the end users of derivatives are the ones that utilize these derivatives. And these weren't large, national companies. They were small businesses. They set the collateral requirements. They set the margin requirements, and they did so safely. They didn't cause the financial meltdown. They were the victims of that meltdown. And they established those collateral requirements and the margins. They did so in an appropriate way. In fact, you know, what the chairman said, the SEC and the CFTC ought to do this. You know, actually, they didn't act in a very responsible manner leading up to this meltdown last September.

Let me simply say this: Requiring greater margin and capital requirements on companies that never got in trouble leads to fewer jobs. It's going to lead to greater volatility in food and energy prices, and a loss of capital investments.

I'm just going to give you two pieces of testimony before our committee.

Steve Holmes of Deere and Company said, ''We have a number of contracts that extend well into the future. If these existing contracts are not permitted an exemption from clearing and collateral requirements, we would have to terminate the transactions at a significant cost.'' That would cost John Deere workers their jobs.

John Hixson of Cargill, Inc., said, ''For us, we've estimated it (collateral

requirements) would cost approximately $1 billion depending on market conditions—an additional amount of money we'd have to borrow. We've built a brand new oil seed facility. Our largest in the U.S. is in Kansas City. So we have to choose: whether you put the money in margin, or do you continue and build that plant? That's the type of thing we'd have to decide,'' marginal requirements or jobs.

Mr. FRANK of Massachusetts. Again, the question is whether we should decide now that there will never be such a requirement. As to it costing a lot of money, the amendment specifically says that they should be allowed to use noncash collateral. That means they could pledge certain of their own assets, which could mean no cost.

It also says that the regulators shall impose the requirements commensurate with the risk involved in the transaction. Once again, we give incentives here for people to minimize risk, and I think that's the appropriate market approach.

We are, as I said, mandating these to be imposed. We are allowing them to be a noncash collateral, and we said they should be commensurate with risk.

The opposition argument is never. There will never be such a thing. There are no imprudent end users. There is no need ever to have them. The failure of trades in an individual case can be a problem for an individual company. They can cumulate. And that is the question: Do we say that we are willing to go forward with this issue with no power in any regulator to say that particular trades are being conducted in an imprudent fashion?

□ 1940

Because if they are conducted in an imprudent fashion, there is no power here because any margin requirement must be commensurate with risk. We have stricken the notion. The gentleman from Minnesota raised that point. There was at some point some language that we had that said it had to be greater than zero. We said, no, it does not have to be greater than zero, it is commensurate with risk.

And that is the issue. We are being asked to say we have complete confidence that there will never be the kind of imprudent trades that could begin to cause trouble in the system, and therefore, we will deny the regulators the power even to consider this.

I yield back the balance of my time.

Mr. GARRETT of New Jersey. I yield the balance of my time to the gentleman from Minnesota (Mr. PETERSON).

The Acting CHAIR. The gentleman from Minnesota is recognized for 2 minutes.

Mr. PETERSON. I thank the gentleman.

I rise in opposition to this amendment. This issue of authority for regulators to set margin requirements for end users was one issue that we could not agree upon during our negotiations, so I think it's appropriate that we resolve it here.

First, I want to remind Members that in the underlying Peterson-Frank amendment that we've adopted with regard to swap dealers and major swap participants and their security-based swap counterparties, regulators will have full authority to set margin requirements appropriate for the uncleared swaps that they hold. So that authority will be in place with regard to the banks.

Because swap dealers and major swap participants are so heavily involved in the swap market and are interconnected with potentially hundreds of different counterparties, we believe it's important that we regulate their margins for the protection of their end-user customers and the financial system as a whole.

However, I don't think that we need the regulators putting margin requirements on end users in order to protect the swap dealers and major swap participants. I think they can look out for themselves.

The so-called end user community of energy companies, manufacturers and on and on, did not, as has been said, cause the problem. They are concerned about potential impact of this amendment, and so I urge my colleagues to oppose the amendment.

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

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

Mr. GARRETT of New Jersey. Madam Chair, I demand a recorded vote.

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

AMENDMENT NO. 8 OFFERED BY MR. STUPAK

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in House Report 111–370.

Mr. STUPAK. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. STUPAK:

At the end of title III, insert the following new section:

SEC. _____. ADDITIONAL RULES REGARDING EXECUTION AND CLEARING OF SWAPS AND SECURITY-BASED SWAPS.

(a) SWAPS.—Section 2(j)(7) of the Commodity Exchange Act (7 U.S.C. 2), as added by the preceding provisions of this Act, is amended—

(1) in subparagraph (A), by striking ''and where both counterparties are either swap dealers or major swap participants, such counterparties'' and inserting '', the parties''; and

(2) by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following:

''(C) CERTAIN SWAPS NOT REQUIRED TO BE CLEARED.—

''(i) IN GENERAL.—A swap that qualifies for the exception of paragraph (8)(A)(i) shall not be executed, except on or through a swap execution facility registered with the Commission.

''(ii) ADDITIONAL EXCEPTIONS.—Clause (i) shall not apply to a swap if no swap execution facility makes the swap available to trade or execute.

''(iii) RULE OF INTERPRETATION.—This subparagraph shall not be interpreted to require any swap to be cleared.''.

(b) SECURITY-BASED SWAPS.—Section 5A(a) of the Securities Exchange Act of 1934, as added by the preceding provisions of this Act, is amended—

(1) in paragraph (1), by striking ''section 3B and where both counterparties are either swap dealers or major swap participants, such counterparties'' and inserting ''section 3B(a)(1), the parties''; and

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) CERTAIN SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—

''(A) IN GENERAL.—A security-based swap that qualifies for the exception of section 3B(h)(1)(A) shall not be executed except on a swap execution facility registered with the Commission.

''(B) ADDITIONAL EXCEPTIONS.—Subparagraph (A) shall not apply to a security-based swap if no swap execution facility makes the security-based swap available to trade or execute.

''(C) RULE OF INTERPRETATION.—This paragraph shall not be interpreted to require any security-based swap to be cleared.''.

(c) EFFECTIVE DATE.—

(1) SWAPS.—The amendments made by subsection (a) shall take effect as if included in subtitle A.

(2) SECURITY-BASED SWAPS.—The amendments made by subsection (b) shall take effect as if included in subtitle B.

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

The Chair recognizes the gentleman from Michigan.

Mr. STUPAK. Madam Chair, Chairman FRANK and Chairman PETERSON have provided the framework for regulation of the swaps markets in H.R. 4173, but I believe Congress can improve this bill by requiring additional transparency. We could pass the most comprehensive and thorough regulation of the financial sector imaginable, but it would be meaningless if we continue to leave loopholes in place to evade regulation. As we saw in the oil markets of 2008, leaving loopholes in place for speculators costs consumers more of their hard-earned money.

Swaps are financial contracts that allow a company to lock in prices on everything from currency to oil to pork bellies. In 2008, roughly $80 trillion was traded on regulated exchanges worldwide. And as astonishing as that figure is, it pales in comparison to the more than $600 trillion traded over-the-counter, or in unregulated dark markets. This is seven-and-a-half times what was traded on regulated markets. To put that into perspective, the total gross domestic product of the United States is $14.4 trillion or 41 times smaller than the unregulated swaps

market. These unregulated markets create a systemic risk across the financial system and helped bring Lehman Brothers, Bear Stearns and AIG into bankruptcy and our economy to the verge of disaster.

The best way to address this problem is to require Wall Street financial houses to post collateral and clear their swaps contracts on regulated exchanges. If we can't guarantee that Wall Street will post collateral, have some skin in the game, we should at least require that these trades be made in the open, transparent markets.

My amendment establishes a simple requirement: Swaps by end dealers that could clear will remain exempt from clearing because one of the parties in that contract is a bona fide hedger. However, the swaps still should be reported on an exchange. Much of the concern over the dark swaps markets is the lack of information that ensure a competitive, transparent market. By adopting this amendment, the marketplace will become more open, and end users and other important swap users can accurately determine fair prices.

Nothing, and let me repeat, nothing in this amendment requires a new clearing requirement. It's all about transparency and nothing more. Our amendment specifically includes a provision stating that the amendment ''shall not be interpreted as requiring any swap to be cleared.''

CFPC Chairman Gary Gensler originally proposed the concept for required reporting on specific swaps, and supports our amendment that requires transparency in swaps markets. I would like to submit his letter of support in the RECORD.

As Chairman Gensler told the House Energy and Commerce Committee last week, ''Economists have for decades recognized transparency benefits the marketplace'' and that ''lack of regulation in these markets has created significant information deficits.''

There are a number of groups who support this legislation and this amendment, including Americans for Financial Reform, which includes United Food and Commercial Workers, AFL–CIO, a number of groups.

Without our amendment, a significant portion of the swaps market will remain in the dark, and unscrupulous traders will remain out of reach of regulators.

I urge Members to adopt this amendment and bring these swap contracts out of the dark markets.

U.S. COMMODITY FUTURES
TRADING COMMISSION,
Washington, DC, December 10, 2009.

Hon. BART STUPAK,
House of Representatives,
Washington, DC.
Hon. CHRIS VAN HOLLEN,
House of Representatives,
Washington, DC.

DEAR CONGRESSMEN STUPAK AND VAN HOLLEN: I am writing in support of your amendment to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, which would require transparency in swaps contracts by requiring all standardized non-cleared swaps be executed on a registered swap execution facility. This requirement would apply only to those contracts listed for trading while still fully allowing hedgers to enter into customized transactions off-exchange. In addition, the amendment explicitly states that it ''shall not be interpreted to require any swap to be cleared.'' Your amendment would be an important addition to a very strong bill.

In the past few months, Congress has taken historic steps to bring comprehensive regulation to the over-the-counter derivatives markets. H.R. 4173 fully regulates swap dealers and requires that all standardized trades between these Wall Street swap dealers be brought into clearinghouses and transparent trading facilities. Your amendment strengthens the bill by broadening the transparency requirement to include all standardized derivatives transactions. Under H.R. 4173, while big Wall Street banks would be subject to the requirement when trading with each other, those same Wall Street banks would be exempt when trading with many of their customers. Your amendment would close this exemption and increase the amount of information available to the public and market participants.

Economists have for decades recognized that market transparency benefits the public by lowering costs. If derivatives users knew what others were paying to enter into similar contracts, they would receive better pricing on their transactions. A municipality could better decide whether or not to hedge an interest rate risk based upon the reported pricing from the broader market. As a nation, we do not stand for this lack of transparency in other markets. For example, one would not purchase 100 shares of his or her favorite stock without knowing the last price at which those shares sold. Similarly, one would not buy an apple at the supermarket if the price was kept private. Transparency in the over-the-counter derivatives marketplace would shift the information advantage from Wall Street to the businesses, municipalities and nonprofit organizations that you represent in Congress. This would lower the cost of hedging and thus the costs to customers and promote economic growth in every sector of the economy.

Your amendment accomplishes the critical goal of promoting transparency without imposing any additional costs on business as it does not require these end-user trades to be cleared by central counterparties. Your amendment separates mandatory trading on transparent trading venues from a central clearing requirement that would require businesses to post margin. The two should not be confused. Transparency can be required while leaving the clearing decision up to the parties involved in particular transactions.

I commend you for your efforts to bring greater transparency to the currently opaque over-the-counter derivatives marketplace.

Sincerely,

GARY GENSLER,
Chairman.

I reserve the balance of my time.

Mr. LUCAS. Madam Chairman, I rise to claim the time in opposition.

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

Mr. LUCAS. Madam Chairman, I yield myself 2 minutes.

This amendment is just another solution in search of a problem. What risk is this amendment looking to eliminate? Both the House Agriculture Committee passed language and the Peterson-Frank amendment, which this seeks to amend, recognize that there are swaps that need not go through the cost and formality of the executed on an exchange or swap execution facility.

As long as the regulator can see the swap and has the appropriate tools to mitigate risk to the U.S. financial system, what more does the exchange execution require add?

This amendment requires unique agreements of no consequence to anyone but the parties involved to be regulated as if it were a credit default swap transacted between systemically risky counterparties. These swaps serve no price discovery function, they aren't conducted between systemically risky parties, and most are unique for an exchange or SEF to appropriately rate the risk.

Forcing these swaps to be executed on an exchange or SEF will only artificially increase the cost of managing risk or discourage legitimate risk management activity altogether. Neither should be the purpose of this legislation.

I urge the defeat of the amendment and reserve the balance of my time, Madam Chairman.

Mr. STUPAK. Madam Chair, I yield 2 minutes to the co-author of this amendment, Mr. VAN HOLLEN from Maryland, who is a champion on this issue.

Mr. VAN HOLLEN. Madam Chair, I'm very pleased to join with my colleague, Mr. STUPAK, in offering this amendment. I want to commend Chairman FRANK and Chairman PETERSON for bringing a strong bill to the floor.

It's time to finally hold Wall Street and the big banks accountable and never allow them again to hold the American economy hostage and leave the American taxpayer holding the bag. We cannot ask the taxpayers to pay for bad bets made by Wall Street bankers.

This amendment strengthens what is already a good bill. And as my colleague, Mr. STUPAK, has said, what it calls for is simply greater transparency in transactions. Transparency in the over-the-counter derivatives market will shift the information advantage to a small group of Wall Street bankers to businesses, municipalities, nonprofit organizations and to the taxpayer. Why are we afraid of a little sunshine? That is what this amendment is about.

I want to read to the Members a letter that we received, Mr. STUPAK and I, from Gary Gensler, the chairman of the CFTC, and it was addressed to us. It says, ''Your amendment accomplishes the critical goal of promoting transparency without imposing any additional costs on business as it does not require these end-user trades to be cleared by central counterparties.''

I want to emphasize that point because there are certain trades obviously in this legislation that do need to be cleared through central counterparties and clearinghouses. But this is for

the remainder. We are saying what is left over should at least be transparent. We should know about it. The taxpayer should know about it. People who want to look at the market and make decisions should know about it.

He goes on to say, ''Your amendment separates mandatory trading on transparent trading venues from a central clearing requirement that would require businesses to post margin. The two should not be confused.''

□ 1950

This does not require anyone to put up a margin. We're saying these transactions have to be transparent.

Finally, he makes the point that ''transparency can be required while leaving the clearing decision up to the parties involved in particular transactions.''

Let's vote for transparency. Let's vote for sunshine. Let's vote for this amendment.

Mr. LUCAS. Madam Chair, I yield 2 minutes the gentleman from Minnesota (Mr. PETERSON), the chairman of the Agriculture Committee.

Mr. PETERSON. I thank the gentleman for yielding.

Madam Chair, I rise in opposition to this amendment, and I do so reluctantly because I know the concept of what the gentleman is trying to accomplish has been endorsed by CFTC Chairman Gensler.

First, let me explain what's already in the Peterson-Frank amendment. If clearing mandate applies to a swap or class of swaps, then the swap dealers and major swap participants not only have to clear such trades but also have to execute them on or through a futures or securities exchange or a swap execution facility. Now, banks hate this because it will expose their trades among themselves to the light of day. It will provide greater price transparency and will narrow their spreads and cost them money, all to the benefit of the end user. For the end users, we provide an exemption from the clearing mandate and, consequently, from the execution mandate.

Mr. STUPAK's amendment would preserve the clearing exemption but impose an execution mandate on end users, the idea being that the more swaps that can go through a swap execution facility, the greater price transparency you receive, the better deal an end user can make.

In theory, this all makes sense; however, the end user community doesn't buy it. They question whether the price information that will come out of the swap execution facility will actually be beneficial to them, and they also know that there will be costs to bear because the facilities won't perform this service for nothing. End users don't know whether the benefits will outweigh the costs. I have a real problem telling people that are in the business what's good for them when they don't believe it.

So I have here a letter from various groups who like the Peterson-Frank approach. Among them are the American Gas Association, the Public Gas Association, Public Power Association, Wind Energy, Edison Electric, Electric Power Supply Association, Independent Petroleum Association, Natural Gas Supply Association, NRECA, the Chamber of Commerce, 3M, Cargill, John Deere, Caterpillar, Medtronic, Zimmer, Ecolab, and others.

So I ask my colleagues to oppose the amendment.

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

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

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

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

AMENDMENT NO. 9 OFFERED BY MR. STUPAK

The Acting CHAIR. It is now in order to consider amendment No. 9 printed in House Report 111–370.

Mr. STUPAK. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. STUPAK:

At the end of title III, insert the following new sections:

SEC. _____. AUTHORITY TO BAN ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly, by rule or order, prohibit transactions in any swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) which the Commodity Futures Trading Commission and the Securities Exchange Commission find would be detrimental to the stability of a financial market or of participants in a financial market.

SEC. _____. ELIMINATION OF CONSIDERATION OF BALANCE SHEET RISK IN DETERMINING THE COMMERICAL RISK OF BONA FIDE HEDGING END USERS.

(a) Section 1a(39)(A)(i) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceding provisions of this Act, is amended by striking ''and balance sheet''.

(b) Section 2(j)(8)(A)(ii) of the Commodity Exchange Act (7 U.S.C. 2), as added by the preceding provisions of this Act, is amended by striking ''or balance sheet''.

(c) Section 3(a)(67)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended by striking ''and balance sheet''.

(d) Section 3B(h)(1)(B) of the Securities Exchange Act of 1934, as added by the preceding provisions of this Act, is amended by striking ''and balance sheet''.

(e)(1) The amendments made by subsections (a) and (b) shall take effect as if included in subtitle A.

(2) The amendments made by subsections (c) and (d) shall take effect as if included in subtitle B.

SEC. _____. LEGAL CERTAINTY OF CERTAIN SWAP CONTRACTS.

(a) IN GENERAL.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)), as amended by the preceding provisions of this Act, is amended—

(1) in paragraph (4)(A), by inserting '', and entered into before the effective date of this paragraph,'' after ''investor'';

(2) in paragraph (4)(B), by inserting '', and entered into before the effective date of this paragraph,'' after ''between eligible contract participants''; and

(3) in paragraph (5), by inserting '', and entered into before the effective date of this paragraph,'' after ''United States''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in subtitle A.

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

The Chair recognizes the gentleman from Michigan.

Mr. STUPAK. Madam Chair, this amendment was crafted with the help of Representatives DELAURO, LARSON, and VAN HOLLEN. We worked and reached an agreement with Chairman FRANK and Chairman PETERSON to enhance regulation of the over-the-counter derivatives market. I want to thank my colleagues and both chairmen for their work.

Our amendment provides additional assurances that the swaps market will be policed and prevents speculative financial companies from evading regulations or otherwise ignoring the law. Under this amendment, the CFTC and the SEC will be granted authority to prohibit swap transactions that pose a risk to the financial marketplace. Certain swaps, such as naked credit default swaps, are pure speculative bets that a company will fail and should be banned. As we learned in 2008, credit default swaps and other swap transactions pose a systemic risk to our economy and accelerated the economic collapse.

This amendment also narrows the definition of determining which companies are and are not bona fide hedging end users. Commercial companies that use commodities and securities to lock in prices and hedge the risk of their products, such as airlines, trucking companies, and electric utilities, did not create the current financial crisis. H.R. 4173 reflects this reality, but its exception for clearing swaps on an exchange is written so broadly that financial speculators and private pools of capital can be treated as bona fide hedgers.

To maintain strong standards for financial companies, we must ensure illegal swap transactions do not remain a valid contract in a court of law. Our amendment prevents a company that enters into a swap contract to remain liable for payment under the swap contract if the counterparty has acted illegally in creating, executing, or reporting the swap.

This amendment is the result of hard work between Chairman FRANK, Chairman PETERSON, and my colleagues and me to reach an agreement. This amendment will preserve the ability of bona

fide end users to hedge commercial risk with strong standards for Wall Street financial companies.

I urge adoption of this amendment.

DECEMBER 8, 2009.

Re support H.R. 4173, ''Wall Street Reform and Consumer Protection Act of 2009''.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: The undersigned organizations strongly urge you to support H.R. 4173, the ''Wall Street Reform and Consumer Protection Act of 2009,'' when it comes to the House floor this week. We write individually and also on behalf of Americans for Financial Reform, a coalition of more than 200 national, state and local consumer, labor, retiree, investor, community, business and civil rights organizations who are campaigning for real reform in our nation's financial system.

The need for this legislation could not be more obvious. Years of deregulation have produced a financial system that is a threat to our economy. Rampant abuses in consumer lending practices, combined with a casino mentality on Wall Street and the willful blindness of federal regulators, have plunged our economy into its worst economic crisis since the Great Depression—and it is clear that Wall Street has not learned its lessons. While H.R. 4173 needs to be strengthened, it contains vital reforms for our country and must be passed.

A number of amendments will be offered which will fundamentally affect the shape of this legislation. In order to ensure meaningful financial reform, we strongly urge you to:

Oppose the Minnick amendment to eliminate a new Consumer Financial Protection Agency (CFPA) from the bill. It would leave enforcement of consumer protection and civil rights laws in the hands of the same existing regulatory bodies that resoundingly failed to use them.

Support the Stupak/DeLauro/Larson/Van Hollen amendment on derivatives. Regulators must have the authority to ban abusive derivatives instruments rather than simply reporting them to Congress, transactions which violate the law should be considered invalid, and loopholes which leave too many trades to continue in the shadows must be closed.

At the same time, we believe that as the legislative process moves forward, H.R. 4173 must be improved in important respects including:

The bill provides systemic regulatory authority to the Board of Governors of the Federal Reserve without reforming the Federal Reserve System to remove the banks themselves from a role in overseeing the Federal Reserve's regulatory staff. We need a fully public systemic risk regulator, either in the form of a separate agency as detailed in Chairman Dodd's proposal, or a reformed Federal Reserve.

The proposed CFPA needs to have jurisdiction over the Community Reinvestment Act (CRA), as it does in Chairman Dodd's proposal. The CRA is vital to fighting discriminatory, deceptive, and unsustainable lending practices in minority communities. But as is the case with other consumer protection and civil rights laws, CRA enforcement in recent years has been extremely weak, allowing a wide range of under-regulated, non-bank—and often predatory—lenders to fill the void.

The legislation should also be changed to give the SEC authority to make the exemption from registration under the 1940 Act for private investment funds contingent upon such funds fulfilling requirements established by the SEC.

Despite the need for these improvements, passage of H.R. 4173 would represent dramatic progress towards a financial system that works for all Americans. By voting for it, you will send an important message to the American public that you intend to change the way that Wall Street works for the better.

Thank you for your consideration of our views. If you have any questions, please contact Rob Randhava, Leadership Conference on Civil Rights, and Lisa Donner, Americans for Financial Reform.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

Following are the partners of Americans for Financial Reform. All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

A New Way Forward; AARP; ACORN; Adler and Colvin; AFL-CIO; AFSCME; Alliance For Justice; Americans for Democratic Action, Inc; American Income Life Insurance; Americans for Fairness in Lending; Americans United for Change; Calvert Asset Management Company, Inc.; Campaign for America's Future; Campaign Money; Center for Digital Democracy; Center for Economic and Policy Research; Center for Economic Progress; Center for Responsible Lending; Center for Justice and Democracy; Center of Concern; Change to Win; Clean Yield Asset Management; Coastal Enterprises Inc.; Color of Change; and Common Cause.

Communications Workers of America; Community Development Transportation Lending Services; Consumer Action; Consumer Association Council; Consumers for Auto Safety and Reliability; Consumer Federation of America; Consumer Watchdog; Consumers Union; Corporation for Enterprise Development; CREDO Mobile; CTW Investment Group; Demos; Economic Policy Institute; Essential Action; Greenlining Institute; Good Business International; HNMA Funding Company; Home Actions; Housing Counseling Services; Information Press; Institute for Global Communications; Institute for Policy Studies: Global Economy Project; International Brotherhood of Teamsters; Institute of Women's Policy Research; and Krull & Company.

Laborers' International Union of North America; Lake Research Partners; Lawyers' Committee for Civil Rights Under Law; Leadership Conference on Civil Rights; Move On; NASCAT; National Association of Consumer Advocates; National Association of Neighborhoods; National Coalition for Asian Pacific American Community Development; National Community Reinvestment Coalition; National Consumer Law Center (on behalf of its low-income clients); National Consumers League; National Council of La Raza; National Fair Housing Alliance; National Federation of Community Development Credit Unions; National Housing Institute; National Housing Trust; National Housing Trust Community Development Fund; National NeighborWorks Association; National Training and Information Center/National People's Action; National Council of Women's Organizations; Next Step; OMB Watch; Opportunity Finance Network; and Partners for the Common Good.

PICO; Progress Now Action; Progressive States Network; Poverty and Race Research Action Council; Public Citizen; Sargent Shriver Center on Poverty Law; SEIU; State Voices; Taxpayer's for Common Sense; The Association for Housing and Neighborhood Development; the Fuel Savers Club; The Seminal; U.S. Public Interest Research Group; Union Plus; United Food and Commercial Workers; United States Student Association; USAction; Veris Wealth Partners; Veterans Chamber of Commerce; Western States Center; We the People Now; Woodstock Institute; World Privacy Forum; UNET; Union Plus; and Unitarian Universalist for a Just Economic Community.

PARTIAL LIST OF STATE AND LOCAL SIGNERS

Alaska PIRG; Arizona PIRG; Arizona Advocacy Network; Arizonans For Responsible Lending; Association for Neighborhood and Housing Development NY; Audubon Partnership for Economic Development LDC, New York NY; BAC Funding Consortium Inc., Miami FL; Beech Capital Venture Corporation, Philadelphia PA; California PIRG; California Reinvestment Coalition; Century Housing Corporation, Culver City CA; Center of Concern; Center for Media and Democracy; CHANGER NY; Chautauqua Home Rehabilitation and Improvement Corporation (NY); Chicago Community Loan Fund, Chicago IL; Chicago Community Ventures, Chicago IL; Chicago Consumer Coalition; Citizen Potawatomi CDC, Shawnee OK; Colorado PIRG; Coalition on Homeless Housing in Ohio; Community Capital Fund, Bridgeport CT; Community Capital of Maryland, Baltimore MD; Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ; and Community Redevelopment Loan and Investment Fund, Atlanta GA.

Community Reinvestment Association of North Carolina; Community Resource Group, Fayetteville A; Connecticut PIRG; Connecticut Association for Human Services; Consumer Assistance Council; Cooper Square Committee (NYC); Cooperative Fund of New England, Wilmington NC; Corporacion de Desarrollo Economico de Ceiba, Ceiba PR; Delta Foundation, Inc., Greenville MS; Economic Opportunity Fund (EOF), Philadelphia PA; Empire Justice Center NY; Enterprises, Inc., Berea KY; Fair Housing Contact Service OH; Federation of Appalachian Housing; Fitness and Praise Youth Development, Inc., Baton Rouge LA; Forward Community Investment (Madison, WI); Florida Consumer Action Network; Florida PIRG; Funding Partners for Housing Solutions, Ft. Collins CO; Georgia PIRG; Green America; Grow Iowa Foundation, Greenfield IA; Homewise, Inc., Santa Fe NM; Idaho Nevada CDFI, Pocatello ID; and Idaho Chapter, National Association of Social Workers.

Idaho Community Action Network; Illinois PIRG; Impact Capital, Seattle WA; Information Press CA; Indiana PIRG; Iowa PIRG; Iowa Citizens for Community Improvement; JobStart Chautauqua, Inc., Mayville NY; Keystone Research Center; La Casa Federal Credit Union, Newark NJ; Low Income Investment Fund, San Francisco CA; Long Island Housing Services NY; MaineStream Finance, Bangor ME; Maryland PIRG; Massachusetts Consumers' Coalition; MASSPIRG; Massachusetts Fair Housing Center; Michigan PIRG; Midland Community Development Corporation, Midland TX; Midwest Minnesota Community Development Corporation, Detroit Lakes MN; Mile High Community Loan Fund, Denver CO; Missouri PIRG; Mortgage Recovery Service Center of L.A.; Montana Community Development Corporation, Missoula MT; and Montana PIRG.

National Housing Institute; Neighborhood Economic Development Advocacy Project; New Hampshire PIRG; New Jersey Community Capital, Trenton NJ; New Jersey Citizen Action; New Jersey PIRG; New Mexico PIRG; New York PIRG; New York City Aids Housing Network; Next Step MN; NOAH Community Development Fund, Inc., Boston MA; Nonprofit Finance Fund, New York NY; Nonprofits Assistance Fund, Minneapolis MN; Northern Community Investment Corporation (St. Johnsbury, VT); North Carolina Association of Community Development Corporations; North Carolina PIRG;

Northside Community Development Fund, Pittsburgh PA; Ohio Capital Corporation for Housing, Columbus OH; Ohio PIRG; Oregon State PIRG; Our Oregon; PennPIRG; Piedmont Housing Alliance, Charlottesville VA; Rocky Mountain Peace and Justice Center, CO; Rhode Island PIRG; Rural Community Assistance Corporation, West Sacramento CA; and Rural Organizing Project OR.

San Francisco Municipal Transportation Authority; Seattle Economic Development Fund; Siouxland Economic Development Corporation (Sioux City, IA); Southern Bancorp (Arkadelphia AR); Community Capital Development; TexPIRG; The Association for Housing and Neighborhood Development; The Fair Housing Council of Central New York; The Help Network; The Loan Fund, Albuquerque NM; Third Reconstruction Institute NC; Vermont PIRG; Village Capital Corporation, Cleveland OH; Virginia Citizens Consumer Council; Virginia Poverty Law Center; War on Poverty—Florida; WashPIRG; Westchester Residential Opportunities Inc.; Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI; and WISPIRG.

DECEMBER 10, 2009.

HOUSE OF REPRESENTATIVES,
U.S. Capitol Building,
Washington, DC.

DEAR REPRESENTATIVE: The undersigned members of the Commodity Markets Oversight Coalition would like to extend its gratitude to Representative Collin Peterson of Minnesota, Chairman of the House Agriculture Committee, and members of his committee, for the hard work and efforts necessary to bring the over-the-counter (OTC) derivatives legislation, which is a part of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, to the House floor this week.

Both Chairman Peterson and House Financial Services Chairman Barney Frank and the members of their committees are to be commended on their efforts towards meaningful reform of the commodities futures/swaps markets. As members of Congress are well aware, our coalition has since early 2007 advocated for legislation to bring about greater transparency, oversight and accountability in these markets and to empower federal regulators with the authority and resources to protect against fraud, manipulation and excessive speculation.

In light of this, we urge your support for the following floor amendments to H.R. 4173 that will help to strengthen this legislation:

No. 47 (Rep. Stupak)—Would require transparency in swaps contracts by requiring all non-cleared swaps be executed on a registered swap execution facility.

No. 48 (Reps. Stupak, DeLauro, Larson, Van Hollen)—Would give the Commodity Futures Trading Commission and the Securities and Exchange Commission the authority to ban abusive swaps, amends any proposed commercial risk definition to disregard balance sheet risk, and maintains any illegal swap entered into after enactment of this Act will not be valid.

No. 114 (Rep. Peterson)—Would provide for the CFTC to define the terms ''commercial risk,'' ''operating risk,'' and ''balance sheet risk'' for purposes of the Commodity Exchange Act.

No. 115 (Reps. Peterson and Frank)—Would provide for position limits for physical commodities, clearing of over-the counter transactions, increased transparency, reporting, and recordkeeping, and transparency of offshore trading. It also addresses jurisdictional issues in the context of swaps by providing for CFTC jurisdiction over swaps and SEC jurisdiction over swaps that are primarily based on securities (or narrow-based security indexes). These two agencies are required to consult with each other and with banking regulators before regulating.

No. 135 (Rep. Lynch)—Prohibits swaps dealers from controlling more than 20% of an exchange. Provides rules toward the equitable governance of clearing houses and swap exchange facilities.

We are hopeful you will send the Senate strong, pragmatic legislation that will bring light to opaque, unregulated or under-regulated markets and market activity, close the door on potential fraud and manipulation, and give federal regulators the tools they need to prevent financial speculation from driving food and energy prices.

Such action is essential to rebuilding confidence in these markets as price discovery and risk management tools for bona-fide physical hedgers, to reducing systemic risk and market volatility, and helping to prevent further destabilization of our nation's economic recovery.

Sincerely,

Agricultural Retailers Association; Air Transport Association; American Feed Industry Association; American Cotton Shippers Association; Arkansas Oil Marketers Association; Colorado/Wyoming Petroleum Marketers Association; Columban Center for Advocacy and Outreach; California Independent Oil Marketers Association; Florida Petroleum Marketers Association; Food & Water Watch; Friends of the Earth; Fuel Merchants Association of New Jersey; Gasoline and Automotive Service Dealers of America; Independent Connecticut Petroleum Association; Institute for Agriculture and Trade Policy; Illinois Petroleum Marketers Association; Illinois Association of Convenience Stores; Louisiana Oil Marketers & Convenience Store Association; Maine Energy Marketers Association; Maryknoll Office for Global Concerns; Massachusetts Oilheat Council; Mid-Atlantic Petroleum Distributors' Association; Missionary Oblates—Justice, Peace & Integrity of Creation; Montana Petroleum Marketers & Convenience Store Association; National Association of Oilheating Service Managers; National Association of Truck Stop Operators; and National Family Farm Coalition.

National Farmers Union; National Grange; Nebraska Petroleum Marketers & Convenience Store Association; New England Fuel Institute; New Jersey Citizen Action Oil Group; New Mexico Petroleum Marketers Association; New York Oil Heating Association; North Dakota Petroleum Marketers Association; Ohio Petroleum Marketers & Convenience Store Association; Oil Heat Council of New Hampshire; Oil Heat Institute of Long Island; Oil Heat Institute of Rhode Island; Organization for Competitive Markets; Petroleum Marketers Association of America; Petroleum Marketers & Convenience Stores of Iowa; Petroleum Marketers & Convenience Store Association of Kansas; Propane Gas Association of New England; Public Citizen; R–CALF USA; South Dakota Petroleum & Propane Marketers Association; Tennessee Oil Marketers Association; United Egg Producers; Utah Petroleum Marketers & Retailers Association; Vermont Fuel Dealers Association; Western Peanut Growers; and West Virginia Oil Marketers & Grocers Association.

Madam Chair, I reserve the balance of my time.

Mr. LUCAS. Madam Chair, I rise in opposition to the amendment.

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

Mr. LUCAS. Madam Chair, I yield myself 2½ minutes.

This amendment strikes the term ''balance sheet'' risk from the definition of major swap participant, the result of which prevents corporations from hedging pension of funds costs.

Pension funds are a liability on a corporation's balance sheet. That liability carries risk and that risk needs to be managed. If corporations can't manage pension fund risk, their employees will realize smaller benefits or fewer employees will enjoy pension benefits altogether. Some companies may be forced to join the ranks of employers who have terminated company-based retirement plans.

Another part of the amendment allows a party to a swap to walk away from a swap for failure to comply with the clearing requirement or the execution transparency requirement created in this title. It sounds like a good idea, but let's take a closer look.

The only time a party to a swap will want to walk away from a transaction is when they're losing money. This provision will encourage a swap participant to call his or her attorney when the deal goes sour to find a way to walk away from the liability created by the transaction. This contractual uncertainty will push companies away from risk mitigation, leading to higher operating costs and higher prices to consumers. In addition, this amendment is not needed to punish a counterparty for lack of compliance. If there's noncompliance with the clearing or execution transparency requirements, the CFTC can stop and catch the malefactors.

I urge my colleagues to oppose this amendment.

Madam Chair, I reserve the balance of my time.

Mr. STUPAK. Madam Chair, I yield 2 minutes to the to the gentlewoman from Connecticut (Ms. DELAURO), the co-author of this amendment.

Ms. DELAURO. I am pleased to join Mr. STUPAK, Mr. VAN HOLLEN, and Mr. LARSON in support of this amendment.

The amendment does three things: It grants the CFTC and the SEC the authority to prohibit specific swaps, including the abuse of naked credit default swaps that distorted the derivatives market. It narrows the bona fide end user exemption in the bill to prevent loopholes that might allow major financial players to evade the requirements of this bill while ensuring that legitimate end users still have access to this financial tool. It ensures that no illegal swap transaction will remain a valid contract in a court of law. We should not countenance predatory behavior in any way, and we should make sure market players are not financially benefiting from the abusive and corrupt practices that helped to initiate this debilitating recession.

With credit default swaps, companies took bets that others would fail without facing any risk themselves in the

case of default. Other institutions took those bets even though they could not pay out if the unthinkable happened. It was a casino culture where traders played with taxpayers' dollars and made sure they won either way, always at the expense of regular people.

□ 2000

And when the defaults started to mount up, the whole house of cards came tumbling down.

Why did the credit default swaps, once just a financial tool to hedge risk, become the province of rampant and reckless speculation? Because they remained unregulated. The bill before us is a good step toward repairing this oversight and regulating markets, but we need to do more. Taken together, the changes in this amendment will strengthen regulation over these once useful financial tools and will help ensure that the entire Nation does not get taken for another ride on account of bad behavior in the derivatives market.

I urge my colleagues to support this amendment.

Mr. LUCAS. Madam Speaker, I would note to my colleagues that I have one remaining speaker, and I would turn to him to close when the time is appropriate.

Mr. STUPAK. I yield the balance of my time to the co-author of this amendment, Mr. VAN HOLLEN.

Mr. VAN HOLLEN. I want to thank my colleague, Mr. STUPAK. I am pleased to join with him and Ms. DELAURO and Mr. LARSON in offering this amendment.

I think we should make one thing clear: We all know that, when used properly within an appropriate regulatory framework, derivatives can be valuable tools for hedging commercial risk and provide important consumer benefits. That being said, we have learned all too painfully over the last year that derivatives used improperly and outside of an appropriate regulatory framework can become what Warren Buffett has described as ''financial weapons of mass destruction.'' When that speculation is permitted to spin out of control on unregulated dark markets, it can create a magnitude of systemic risk sufficient to threaten the entire economy. That's what we saw with AIG and others.

This amendment that we are offering today will provide important additional oversight to that market by giving regulators the explicit authority to ban abusive swaps, prevent abuse of the end user exemption, and ensure that victims of illegal transactions cannot be held liable for payment to their predatory counterparties in a court of law.

I urge adoption of the amendment and thank Chairmen FRANK and PETERSON for their support of this amendment.

Mr. LUCAS. Madam Chair, I yield my remaining time to close to my colleague and friend, the chairman of the Agriculture Committee, Mr. PETERSON of Minnesota.

Mr. PETERSON. I thank the gentleman.

I rise in opposition to the amendment, and I do so reluctantly because I know the sponsors of this amendment are sincere in their attempt to address potential problems that they fear could arise with the underlying bill. But I have to say that we have looked at these issues in great depth in the committee, and it is not that we haven't considered them.

In the first issue, banning of financial products, our concern there is that we believe that if we ban these products, they will simply move overseas and outside of our ability to regulate them. And if they are dangerous products and if they are something that shouldn't be done, I don't know if it makes any sense if we are just going to transfer that over to a foreign country. Our committee went to Europe. We recognize that most of the companies that do business in the United States also do business in Europe, and that is how we came down on that issue.

Another provision strikes the term ''balance sheet risk.'' We had considerable discussion about this. We think we have got the right terminology to get at the issue that some of the end users had. They felt that without that term, they might limit some of their transactions. And for those of us in agriculture, these things are very important to us because we are actually hedging physical risk. That is why I introduced an amendment directing the regulators to define the terms in explicit terms so that we would be clear about this. But as I said during that debate, the Agriculture Committee will definitely haul them up and straighten them out if they don't get the right answer to that.

Finally, the amendment limits the applicability of legal certainty of swaps. This amendment asks the question why illegal swaps should be enforceable. The answer is that otherwise you will encourage illegal behavior. If a swap dealer or an end user finds itself in a money-losing swap, it would be easy to engage in some illegal behavior to negate the swap and escape its financial liability.

The standard of illegality is not very high. You wouldn't have to commit fraud to invalidate a swap; you just don't have to follow the regulations. So do we really want businesses making the calculation between the costs associated with paying a fine to regulators for failing to dot the i's or cross the t's versus the costs associated with honoring their swap obligation? If the end user is harmed by the fraudulent action of its swap counterparty, the CFTC has the tools to seek restitution for the end user from the counterparty. Ending legal certainty causes more problems than it solves, in our opinion.

I know the sponsors of this amendment have good intentions, but I think that the amendment goes a little too far to address problems that it seeks to correct, and I would urge my colleagues to oppose the amendment.

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

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

Mr. FRANK of Massachusetts. Madam Chair, I demand a recorded vote.

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

AMENDMENT NO. 10 OFFERED BY MS. MATSUI

The Acting CHAIR. It is now in order to consider amendment No. 10 printed in House Report 111–370.

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

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Ms. MATSUI:

Page 465, after line 2, insert the following new subtitle:

Subtitle L—Making Home Affordable Program

SEC. 9911. PUBLIC AVAILABILITY OF INFORMATION.

(a) REVISIONS TO PROGRAM GUIDELINES.—The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall includes the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

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

The Chair recognizes the gentlewoman from California.

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

Madam Chair, I rise today to offer an amendment, along with Representatives KATHY CASTOR and BETTY SUTTON, that calls on the mortgage industry to help place more responsible homeowners into more affordable terms under the Making Home Affordable program.

Sadly, after more than 2 years since the beginning of the foreclosure crisis, much needs to be done to help Americans facing the threat of foreclosure. Leading economists expect another uptick in foreclosures, estimating nearly 5 million homeowners could face foreclosure over the next 2 years.

Madam Chair, my home district of Sacramento has been devastated by this crisis. I have been to foreclosure workshops over and over again. I have seen the hardships and the looks of desperation. The Making Home Affordable Housing program offers a host of financial incentives to the mortgage industry to help homeowners modify their loans to more affordable terms. It is expected to help nearly 4 million homeowners. Unfortunately, to date, the mortgage industry has yet to demonstrate its commitment to help homeowners. In fact, since the inception of the program nearly 1 year ago, the mortgage industry has placed only 31,000 homeowners into a permanent, affordable loan modification.

Madam Chair, no one here is looking for a bailout, but families need honest assistance. The amendment my colleagues and I are offering today requires mortgage industry participants in the Making Home Affordable program to report basic information on a monthly basis.

Under the amendment, mortgage industry participants would have to report the number of loan modification requests received, the number being processed, the number that have been approved, and the number that have been denied. It would also make that information available to the public through the Treasury Department's Web site.

Madam Chair, it is clear that greater transparency is needed to ensure that all parties are working toward the common goal of helping homeowners. I strongly urge my colleagues to join me in supporting this amendment.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chair, pursuant to section 4 of House Resolution 964, I request that amendment No. 11 be considered out of order. If I may elaborate, it is for the purpose of en blocing some amendments.

Mrs. CAPITO. Madam Chair, I rise to claim time in opposition, although I am not entirely opposed to the gentlelady's amendment.

The Acting CHAIR. Without objection, the gentlewoman from West Virginia is recognized for 5 minutes.

There was no objection.

Mrs. CAPITO. Madam Chair, the gentlelady's amendment deals with the Making Home Affordable program, which has been in effect for most of 2009. I think it is important to note that the Department of the Treasury is already collecting some of this data. But I would like to take this opportunity to express my continued concern, as the gentlelady expressed hers, with the loan modification programs in general.

Earlier this week, the House Financial Services Committee held a hearing in which there was bipartisan frustration with these programs. Rolled out under heralded proclamations that they would help 7 million to 9 million struggling homeowners, to date the loan modifications have helped only a fraction of that.

□ 2010

I have serious concerns that the administration has overpromised on these programs and has unfairly raised borrowers' expectations. Furthermore, we have learned that many of the trial modifications are not being processed with complete documentation. Lack of documentation was one of the main contributors to the foreclosure problem in the first place.

JPMorgan Chase recently disclosed that in November close to 25 percent of their trial modifications failed to make the first payment, and that nearly 50 percent of the borrowers failed to make all three of the first three payments. Furthermore, the Federal Reserve Bank of Boston cites that 30 to 45 percent of borrowers who receive modifications end up in default within 6 months.

Clearly, we need more transparency in this program. We also need to find a way to make the goals of the program work to help those who are having difficulty—who are suffering from unemployment or from the real estate collapse in their areas or who are unable to meet their obligations. All of us hear from constituents every single day who are struggling, but this program, Making Home Affordable, obviously has great lapses and great challenges.

With that, I reserve the balance of my time.

Ms. MATSUI. Madam Chair, I yield 1 minute to my colleague on the Energy and Commerce Committee, the gentlewoman from Florida (Ms. CASTOR).

Ms. CASTOR of Florida. I thank my colleague from California (Ms. MATSUI).

I rise in support of the Matsui amendment.

Madam Chair, all across America, families are doing everything right. They are paying their mortgages. They want to stay in their homes, but loan servicers and the banks have been slow to respond to reasonable requests for modifications.

Like many Democratic Members, I've held a number of foreclosure prevention workshops. What I hear from families is that these banks and the lenders and the servicers will not answer the phones to complete a modification and that, once they get the paperwork, they are not completing these modifications as they should.

Now, while President Obama's Making Home Affordable program has been positive in Florida and while we have over 83,000 modifications underway, we do not have the information necessary to tell where it is working, who it is working for, and which banks and servicers are not helping. So this amendment gets tough on those lenders and servicers.

It says that they have to demonstrate that they are following through with their responsibilities to modify mortgages for qualified families. It will keep the lenders honest by requiring up-to-date information about modifications, and that information will be made public. No more excuses for these lenders and servicers that have not been holding up their end of the bargain for America's families.

Mrs. CAPITO. Madam Chair, I continue to reserve the balance of my time.

Ms. MATSUI. Madam Chair, I yield 1 minute to my other colleague on the Energy and Commerce Committee, the gentlewoman from Ohio (Ms. SUTTON).

Ms. SUTTON. Madam Chair, I rise today, along with my colleagues Representative MATSUI and Representative CASTOR, in support of the Matsui amendment.

Before Wall Street collapsed, before anyone ever heard of ''credit default swaps'' and before AIG became a four letter word, homeowners across this country—and especially in Ohio—were already hurting. Responsible Americans were sold mortgages with indecipherable terms, with smoke-and-mirror provisions and with ''gotcha'' fees. Some lost their jobs and were unable to make payments, and some homeowners are still suffering. Last month, one in every 417 homes in this country received a foreclosure filing. The Making Home Affordable program has helped some homeowners but not enough, and it is time we saw some numbers.

This amendment requires Treasury to post on their Web site important data on mortgage servicer and lender participation in the program so we can hold mortgage servicers and lenders accountable, and so we can ask them ''why.'' Why are you not helping homeowners out of this mess that you created?

This is an important step toward helping Americans stay in their homes. I urge a ''yes'' vote.

Mrs. CAPITO. Madam Chair, I yield 2 minutes to my colleague on the Financial Services Committee, the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. I thank the gentlewoman for yielding.

Madam Chair, I could not agree more with the speakers whom I heard or with the intention of the gentlewoman who offered the amendment that we certainly need greater transparency in these taxpayer-funded housing programs.

I would also like to see that we include, maybe, HOPE for Homeowners, for which $300 billion has been authorized, but on the last date that it's available, which is dating back to July, only 1,000 applications and 50 loans closed. Yet $300 billion was authorized.

In the HAMP program, there was $75 billion of taxpayer money for 650,000, apparently, temporary loan modifications on a program that was supposed to help 4 million homeowners.

HARP, the Home Affordable Refinance Program, was supposedly going to help 4 to 5 million, and instead, there were only 116,000 loans.

Now let's look at what those who actually own the loans have done. There have been 4.7 million workouts that have happened in the competitive marketplace without any interference by government with no taxpayer money expended.

I mean, Madam Chair, this is the kind of transparency that we need. All of these taxpayer-funded foreclosure mitigation programs of this administration and of this Congress have been absolute abject failures. The only loan modification program, foreclosure mitigation program, that is going to work is a job, and we know what the record of this administration and of this Congress is: the highest unemployment rate in a generation and a double-digit unemployment rate.

Until you get rid of the looming storm clouds of Obamanomics, the debt, the spending, and the bailouts, you won't get the jobs. If you don't get the jobs, people can't keep their homes. So I am happy that we will shine a little bit more transparency into this.

Ms. MATSUI. Madam Chair, how much time do I have remaining?

The Acting CHAIR. Both sides have 1 minute remaining.

Ms. MATSUI. Madam Chair, I yield the balance of my time to the chairman of the Financial Services Committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. I support the amendment, but I do have to comment on this job issue.

Once again, it is clear that January 21, 2009, saw a mass disease outbreak—prolonged, profound Republican amnesia. The gentleman from Texas says, under this administration, we've lost jobs. Yes. The Obama recovery from the Bush recession has been slower than we had hoped, but it has begun.

According to the official National Bureau of Economic Research, the Bush recession began in 2007. Large job losses happened under the Bush administration and as a continuation of the Bush policies. We have finally begun to slow down the job loss.

The notion that it is because our economic recovery plan was passed that job loss has continued is, of course, economic illiteracy of the highest sort. The problem is that you do not immediately turn things around. Most economic analysts agree that the economic recovery program has slowed down the rate of job loss, and we have begun to turn it around.

When the gentleman from Texas and other Republicans blame Obama for the Bush mistakes, it's not going to be allowed to go unrebutted.

Mrs. CAPITO. Madam Chair, I would like to say facts are facts. We are, unfortunately, suffering some of the highest unemployment in a generation. These are real people who are losing real jobs, and we want to help them in their housing issues. I support the gentlewoman's amendment.

I would like to say that, in our hearing, we learned that the servicers and the banks were having some lapses, but we found also that the borrowers were having some lapses as well in terms of providing full documentation, in terms of responding to the lenders and to the servicers.

So I would encourage the gentlewoman, as we move through this process, to maybe expand the transparency of the information so that we can see the full program not just from the servicer's side or from the bank's side but also from the borrower's side, too, and see where their lapses may be as well.

With that, I yield back the balance of my time.

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

The amendment was agreed to.

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AMENDMENT NO. 12 OFFERED BY MR. KANJORSKI

The Acting CHAIR. It is now in order to consider amendment No. 12 printed in House Report 111–370.

Mr. KANJORSKI. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. KANJORSKI:

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

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

Page 1221, strike lines 20 through 25.

Page 1222, strike lines 1 through 2.

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

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

The Chair recognizes the gentleman from Pennsylvania.

Mr. KANJORSKI. Madam Chairman, I yield 1 minute to the son of one of the original authors of the Sarbanes-Oxley bill, Representative SARBANES of Maryland.

Mr. SARBANES. I thank the gentleman for yielding. I strongly support the Kanjorski-Frank-Sarbanes-Cohen amendment to the bill. This would restore critical investor protections for those who invest in publicly traded companies. And what are those? Number one, that the management establish internal controls with respect to the financial operations of the company; and, number two, that they get an outside audit to validate the soundness of those controls.

Now, those who oppose this say that the smaller publicly traded companies can't handle the burden of compliance. The costs have come way down, particularly because the SEC has been careful to work with these smaller companies to make sure that that burden is not too heavy.

The fact of the matter is that if you are an investor, it doesn't matter to you whether you are investing in a smaller company or a larger company. What you want to know is that that company is not cooking the books.

If we don't pass this amendment, then almost half of the publicly traded companies in this country will be exempt from these basic transparency requirements. That's why I urge support of it.

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

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

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 2 minutes.

I would like to begin by commending my colleague from South Jersey, Congressman JOHN ADLER, for his hard work on this very important issue. As all of our colleagues know in New Jersey and around the country, our Nation is in tough economic times right now and these tough times are compounded if you are a small business. And the last thing we need to do is put more burdens on them by imposing costly regulations.

I think we all agree that our Nation's small businesses are not the cause of our current financial situation, but they are the ones who are going to get us out of it. The language in the bill that would permanently exempt small businesses with a market capitalization of $75 million or less from section 404(b) of Sarbanes-Oxley was added during committee consideration by myself and Mr. ADLER and was adopted by a broad bipartisan vote, with the backing of the White House as well.

Unlike some would like to have you believe, this exemption does not exempt institutions from all auditing requirements. As the Independent Community Bankers Association notes in a

letter on this matter, they say, ''The regulatory burden will be in addition to their other annual auditing fees, their regular safety and soundness and compliance examinations conducted by the banking agencies, and complying with other numerous Federal and State banking laws and regulations. It will also be in addition to complying with Sarbanes-Oxley section 404(a) which requires management to render an opinion concerning an issuer's internal controls.''

Basically all that means is there is a plethora of other regulations providing for transparency for these companies.

Let me give you a quick example about one company in my district, and that is Dewey Electronics. They are located in Oakland, New Jersey, a small company, 35 employees, capitalized $3.6 million, hardly a company that's going to cause panic in this country if they fail. The CEO, the CFO and other management, they are all located in the same hallway, in the same building. There is constant communication between all the board of directors. They are a perfect example of a small business in which the government should not force new and now highly expensive regulatory requirements in order to have them check off some boxes on some form.

Think about it. The hundreds of thousands of dollars that it will cost them to comply with section 404(b) would be much better spent in developing new and more efficient generators, which is what the company does to support our troops overseas to be used on the battlefield or to be used to hire new employees, which is what we talked about a number of times before on this floor, to make sure that we can provide more jobs as we see the joblessness rate rise.

I reserve the balance of my time.

Mr. KANJORSKI. Madam Chair, I yield 1 minute for the gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. Madam Chair, I want to thank the people I have worked with on this amendment, Mr. KANJORSKI, Mr. FRANK, Mr. SARBANES.

The fact is that Sarbanes-Oxley section 404 is one of the more important pieces that we have in our portfolio to protect consumers against corporate fraud and corporate corruption. When it was passed it was passed by an overwhelming majority, almost unanimous, in this House.

Over the years it hasn't been implemented completely, but now it needs to be implemented, for small companies, $75 million or less, as well as the large companies where it has already been implemented. As Mr. SARBANES said, the loss to investors from small companies is just as important and potent to them as the loss from large companies. We have so many investors that will be at risk if there are not proper accounting procedures and safeguards for the American public.

As Arthur Levitt, the former chairman of the SEC said, Overturning the most pro-investor legislation in the past 25 years is deeply disturbing. Those who vote against investor protections in Sarbanes-Oxley will bear the investors' mark of Cain. Take it if you choose it.

I submit you shouldn't support the amendment.

Mr. GARRETT of New Jersey. Madam Chair, I now yield 1½ minutes to my friend and colleague from South Jersey, Congressman ADLER.

Mr. ADLER of New Jersey. I thank the gentleman from New Jersey.

Much of the legislation we are discussing the last couple of days and tomorrow when we vote is about the failure of this Congress to regulate sufficiently. I mean, it's one instance we have facts, we have data, we have clear evidence of our overregulation. Sarbanes-Oxley has done some very good things, and unfortunately the section 404(b) has chased companies out of the United States of America. We know companies that are doing IPOs, not in New York, but in London. They have said so. We know other companies that have been unable to aggregate capital to go from small to big, to create jobs, the sorts of jobs the President talked about at the Brookings Institution just a couple of days ago. Small companies sometimes become great companies and employ thousands and thousands of people.

Most of this bill we are talking about today and tomorrow will do some very good things to add enough regulation. This one instance, we have to do what Mr. GARRETT and I tried to do, what a bipartisan group in the Financial Services Committee did, which is restore the right balance so small companies aren't crushed from their aspiration of going public, of selling stock to the public, of growing and creating the next Microsoft, IBM, General Electric, the next great companies. We are missing a chance here if we pass this amendment.

The committee did the right thing on a bipartisan basis to grow our economy. Let's not turn our backs on the many Americans who want to have good, decent jobs in this country now.

Mr. KANJORSKI. Madam Chairman, I yield 1 minute to the chairman of the full committee, Mr. FRANK.

Mr. FRANK of Massachusetts. Madam Chair, the SEC has recognized the potential problems for people under $75 million. They are not now subjected to this. The question is not whether they should be immediately put under this, but whether they should be given a permanent exemption without giving us a chance to have the SEC continue its development of more appropriate rules. The notion that no such requirement should apply, there is an absolutism here that seems to me in error.

Yes, the SEC should treat companies at $75 million and below differently than people that are at a billion dollars and above, et cetera. But they are in the process of doing this. This is an exemption that is unnecessary at this time. If and when the SEC decides that it is ready to cover them and Members here think that they haven't done an adequate job of providing for it, a motion like this might be in order.

I understand the desire of people to help smaller businesses. But at this point it is a license for people who might want to be abusive by guaranteeing them that they will never be audited despite any effort to make an appropriate audit.

Mr. GARRETT of New Jersey. We should be closing. Are there speakers on the other side?

I will reserve the balance of my time.

Mr. KANJORSKI. As I understand, we are down to our last speaker on the other side; is that correct?

Mr. GARRETT of New Jersey. I am going to close, yes.

Mr. KANJORSKI. I will take the remaining time on our side.

The Acting CHAIR. The gentleman from Pennsylvania is recognized for 2 minutes.

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Mr. KANJORSKI. Madam Chairman, this was a very close vote in the committee and a highly contested issue, and I understand that there are hard and good feelings on both sides.

I think the proponents of the amendment that carried in the committee, which now this amendment is trying to reverse here on the floor, were trying to say that government is hurting, in some way, small companies, about 5,000 of them, if we continue to impose 404(b). That's not correct.

First and foremost, 404(b), to the companies that are less than $75 million in capitalization are not presently compelled to follow any of the existing Sarbanes-Oxley proposals. As a matter of fact, in the underlying bill, it won't be until 2011 that there will be an imposition of that, and only after a study that has already been ordered is made, which, as the chairman of the full committee recognized in his presentation, is that we will have plenty of time, that if that study comes back and says we should make adjustments to 404(b), we'll be able to do that.

The problem of our friends like Mr. Levitt, Mr. Volcker, and many other leading economists in the country and people of high position in economics, they know that for 20 years there has been a fight in this country to try and protect investors from unscrupulous activity. We saw, 7 years ago, Enron and WorldCom, and that's the genesis of where this rule came from. To now summarily reverse this rule because it's not very nice to have companies spend money to protect their shareholders is very appealing. I haven't any doubt that it will appeal.

But we're not talking about—when our adversaries on this particular proposition talk about small business, this isn't small business. These are companies that are registered public companies on the stock exchange and have up to $75 million in capitalization. That's

a pretty large company in most places. It certainly doesn't classify itself, under governmentspeak, to be a small business.

Mr. GARRETT of New Jersey. And now, I shall yield my remaining 1½ minutes to my friend and colleague from the State of Texas.

Mr. HENSARLING. As I listen carefully to this debate, I'm struck by the fact that this United States Congress doesn't seem to get it. The number one job of this Congress ought to be jobs. Again, I know some on the other side of the aisle take umbrage at the facts, and the facts are, we have double-digit unemployment, the highest unemployment in a generation. 3.6 million have lost their jobs since President Obama became President.

Now, I was informed by the distinguished chairman of the Financial Services Committee that perhaps some, like myself, on this side of the aisle have amnesia because the problem really started in 2007, which conveniently coincides with the year that the Democrats took control of Congress. So apparently, amnesia does not know partisan bounds, Madam Chairman.

So what we have here in front of us is an amendment to put even greater burdens on small business, the job engine of America. How many more regulations, how much more cost do you have to put on small businesses as they're struggling to meet their payrolls, as they're struggling to try to keep their businesses afloat? How many more jobs have to be lost, Madam Chairman? I hope no more. And we should reject this amendment.

Mr. GARRETT of New Jersey. Madam Chair, I would enter into the RECORD at this time just the letters of support of the Adler-Garrett amendment from the New York Stock Exchange Euronext, Property Casualty Insurers, ICBA, Biotechnology, and the Center for Investors and Entrepreneurs.

NYSE EURONEXT,
DECEMBER 8, 2009.

Hon. JOHN ADLER,
House of Representatives,
Washington, DC.
Hon. SCOTT GARRETT,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVES ADLER AND GARRETT: NYSE Euronext supports your provision in the Investor Protection Act that would permanently exempt smaller public companies, with a market capitalization of less than $75 million, from Section 404(b) of the Sarbanes Oxley Act of 2002.

We urge Congress to retain this provision in H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

This provision will help promote the ability of smaller companies to compete and create jobs without sacrificing the important benefits of strong auditor oversight and robust financial reporting requirements. The SEC's current exemption for companies with less than $75 million in market value represents a measured approach to balancing investor protection and SME competitiveness, as these companies continue to be audited and subject to SEC rules regarding financial reporting and disclosure requirements.

NYSE Euronext looks forward to continuing to work with the Congress to strengthen the growth, competitiveness and job-creation of U.S. public companies.

Sincerely,

CLARKE D. CAMPER,
Senior Vice President, Head of Government Affairs and Public Advocacy.

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA,
Washington, DC, December 10, 2009.

Hon. JOHN H. ADLER,
House of Representatives,
Washington, DC.
Hon. SCOTT GARRETT,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN ADLER AND CONGRESSMAN GARRETT: The Property Casualty Insurers Association of America (PCI) supports your provision in the Investor Protection Act that would permanently exempt smaller public companies, with a market capitalization of less than $75 million, from Section 404(b) of the Sarbanes Oxley Act of 2002. We strongly urge the Congress to include this language in the final version of H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

PCI supports strong corporate governance for all corporations. However, since the Sarbanes-Oxley Act became law, it has become clear that the implementation of Section 404(b) was too broad. It has been a competitive disadvantage for many U.S. corporations. We believe that the costs of compliance with Section 404(b) must continue to be reduced for all publicly-traded insurance companies, in particular for the small-to-medium sized insurers to which your provision applies.

PCI applauds you for your continued leadership on this important issue, and we look forward to working with you to lessen the burden of Section 404(b) compliance for smaller public businesses.

PCI represents the broadest cross-section of insurers of any national property/casualty trade association, with over 1000 members writing over $180 billion in direct written premium annually, over 37 percent of the nation's property/casualty insurance.

Sincerely,

BENJAMIN J. MCKAY, III,
Senior Vice President,
Federal Government Relations.

INDEPENDENT COMMUNITY BANKERS OF AMERICA,
Washington, DC, December 8, 2009.

Hon. LOUISE MCINTOSH SLAUGHTER,
Chairwoman, Rules Committee, House of Representatives, Washington, DC. 20515
Hon. DAVID DREIER,
Ranking Member, Rules Committee, House of Representatives, Washington, DC.

DEAR CHAIRWOMAN SLAUGHTER AND RANKING MEMBER DREIER: The Independent Community Bankers of America (ICBA) wishes to commend members of the House Financial Services Committee for including an amendment to the Investor Protection Act of 2009 sponsored by Representatives Scott Garrett and John Adler (which is Section 606 of that Act) that would exclude small publicly held companies including many community banks from the costly regulatory burden of complying with Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX). As the Rules Committee considers amendments to the overall financial reform package, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, ICBA would like to voice our opposition to an amendment being offered by Representative Paul Kanjorski that would strip this provision from the Investor Protection Act.

Without the Garrett/Adler exclusion included in the Investor Protection Act, beginning next year, many small, publicly held companies including several hundred community banks would be required to retain outside auditors to render costly attestations of their internal controls. In the case of community banks, this regulatory burden will be in addition to their other annual auditing fees, their regular safety and soundness and compliance examinations conducted by the banking agencies, and complying with numerous other federal and state banking laws and regulations. It also will be in addition to complying with SOX Section 404(a) which requires management to render an opinion concerning an issuer's internal controls.

For the hundreds of community banks that would be impacted by SOX Section 404(b), this exclusion will allow them to significantly reduce their regulatory expenses, conserve their capital, allowing them to make needed loans in their communities. This exclusion is particularly critical for those publicly held community banks located in areas of the country that have been hard hit by the economic downturn. These banks will be able to use this additional revenue to lend money to small businesses and consumers, encouraging job creation and aiding in the economic recovery. Importantly, this exclusion will also protect the FDIC's Deposit Insurance Fund by helping these community banks weather the economic crisis.

As you consider amendments to the regulatory reform package this week, ICBA urges you to retain the Garrett/Adler language that would exclude many community banks from the costly requirements of SOX Section 404(b) and oppose the Kanjorski amendment that would strip the bill of these needed provisions.

Sincerely,

STEPHEN VERDIER,
Executive Vice President,
Director of Congressional Relations.

BIOTECHNOLOGY INDUSTRY ORGANIZATION,
Washington, DC. December 10, 2009.

Hon. NANCY PELOSI,
Speaker of the House,
House of Representatives.
Hon. STENY HOYER,
Majority Leader,
House of Representatives.
Hon. JAMES CLYBURN,
Majority Whip,
House of Representatives.
Hon. JOHN BOEHNER,
Republican Leader,
House of Representatives.
Hon. ERIC CANTOR,
Republican Whip,
House of Representatives.

DEAR SPEAKER PELOSI, LEADERS HOYER AND BOEHNER, WHIPS CLYBURN AND CANTOR: On behalf of the Biotechnology Industry Organization (BIO) and our more than 1,200 member companies and research organizations, I am writing to express support for a provision included in H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, that will provide a permanent exemption from Section 404(b) of the Sarbanes-Oxley Act for smaller reporting companies (those with less than $75 million in market capitalization), and to ask that you oppose an amendment by Rep. Kanjorski to remove this provision from the bill. The provision in the bill would provide much-needed relief to smaller public biotechnology companies on the cutting edge of research and development. Additionally, the language in H.R. 4173 would require the SEC and GAO to conduct a study within 180 days of enactment to determine how the SEC could reduce the burdens of compliance with

Section 404(b) for those companies whose market capitalization is between $75 million and $250 million.

Over the past thirty years, the U.S. biotech industry has helped America build an innovation-based economy and created high-value, high-wage U.S. jobs. These jobs pay, on average, 68 percent more than private sector jobs in general. However, small biotechnology companies face great difficulties raising capital to finance the research and development of new and promising therapies, especially in the wake of the financial crisis. For example, in 2008 capital raised from initial public offerings fell 97 percent compared to 2007, and secondary offerings fell 56 percent. Total capital raised by the biotechnology industry in 2008 fell by 55 percent compared to 2007. There have only been 3 successful IPOs in 2009. I am concerned that adoption of Kanjorski Amendment #51 would contribute to the continuation of this troubling trend.

Without a permanent exemption from Section 404(b), the smallest biotech companies will be forced to absorb outsized audit and compliance costs—diverting revenue that could otherwise be reinvested in employees developing life-saving therapies. Currently, 41% of active publicly traded biotech companies fall under $75 million in market capitalization. This provision would both provide relief to small biotech companies as well as ensure that these companies can continue to focus their cash resources on developing the next generation of therapies to treat diseases affecting tens of millions of Americans.

Please support reasonable regulatory relief for small businesses and oppose Kanjorski amendment #51. I appreciate your leadership and look forward to working with you on this important issue.

Sincerely,

JAMES C. GREENWOOD,
President and CEO,
Biotechnology Industry Organization.

THE CENTER FOR INVESTORS
AND ENTREPRENEURS,
DECEMBER 10, 2009.

SUPPORT SMALL ENTREPRENEURS AND INVESTORS—KEEP OBAMA-BACKED ADLER-GARRETT SARBOX RELIEF PROVISION IN FINANCIAL REFORM BILL

OPPOSE KANJORSKI-SARBANES AMENDMENT TO REMOVE ADLER-GARRETT PROVISION FROM BILL

DEAR DEFENDER OF AMERICAN ENTREPRENEURS AND INVESTORS:, As early as today, the U.S. House of Representatives will debate amendments to the Wall Street Reform and Consumer Protection Act of 2009. As an advocate of small entrepreneurs and informed retail investors, we urge you to oppose any amendments to section 7606 of the bill that would remove a measure vital for growing small businesses to raise capital.

The Center for Investors and Entrepreneurs strongly supports the bipartisan provision—added to the bill by John Adler (D–N.J.) and Scott Garrett (R–N.J.) and backed by President Barack Obama—to extend the exemption for small public companies from the most onerous requirements of Sarbanes-Oxley. This will free the resources of these innovative firms for the creation of new products, new technologies, and new jobs—rather than accounting minutiae.

Expressing support for the Adler-Garrett provision, the Obama administration has said, ''Our focus must be on addressing the threats posed to investors and consumers by large, interconnected companies, rather than placing an undue burden on small businesses.'' (Wall Street Journal, http://blogs.wsj.com/washwire/2009/11/03/sarbanes-oxley-critics-declare-a-victory-at-least-for-now/)

For several years, in fact, Democrats and Republicans have noted that Sarbanes-Oxley's unexpectedly high costs to entrepreneurs, and hence to shareholder return, exceed whatever benefits it may have provided to investors. House Speaker Nancy Pelosi told CNBC in 2006 that the law had ''unintended consequences,.'' and while, ''You need the transparency. . . . I don't think you need the whole package.'' And Sen. John Kerry (D-Mass.) has called for a ''task force'' to ''make it easier for small businesses to comply with the Sarbanes-Oxley by reducing their regulatory burden in the future.'' (Kerry press release, http://kerry.senate.gov/v3/cfm/record.cfm?id=264068&)

University of Minnesota economics professor Ivy Zhang has calculated that Sarbanes-Oxley has cost the U.S. economy a whopping $1.4 trillion and provided few if any quantifiable benefits to investors (Zhang paper, http://w4.stern.nyu.edu/accounting/docs/speaker—papers/spring2005/Zhang—Ivy Economic—Consequences—of—S—O.pdf). Direct costs for the average public company to comply with just one section of Sarbanes-Oxley—the onerous section 404 that Adler-Garret targets—exceed $2.3 million per year, more than 25 times the original SEC estimate of $91,000 in annual costs. As a result, there is a dearth of small and midsize companies attracting capital by going public, leading the Wall Street Journal to report that ''even though financial markets have rebounded this year, initial public offerings in the United States are on track to fall below even the levels of the dot-com bust of 2001–2003.'' (Wall Street Journal, http://online.wsj.com/(article/SB10001424052748703558004574584241362784198.html) When companies can't raise capital by issuing equity in shares to the public, they are more dependent on debt markets. And when both debt and equity markets are effectively closed off, growth opportunities are limited, as are prospects for the growth of new jobs.

The Adler-Garrett provision does not exempt smaller companies from numerous anti-fraud statutes or indeed from most of Sarbanes-Oxley. It simply says that they need not comply with the requirement of Section 404 (b) that ''internal controls'' over financial statements be subject to full-blown audits. In practice, accountants have interpreted ''internal controls'' under the law to mean everything from the possession of office keys to the number of letters in an employee password, auditing items that have little relevance to accurate statements for shareholders. And these internal control rules were did no good against the mortgage shenanigans of companies like Countrywide Financial, which actually won an award from its internal control compliance in 2007 from the Institute of Internal Auditors.

Ironically, The accounting firms intended to be reined in by Sarbanes-Oxley have made a bundle due to the ballooning audit costs that have resulted, leading some to call the law ''The Accountants Full Employment Act.'' Thus, it should not be surprising that some of the letters you may receive in support of an amendment removing that small company exemption come from accountant associations arguing the self-interests of their members.

One other important consideration is that major portions of Sarbanes-Oxley may be declared unconstitutional in the next few months by the Supreme Court. Reporting on a constitutional challenge to the law that the Court heard this Monday, the Bloomberg states that ''U.S. Supreme Court justices questioned the constitutionality'' of much of the law. (Bloomberg, http://www.bloomberg.com/apps/news?pid = 20601103&sid=acK3iq5xklI4#) Yet, with the current exemption for smaller public companies set to expire this spring, these firms now face no choice but to set aside numerous resources now to plan for expensive audits—resources that could be used to make more products and hire more people—even if the law is eventually declared unconstitutional. At the very least, smaller firms should not be subject to the most onerous rules from Sarbanes-Oxley while its constitutionality is in doubt.

But the floor amendment introduced by Reps. Frank, Kanjorski, Cohen, and Sarbanes would remove the bill's protection for smaller firms from onerous and possibly unconstitutional Sarbanes-Oxley rules. We urge you to stand with the Obama administration and the Democrats and Republicans supporting the Adler-Garret provision by OPPOSING this amendment and any other measure to remove this provision that is so valuable for investors and entrepreneurs from the bill.

Please do not hesitate to contact me with any questions.

Sincerely,

JOHN BERLAU, *Director,*
Center for Investors and Entrepreneurs,
Competitive Enterprise Institute.

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

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

Mr. GARRETT of New Jersey. Madam Chairman, I demand a recorded vote.

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

It is now in order to consider amendment No. 13 printed in House Report 111–370.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. Parliamentary inquiry, Madam Chairman.

Is it not in order for the gentleman from California to offer his amendment now?

The Acting CHAIR. It is now in order to consider amendment No. 14 printed in House Report 111–370.

Mr. PRICE of Georgia. Madam Chairman, parliamentary inquiry.

The Acting CHAIR. The gentleman will state his inquiry.

Mr. PRICE of Georgia. I believe the Chair stated that amendment No. 13 was in order. Is the majority party skipping number 13?

The Acting CHAIR. Amendment No. 13 was not offered.

Mr. FRANK of Massachusetts. If the gentleman would yield, that was also in the manager's amendment, so it will not be offered. It's in the manager's amendment.

Mr. PRICE of Georgia. I thank the Chair.

AMENDMENT NO. 14 OFFERED BY MR. MCCARTHY OF CALIFORNIA

The Acting CHAIR. It is now in order to consider amendment No. 14 printed in House Report 111–370.

Mr. MCCARTHY of California. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

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

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

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

The Chair recognizes the gentleman from California.

Mr. MCCARTHY of California. Madam Chairman, I yield myself as much time as I may consume.

Madam Chairman, this amendment would strike section 6012 from the bill, which changes the liability standards for credit rating agencies that are Nationally Recognized Statistical Rating Organizations, or NRSROs, when they include their ratings on the new securities offerings.

First, I'm not here to defend credit rating agencies. I am supportive of other credit rating agency reforms that the committee passed, including removing references to credit rating from Federal statutes. I think the government and the private sector should use credit ratings for what they are—predictive opinions about inherently uncertain futures.

To cut through the technical discussion about section 7 and section 11 liability related to this issue, let me just make three points. Structure dictates behavior. Increased liability may lead to agencies being hesitant to even allow their ratings on security offerings, thereby providing potential investors with less information.

This also reminds me of the health care debate and our discussion of defensive medicine. Costs go up when doctors must practice defensive medicine to protect themselves from reckless lawsuits. In the same way, if rating agencies must practice defensive ratings for fear of being sued, this would ultimately increase costs and restrict credit. Opening NRSROs to unlimited civil liability will not guarantee more accurate credit ratings. Litigating an industry to death does not solve any problems.

Additionally, the SEC is currently seeking feedback on whether to rescind Rule 436(g), with comments due December 15. I am a critic of the SEC, and I do not always agree with their actions. However, I do think making this change, which will significantly affect security offerings, should be done thoughtfully and with an eye to the impact seemingly small changes will have on information investors receive as part of new securities offerings.

The SEC has asked for comments on a variety of issues, including whether rescinding 436(g) will disrupt access to capital, make it more difficult for smaller companies to obtain a credit rating, or would have negative consequences for smaller NRSROs. These are good issues to examine at any time. They are vital issues to examine in our current economy. We should be very careful about seemingly small changes that have huge consequences.

Madam Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chairman, I claim the time in opposition.

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

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentlewoman from Ohio (Ms. KILROY), a very diligent member of the committee.

Ms. KILROY. Madam Chairman, NRSROs, the credit rating agencies, have played a huge role in the collapse of our markets a year ago. In fact, they bragged that they could rate anything, even a cow. And they continue to play a critical role in millions of financial transactions as pension funds, mutual fund managers, and others rely on the ratings from Moody's, Standard & Poor's, and Fitch as they make their investment decisions. The Wall Street Reform and Consumer Protection Act, H.R. 4173, will provide for greater scrutiny and more responsibility from the credit rating agencies protecting these investors.

□ 2040

But the amendment from the gentleman from California would weaken credit rating agency reforms. It would continue an exemption under SEC rule 436(g) that the agency should not retain.

At the core of the Securities Act of 1933 is the idea that a company should provide investors with basic information about the securities it is issuing. It requires the issues to publicly disclose significant information about themselves and terms of the securities. Those who make material misstatements of fact or omissions in a registration statement can be held accountable under section 11 of the Act.

This provision now covers many experts in the financial world, such as accountants, lawyers, investment bankers, directors, officers, and executives of the issuers. Rating agencies that are not NRSROs fall under it, and there are about a hundred of those. And formerly the NRSROs were held liable under previous rulings of the SEC.

Amazingly enough, though, today, Moody's, Standard and Poor's, and other NRSROs are exempt from section 11 liability by SEC rule. It is a very uneven playing field. H.R. 4173 in its current form would correct that.

This reform should remain in the bill, and the amendment should be rejected. The highest standard of accountability is the central recommendation of the July 2009 report.

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

Mr. FRANK of Massachusetts. I yield the gentlewoman an addition 30 seconds.

Ms. KILROY. This is a central recommendation of the July 2009 report of the Investors Working Group, an independent task force chaired by former SEC Chair Arthur Levitt, who was appointed by President Clinton, and co-chaired by President Bush's appointee, William Donaldson. As they stated, this change would make rating agencies more diligent about the ratings process and ultimately more accountable for its sloppy performance.

Unfortunately, Mr. MCCARTHY's amendment would remove this much-needed accountability for credit rating agencies, and I strongly urge its defeat.

Mr. MCCARTHY of California. Madam Chair, may I inquire of the time remaining?

The Acting CHAIRMAN. Both sides have 2½ minutes remaining.

Mr. MCCARTHY of California. At this time, I'd like to yield 1 minute to my friend, the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentleman.

What the gentleman from California is trying to do is trying to help investors and help the markets by providing this amendment. The SEC is currently examining this whole issue in studying this, and we should basically allow the SEC to continue with its evaluation and then come back to address the issue. Because what we're dealing with here is the fact that there's an exemption, and eliminating that exemption would be punishing not the CRAs, but punishing investors.

What it will do is create an environment that will lead to more volatile and less accurate ratings. Something that none of us should be supporting.

Right now there is an exemption for the NRSROs if they have the ratings included in the registration statements filed under the Act. This removes that. What would be the end consequence of that if this were to go through and this amendment were not to pass?

Well, you would increase dramatically the time and cost involved with raising capital and thus make it more difficult for its issuers to do so. Moreover, some SROs may refuse to consent entirely, and what would that do? That would mean we would have even less information available to investors as they try to evaluate securities in the registration statement.

At the end of the day without this amendment, this underlying bill will see to it that we have a higher cost of credit, a higher cost to do business and less jobs in the country.

Mr. FRANK of Massachusetts. I yield 1 minute to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Madam Chairman, I think I heard the gentleman from New Jersey on the other side indicate that we should leave this up to the Securities and Exchange Commission and let them proceed under normal order. That's a unique statement tonight. I don't think I heard that argument all night. Suddenly, the Securities and Exchange Commission can be relied upon to act promptly. I'm happy to hear the other side is willing to assume that.

What we're trying to do with this amendment is to get uniformity. We

should not have one standard of lawsuit and another standard not allowed. Everyone recognizes, including the Securities and Exchange Commission, that this needs reform. They have a role pending. There is no question about that. But we can fix this problem, and the great lady from Ohio took it upon herself to do so at the committee. And I urge my colleagues to support her thoughtful amendment—or the opposition to this amendment by supporting the underlying bill and making uniformity a call of the day.

Mr. MCCARTHY of California. At this time, I will yield the remaining time to my good friend from Texas, Mr. JEB HENSARLING.

Mr. HENSARLING. I thank the gentleman for yielding the time.

This, in some respects, may be one of the few areas of agreement on both sides of the aisle that the rating agencies played a critical role in the economic turmoil that has been foisted upon our economy. We may differ on the remedy, though.

What is needed here is more competition, not more lawsuits. And what happens is when you lower the bar for a lawsuit, you raise the bar, barriers to entry, and make it more difficult. We know that for all intents and purposes that the government created a rating agency oligopoly that prevented the market from enjoying more competition, and we had all of this AAA-rated paper, and we know what has happened.

In many respects, Madam Chair, what we have seen now is the Democrats have tried to spin their way into more jobs than we have—our Nation's first trillion-dollar deficit; they have tried to borrow their way into more jobs—we're now borrowing 43 cents on the dollar and sending the IOUs to our children and grandchildren.

The bill that is brought to the floor today creates a permanent bailout authority for Wall Street. They have tried to bail out their way to more jobs, and this particular amendment says maybe we can sue our way into more jobs. That is not the way it is done, Madam Chair. We need more competition, not more lawsuits.

I urge the adoption of the amendment from the gentleman from California.

Mr. FRANK of Massachusetts. Madam Chair, I know the gentleman from Texas likes to blame everything bad that happened starting on January 21; there was no Bush recession; there was no deterioration in the war in Afghanistan; there was no TARP under Bush, but he's particularly trying to do it now because here's what he's doing: He's trying to defend an amendment that would give legal immunity to the rating agencies. I cannot think of a more counterintuitive and counterproductive thing to do.

The gentleman from California—I thought I heard him say—we don't want them practicing defensive ratings. Yeah, we do, because they have been practicing very offensive ratings. Here are the rating agencies that everybody agrees have been a major cause of the problems, and what do the Republicans want to do? Protect the poor dears from people suing them by a standard of gross negligence so that an investor who relies on their judgment has no remedy whatsoever.

Yes, we want the rating agencies to be a lot more careful. We want the rating agencies to fear that if they overestimate—here's the problem: We have a business model where the rating agencies are paid by the people they rate. I wish we could encourage people on the buy side to do that. We've certainly encouraged them in any way we can.

But as long as you have rating agencies paid by the people they rate—and the only people who would sue them now are the people who they rate. So they can only be sued if people thought they were too low. There's nobody who has the right to sue them if they thought they were too high—and of course we have done that in this bill.

But here's what it comes down to. If you want to protect the rating agencies from being legally liable for their gross negligence to hurt investors, vote for this amendment.

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

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

Mr. MCCARTHY of California. Madam Chairman, I demand a recorded vote.

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

□ 2050

Mr. FRANK of Massachusetts. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SERRANO) having assumed the chair, Ms. EDWARDS of Maryland, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

PERMISSION TO CONSIDER CERTAIN AMENDMENTS AS MODIFIED DURING FURTHER CONSIDERATION OF H.R. 4173

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that, during further consideration of H.R. 4173 pursuant to House Resolution 964, the amendments numbered 1 and 36 may be considered as modified by the respective forms at the desk.

The SPEAKER pro tempore. The Clerk will report the modifications.

The Clerk read as follows:

Modification to amendment No. 1 offered by Mr. FRANK of Massachusetts:

On page 152 of the Amendment: strike the instruction referring to page 747 and the following text through page 153, line 8.

Modification to amendment No. 36 offered by Mr. BACHUS:

At the end of title I, add the following new section:

SEC. 1012. GAO AUDIT OF THE FEDERAL RESERVE.

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

(1) 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.'';

(2) 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

(3) 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 within 12 months of the enactment of the Consumer and Taxpayer Protection Act of 2009.

''(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.''.

Mr. FRANK of Massachusetts (during the reading). Mr. Speaker, I ask unanimous consent that the reading be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request?

Without objection, the amendments are modified.

There was no objection.

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

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

□ 2052

IN THE COMMITTEE OF THE WHOLE

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

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose earlier today, a request for a recorded vote on amendment No. 14 printed in House Report 111–370 by the gentleman from California (Mr. MCCARTHY) had been postponed.

ANNOUNCEMENT BY THE ACTING CHAIR

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

Amendment No. 1, as modified, by Mr. FRANK of Massachusetts.

Amendment No. 2 by Mr. SESSIONS of Texas.

Amendment No. 5 by Mr. LYNCH of Massachusetts.

Amendment No. 6 by Mr. MURPHY of New York.

Amendment No. 7 by Mr. FRANK of Massachusetts.

Amendment No. 8 by Mr. STUPAK of Michigan.

Amendment No. 9 by Mr. STUPAK of Michigan.

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

AMENDMENT NO. 1, AS MODIFIED, OFFERED BY MR. FRANK OF MASSACHUSETTS

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 240, noes 182, not voting 18, as follows:

[Roll No. 953]

AYES—240

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

NOES—182

Aderholt
Adler (NJ)
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hodes
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kaptur
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Massa
McCarthy (CA)
McCaul
McClintock
McCotter
McKeon
McMorris Rodgers
Meek (FL)
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—18

Baldwin
Barrett (SC)
Bordallo
Clarke
Deal (GA)
DeFazio
Hoyer
Johnson (GA)
Lofgren, Zoe
McHenry
Moran (VA)
Murtha
Radanovich
Richardson
Roybal-Allard
Schauer
Scott (GA)
Slaughter

□ 2118

Messrs. CAMPBELL and SHUSTER changed their vote from ''aye'' to ''no.''

Mr. VISCLOSKY changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Ms. CLARKE. Madam Chair, on rollcall No. 953 for the Frank of Massachusetts Amendment as modified, had I been present, I would have voted ''aye.''

Mr. SCOTT of Georgia. Madam Chair, on rollcall No. 953, the Frank of Massachusetts Amendment as modified, I was unable to vote. Had I been present, I would have voted ''aye.''

AMENDMENT NO. 2 OFFERED BY MR. SESSIONS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the

gentleman from Texas (Mr. SESSIONS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 172, noes 257, not voting 11, as follows:

[Roll No. 954]

AYES—172

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Dent
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McClintock
McCotter
McHenry
McKeon
McMahon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Nye
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Schrader
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOES—257

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

NOT VOTING—11

Baldwin
Barrett (SC)
Bordallo
Deal (GA)
Lofgren, Zoe
McCaul
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2125

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 5 OFFERED BY MR. LYNCH

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 228, noes 202, not voting 10, as follows:

[Roll No. 955]

AYES—228

Abercrombie
Ackerman
Andrews
Arcuri
Baca
Baird
Barrow
Barton (TX)
Becerra
Berkley
Berman
Berry
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capito
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castle
Castor (FL)
Chandler
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Costello
Courtney
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Emerson
Engel
Eshoo
Faleomavaega
Farr
Fattah
Filner
Fortenberry
Frank (MA)
Fudge
Garamendi
Gerlach
Giffords
Gohmert
Gonzalez
Grayson
Green, Al
Green, Gene
Grijalva
Hall (NY)
Hare
Harman
Harper
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inglis
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kissell
Kucinich
Langevin
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Markey (CO)
Markey (MA)
Marshall
Massa
Matsui
McCollum
McCotter
McDermott
McGovern
McIntyre
McNerney
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mollohan
Moore (WI)
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Norton
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perriello
Peterson
Pierluisi
Pingree (ME)
Platts
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Space
Speier
Spratt
Stark
Stearns
Stupak
Sutton
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Tonko
Towns
Tsongas
Upton
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman

Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—202

Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Austria
Bachmann
Bachus
Bartlett
Bean
Biggert
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Boyd
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Cardoza
Carter
Cassidy
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Connolly (VA)
Cooper
Costa
Crenshaw
Crowley
Culberson
Davis (KY)
Davis (TN)
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Ehlers
Etheridge
Fallin
Flake
Fleming
Forbes
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gingrey (GA)
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Gutierrez
Hall (TX)
Halvorson
Hastings (WA)
Heller
Hensarling
Herger
Hill
Himes
Hoekstra
Hunter
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Lamborn
Lance
Larsen (WA)
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Maffei
Maloney
Manzullo
Marchant
Matheson
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McHenry
McKeon
McMahon
McMorris Rodgers
Meek (FL)
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mitchell
Moore (KS)
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Nunes
Nye
Olson
Paul
Paulsen
Pence
Perlmutter
Peters
Petri
Pitts
Poe (TX)
Polis (CO)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Schrader
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Sullivan
Tanner
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Titus
Turner
Walden
Wamp
Weiner
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—10

Baldwin
Barrett (SC)
Bordallo
Deal (GA)
Lofgren, Zoe
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2133

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 6 OFFERED BY MR. MURPHY OF NEW YORK

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 304, noes 124, not voting 12, as follows:

[Roll No. 956]

AYES—304

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

NOES—124

Abercrombie
Ackerman
Andrews
Becerra
Berman
Bishop (NY)
Brady (PA)
Braley (IA)
Capps
Capuano
Carson (IN)
Castor (FL)
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Courtney
Dahlkemper
DeGette
Delahunt
DeLauro
Dingell
Doggett
Doyle
Edwards (MD)
Ellsworth
Eshoo
Faleomavaega
Farr
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Grayson
Green, Al
Grijalva
Gutierrez
Hare
Hastings (FL)
Hinchey
Hinojosa
Hirono
Holt
Honda
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kucinich
Langevin
Larson (CT)
Lee (CA)
Loebsack
Lowey
Lynch
Markey (MA)
McCollum
McDermott
McGovern
Miller (NC)
Miller, George
Moore (WI)
Nadler (NY)
Napolitano
Norton
Oberstar
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Payne
Perriello
Peterson
Pierluisi
Pingree (ME)
Price (NC)
Quigley
Reyes
Rothman (NJ)
Roybal-Allard
Ryan (OH)
Sablan
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Scott (VA)
Serrano
Sestak
Sherman
Sires
Speier
Stark
Stupak
Sutton
Tierney
Titus
Tonko
Tsongas
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Woolsey
Wu

NOT VOTING—12

Baldwin
Barrett (SC)
Bordallo
Costello
Deal (GA)
Lofgren, Zoe
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter
Sullivan

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2139

Mr. SPRATT changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr.

FRANK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 150, noes 280, not voting 10, as follows:

[Roll No. 957]

AYES—150

Abercrombie
Ackerman
Andrews
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Carnahan
Carson (IN)
Castor (FL)
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Costello
Courtney
Cummings
Davis (IL)
Davis (KY)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Ellison
Engel
Eshoo
Faleomavaega
Farr
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Grayson
Green, Al
Grijalva
Hall (NY)
Hare
Hastings (FL)
Hinchey
Hinojosa
Hirono
Holt
Honda
Israel
Jackson (IL)
Johnson (GA)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kucinich
Langevin
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lowey
Luján
Lynch
Maloney
Markey (MA)
Matsui
McCollum
McDermott
McGovern
Michaud
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Nadler (NY)
Napolitano
Neal (MA)
Norton
Oberstar
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Payne
Perriello
Pierluisi
Pingree (ME)
Price (NC)
Quigley
Rangel
Reyes
Rothman (NJ)
Roybal-Allard
Rush
Ryan (OH)
Sablan
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schrader
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Speier
Spratt
Stark
Stupak
Sutton
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Tsongas
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—280

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

NOT VOTING—10

Baldwin
Barrett (SC)
Bordallo
Deal (GA)
Lofgren, Zoe
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2147

Mr. BACA and Ms. JACKSON-LEE of Texas changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. DAVIS of Kentucky. Madam Chair, on rollcall No. 957 I inadvertently voted ''aye'' when I intended to vote ''no.''

AMENDMENT NO. 8 OFFERED BY MR. STUPAK

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 98, noes 330, not voting 12, as follows:

[Roll No. 958]

AYES—98

Abercrombie
Andrews
Barton (TX)
Becerra
Berman
Blumenauer
Braley (IA)
Brown-Waite, Ginny
Capps
Castor (FL)
Chandler
Christensen
Chu
Clarke
Clyburn
Cohen
Conyers
Courtney
Cummings
DeFazio
DeGette
DeLauro
Dingell
Doggett
Donnelly (IN)
Doyle
Edwards (MD)
Ellison
Eshoo
Faleomavaega
Farr
Filner
Garamendi
Grayson
Grijalva
Hare
Heinrich
Hinchey
Hirono
Honda
Israel
Kaptur
Kennedy
Kildee
Kucinich
Langevin
Larson (CT)
Lee (CA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Markey (MA)
McDermott
McGovern
Michaud
Miller, George
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Payne
Perriello
Pierluisi
Pingree (ME)
Rothman (NJ)
Roybal-Allard
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Serrano
Shea-Porter
Sherman
Sires
Stark
Stearns
Stupak
Sutton
Tierney
Titus
Tonko
Tsongas
Van Hollen
Visclosky
Watson
Waxman
Welch
Woolsey
Wu
Yarmuth

NOES—330

Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Barrow
Bartlett
Bean
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Chaffetz
Childers
Clay
Cleaver
Coble
Coffman (CO)
Cole
Conaway
Connolly (VA)
Cooper
Costa
Costello
Crenshaw
Crowley
Cuellar
Culberson
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Delahunt
Dent
Diaz-Balart, L.
Dicks
Dreier
Driehaus
Duncan
Edwards (TX)
Ehlers
Ellsworth
Emerson
Engel
Etheridge
Fallin
Fattah
Flake
Fleming

Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Green, Al
Green, Gene
Griffith
Guthrie
Hall (NY)
Hall (TX)
Halvorson
Harman
Harper
Hastings (FL)
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinojosa
Hodes
Hoekstra
Holden
Holt
Hoyer
Hunter
Inglis
Inslee
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kanjorski
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Lamborn
Lance
Larsen (WA)
Latham
LaTourette
Latta
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Napolitano
Neal (MA)
Neugebauer
Norton
Nunes
Nye
Oberstar
Olson
Ortiz
Owens
Paul
Paulsen
Pence
Perlmutter
Peters
Peterson
Petri
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Rahall
Rangel
Rehberg
Reichert
Reyes
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ruppersberger
Rush
Ryan (WI)
Sablan
Salazar
Scalise
Schauer
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Sullivan
Tanner
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Towns
Turner
Upton
Velázquez
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watt
Weiner
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—12

Baldwin
Barrett (SC)
Bordallo
Deal (GA)
Diaz-Balart, M.
Gutierrez
Lofgren, Zoe
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2154

Messrs. SABLAN and RUSH changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 9 OFFERED BY MR. STUPAK

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

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

The vote was taken by electronic device, and there were—ayes 150, noes 279, not voting 11, as follows:

[Roll No. 959]

AYES—150

Abercrombie
Ackerman
Andrews
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Brady (PA)
Braley (IA)
Butterfield
Capps
Capuano
Carney
Carson (IN)
Cassidy
Castor (FL)
Chandler
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Courtney
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Ellison
Engel
Eshoo
Faleomavaega
Farr
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Gohmert
Grayson
Green, Al
Green, Gene
Gutierrez
Hall (TX)
Hare
Hastings (FL)
Hinchey
Hinojosa
Hirono
Hodes
Holt
Honda
Inslee
Israel
Jackson (IL)
Johnson (GA)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Klein (FL)
Kucinich
Langevin
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Markey (MA)
Matsui
McCollum
McDermott
McGovern
Michaud
Miller (NC)
Miller, George
Moore (WI)
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Norton
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Petri
Pierluisi
Pingree (ME)
Price (NC)
Rahall
Rangel
Reyes
Rothman (NJ)
Roybal-Allard
Ryan (OH)
Sablan
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Scott (VA)
Sensenbrenner
Serrano
Sestak
Shea-Porter
Sherman
Sires
Stark
Stupak
Sutton
Thompson (CA)
Tierney
Titus
Tonko
Tsongas
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Woolsey
Wu
Yarmuth

NOES—279

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

NOT VOTING—11

Baldwin
Barrett (SC)
Bordallo
Deal (GA)
Grijalva
Lofgren, Zoe
Moran (VA)
Murtha
Radanovich
Richardson
Slaughter

ANNOUNCEMENT BY THE ACTING CHAIR

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

□ 2201

Ms. SPEIER changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENTS EN BLOC OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, pursuant to the authority granted to me under the rule, I offer amendments en bloc.

The Acting CHAIR. The Clerk will designate the amendments en bloc.

Amendments en bloc offered by Mr. FRANK of Massachusetts consisting of amendments numbered 11, 20, 21, 22, 23, 24, 27, 28, 34 and 25 printed in House Report 111–370.

AMENDMENT NO. 11 OFFERED BY MR. PAULSEN

The text of the amendment is as follows:

Page 21, line 23, insert ''and shall not be excluded from any of the Council's proceedings, meetings, discussions and deliberations'' after ''advisory capacity'':

AMENDMENT NO. 20 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 22, beginning on line 19, strike ''orderliness''.

AMENDMENT NO. 21 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 92, line 16, insert the following: ''The aforementioned amounts shall be indexed to inflation.''

AMENDMENT NO. 22 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 58, line 4, insert after the period the following new sentence: ''The Board shall define by rule or regulation the term 'significantly undercapitalized' at a threshold the Board determines to be prudent for the effective monitoring, management and oversight of the financial system.''.

AMENDMENT NO. 23 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 20, line 1, insert after ''possible'' the following: '', but no later than two (2) years,''.

AMENDMENT NO. 24 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 1185, beginning on line 10, strike ''have engaged in information sharing or''.

AMENDMENT NO. 27 OFFERED BY MR. DENT

The text of the amendment is as follows:

At the end of the bill, insert the following new section:

SEC. ___. SENSE OF CONGRESS REGARDING SIMPLIFIED MORTGAGE CONTRACT SUMMARIES.

It is the sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

AMENDMENT NO. 28 OFFERED BY MR. MOORE OF KANSAS

The text of the amendment is as follows:

Add at the end the following new title (and update the table of contents accordingly):

TITLE VIII—NONADMITTED AND REINSURANCE REFORM ACT

SECTION 10001. SHORT TITLE.

This title may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2009''.

SEC. 10002. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

Subtitle A—Nonadmitted Insurance

SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 10101 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 10101(b) of this title that include alternative nationwide uniform eligibility requirements; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 10105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this subtitle on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such

business in the 18-month period that begins upon the effective date of this Act;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the findings of the study not later than 30 months after the effective date of this Act.

SEC. 10107. DEFINITIONS.

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

(1) ADMITTED INSURER.—The term ''admitted insurer'' means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term ''affiliate'' means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term ''affiliated group'' means any group of entities that are all affiliated.

(4) CONTROL.—An entity has ''control'' over another entity if—

(A) the entity directly or indirectly or acting through one or more other persons owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term ''exempt commercial purchaser'' means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this Act and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''home State'' means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term ''home State'' means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term ''independently procured insurance'' means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term ''nonadmitted insurance'' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term ''Non-Admitted Insurance Model Act'' means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term ''nonadmitted insurer'' means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(12) QUALIFIED RISK MANAGER.—The term ''qualified risk manager'' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has one of the following designations:

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as ''CPCU'') issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(13) PREMIUM TAX.—The term ''premium tax'' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) SURPLUS LINES BROKER.—The term ''surplus lines broker'' means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(15) STATE.—The term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle B—Reinsurance

SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subtitle; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 10202. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 10203. DEFINITIONS.

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

(1) CEDING INSURER.—The term ''ceding insurer'' means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms ''State of domicile'' and ''domiciliary State'' means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term ''reinsurance'' means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term ''reinsurer'' means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(5) STATE.—The term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle C—Rule of Construction

SEC. 10301. RULE OF CONSTRUCTION.

Nothing in this title or amendments to this title shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this title and any amendments to this title and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 10302. SEVERABILITY.

If any section or subsection of this title, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this title, and the application of the provision to any other person or circumstance, shall not be affected.

AMENDMENT NO. 34 OFFERED BY MR. MURPHY OF NEW YORK

The text of the amendment is as follows:

Page 176, strike lines 12 through 14 (and redesignate remaining paragraphs accordingly).

Add at the end of the bill the following:

TITLE VII—INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED

SEC. 9001. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.

(a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows:

''(i) [Repealed]''.

(2) HOME OWNERS' LOAN ACT.—The first sentence of section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking ''savings association may not—'' and all that follows through ''(ii) permit any'' and inserting ''savings association may not permit any''.

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

''(g) [Repealed]''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

AMENDMENT NO. 25 OFFERED BY MS. HERSETH SANDLIN

The text of the amendment is as follows:

Page 1022, line 20, strike ''Section'' and insert the following:

(a) EXEMPTION.—Section

Page 1024, line 3, strike the period at the end and insert ''; and''.

Page 1024, after line 3, insert the following:

(b) CONSIDERATION OF RISK.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c)) is amended by adding at the end the following:

''(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.''.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Massachusetts and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, these are 10 amendments that raise in merit from wonderful to at least acceptable, and I will be reserving the balance of my time; and I will yield time, or they can get their own time, to any one of the offerers who wishes to explain his or her amendment.

I reserve the balance of my time.

Mr. BURGESS. I will claim the time in opposition, even though I am not opposed.

The Acting CHAIR. Without objection, the gentleman from Texas is recognized for 10 minutes.

There was no objection.

Mr. BURGESS. Mr. Speaker, I yield myself such time as I may consume to speak on the five amendments that I offered in the Rules Committee that were made in order under the rule.

The first, Burgess amendment No. 20, to strike the word ''orderliness'' on the list of descriptors of title I's definitions of the duties of the Council. In the language of the underlying bill, there is no explanation for what ''orderliness'' means in financial parlance. Without that word, this section still has power, and what this amendment would do is remove a word that seems nebulous without a common understanding.

The second amendment, No. 21, index Systemic Dissolution Fund amounts to inflation. In the language of the underlying bill, the section creating the Systemic Dissolution Fund indexes the amount to inflation whereas any mitigatory action imposed by the Council involving the sale, divestiture or transfer of more than $10 billion in total assets by a financial holding company subject to a stricter set of standards does not. This amendment would index those amounts.

Burgess Amendment No. 22. The metrics of what determines ''significantly undercapitalized'' will be determined by rule or regulation. In the language of the underlying bill, title I portends to elaborate on what ''significantly undercapitalized'' means, but in its definition, it neither gives a fixed dollar amount, a ratio or even a formula. Without a specific metric, this definition is left too much to individual interpretation, just like on page 494 of the bill where ''substantial net position'' requires a specific definition by rulemaking, ''significantly undercapitalized'' should be defined in rule or regulation.

I would further point out that the very next section of the bill gives the term ''significantly critically undercapitalized,'' and under ''critically undercapitalized,'' there is, in fact, reference to at least a ratio at another part of the bill. ''Significantly undercapitalized'' is never adequately defined, and I am concerned about the effect of unintended consequences if we do not provide that definition.

Burgess No. 23, the outer limit of 2 years on the amount of time the Federal Reserve has to do their audit. During the Financial Services markup, Representative PAUL offered an amendment which was accepted 43–26. This amendment is generally reflected in title I, section 1000A, which allows for the auditing of the Federal Reserve, and it shall be completed as expeditiously as possible. My amendment seeks to put an outer time limit on the amount of time which can pass or otherwise be defined as ''expeditiously as possible.'' An audit by the IRS for an individual usually does not take very long. In fact, the IRS has 3 years to

audit an individual if there is not a substantial omission or if there is no tax fraud. In those cases, it would take 6 years, but the IRS is given so much time to do an audit because there are 143 million individual returns to examine.

The Federal Reserve is different. Presumably, as a government agency, while they wouldn't be as easy to audit as an individual, because the government is supposed to have greater transparency, checking the Federal Reserve balance sheet of over $70 billion of assets should not take more than 2 years, simply for two reasons: we know who to audit and we know what to audit.

While I note the historic nature of even getting an audit of the Federal Reserve is in place, we cannot let the audit go on interminably, especially in times of financial crisis. We need to know what they have and where they have it. I applaud Representative PAUL for his laser-like dedicated focus to this issue, but this amendment would add an outer limit of 2 years on the amount of time that the Federal Reserve has to obtain that audit.

Finally, Burgess No. 24 strikes the phrase ''have engaged in information sharing or'' from the SEC ''revolving door'' study. In the language of the underlying bill, the definition of what or what is not information is not sufficiently evidenced so that if an employee of the SEC shares information as basic as the date of a meeting on a calendar, they would be considered a part of the SEC ''revolving door.''

This amendment proposes to get to the heart of the issue, which is to find those who have circumvented Federal rules and regulations without bringing in those who have basic and nonessential information. I liken this to the innocent spouse provision in the IRS statutes. If someone just simply shares a page from an Outlook calendar, that does not make them or should not make them part of the ''revolving door'' which we attempt to contain and restrain with the underlying language of the bill.

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

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentleman from New York (Mr. MURPHY), the author of one of the amendments.

Mr. MURPHY of New York. My amendment very simply gets rid of an anachronistic law from 1933. Right now, it's illegal for banks to pay interest to business checking accounts. This adversely affects our small businesses and keeps them from building their business.

Now, as we are fixing some of the issues we have with our regulatory system, is the right time to get rid of that. So my amendment would make it legal for banks to pay interest to business checking accounts. It wouldn't require it, but it would make it legal. This is the kind of commonsense approach that's going to move us forward and help our small businesses get this economy going again.

Mr. FRANK of Massachusetts. I reserve the balance of my time.

Mr. BURGESS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I would just take this opportunity to announce if there are any Members here who think we are going to do any further business, that we're not. We will resume tomorrow morning. I will inform the Members as a result of what we have been able to do with some of the manager's amendments and this en blocing, and I appreciate the cooperation of the gentleman from Texas and others, we have, I believe, 11 amendments left to be offered tomorrow.

□ 2210

Two of them will take a longer time, one on the CFPA, the Consumer Financial Protection Agency; one on the Republican substitute; and then there will be a recommit. So we should be, obviously, finishing this bill sometime early tomorrow afternoon. We will come back in tomorrow and resume the debate, and I wanted Members to know that.

Mr. PAULSEN. Mr. Chair, the bill before us establishes a Financial Stability Oversight Council that includes the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and Federal banking and securities regulators.

The bill also includes non-voting members, a State insurance commissioner, a State Securities commissioner, the head of the new Federal Insurance Office and a State banking supervisor, who would serve on the Council in an advisory capacity.

My amendment ensures that the non-voting regulators are not excluded from any proceedings, meetings, discussions, and deliberations.

I believe that is important to ensure that the Federal insurance office and other state regulators will have a seat at the table for any deliberations that impact the consumers they protect and institutions they regulate.

If these institutions are going to be responsible for paying into the bailout fund, it is only fair that their concerns are represented.

I urge adoption of my amendment.

Mr. DENT. Mr. Chair, my amendment is simple—It expresses the sense of Congress that mortgage lending institutions should provide loan applicants with a simplified summary of their loan contracts, including an easy to read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

I ask that a sample template of this one page summary document be inserted into the CONGRESSIONAL RECORD.

H.R. 4173 is a 1,200 plus page bill that purports to protect consumers from abusive financial products by creating a new government bureaucracy—the Consumer Finance Protection Agency.

We see in the complicated mortgage contract process that more bureaucracy and more requirements doesn't guarantee more protection. How many homebuyers understand the voluminous and complex documents they shuffle through when closing on a new home? The process is no less cumbersome for the lender. Less can be more.

Having gone through this process as a homebuyer and after speaking to numerous bankers and lenders, I believe we must work to simplify the process, while ensuring borrowers are protected from abusive contractual agreements and providing lenders with the tools to safely and soundly alleviate some of the administrative costs—costs ultimately passed along to the consumer.

Several months ago I learned that Mr. David Lobach and Mr. Elmer Gates of Embassy Bank—a community bank in the 15th District of Pennsylvania—developed a simplified mortgage contract summary for borrowers who take out a mortage with their institution. Embassy is bolstering consumer protection for their customers by ensuring that he or she knows exactly what they are agreeing to upon their signature—not only providing greater transparency for the borrower but also promoting efficiency for the mortgagee.

The statutes in place today, including the Truth in Lending Act and the Real Estate Settlement Procedures Act, intended to protect borrowers and lenders alike, have created this complex closing process that leaves some homebuyers confused and uninformed.

I believe that Congress should review and revisit the current statutes and consider meaningful reforms that make the mortgage process more understandable for borrowers and more efficient for lenders. The adoption of this amendment is an important first step in encouraging financial institutions engaged in mortgage lending to provide their borrowers with a simplified summary of the loan terms so that every new homeowner will walk away from the table understanding their obligations—in simple terms and in fewer pages.

I've held a number of mortgage foreclosure seminars across my district—the 15th District of Pennsylvania. After listening to the experiences of my constituents, I truly believe some of the foreclosures our country has seen in the past 2 years would not have taken place if homeowners had been aware of the actual terms and conditions of their loan.

My amendment is a common-sense approach to promote consumer protection by ensuring families in pursuit of the American dream fulfill that dream under terms they completely and fully understand.

Borrower: Mary Borrower, 10 Test Avenue, Test City, PA 18000.

Lender: Any Bank, PO Box 2020, Any Town, PA 11111.

BASIC LOAN TERMS

The amount you borrowed: $100,000

Your interest rate: 4.99%

Can your interest rate change? [ ] [X] No

The collateral for your loan: Borrower is giving a security interest in 10 Test Avenue, Test City, PA 18000. In addition, Lender has also reserved a contractual right of setoff in Borrower's deposit accounts.

PAYMENT INFORMATION

Your payment amount: $790.28

How often you will make payments: Monthly

Your loan term: 180 payments

When your payments are due: Monthly, beginning November 15, 2009

How late payment charges are calculated: 5.00% of the regularly scheduled payment or $5.00, whichever is greater.

PAYMENTS & BALLOONS

Does your loan have a prepayment penalty? [ ] [X] No

Does your loan have a balloon payment? [ ] [X] No

Loan maturity date: October 15, 2024

ESCROW

Do we require you to have an escrow account for your loan? [ ] [X] No

Important Note: In the event of default on this loan, we will exercise all legal means to recover our money. This document is intended for informational purposes only and does not constitute your contract with Any Bank. Please refer to the complete set of loan documents for exact details regarding your loan terms and conditions.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendments en bloc offered by the gentleman from Massachusetts (Mr. FRANK).

The amendments en bloc were agreed to.

Mr. FRANK of Massachusetts. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. KILROY) having assumed the chair, Mr. SABLAN, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

COMMUNICATION FROM THE REPUBLICAN LEADER

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN A. BOEHNER, Republican Leader:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 10, 2009.

Hon. NANCY PELOSI,
Speaker, H–232, U.S. Capitol,
Washington, DC.

DEAR SPEAKER PELOSI: Pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, (22 U.S.C. 7002) amended by Division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), I am pleased to reappoint Mr. Peter T. R. Brookes of Virginia and Mr. Daniel M. Slane of Ohio to the United States-China Economic and Security Review Commission, effective January 1, 2010.

Both Mr. Brookes and Mr. Slane have expressed interest in serving in this capacity and I am pleased to fulfill their requests.

Sincerely,

JOHN A. BOEHNER,
Republican Leader.

JOBS AND THE ECONOMY

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute.)

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise today to reinforce the call to action by the American people.

As we have watched the recovery grow and Wall Street thrive, the American people need an answer to unemployment. I will be introducing legislation that will provide for 1-year training. For those individuals out of work, they will be allowed to keep their unemployment, but they will receive a stipend for training in many varied disciplines.

I also believe as a member of the new Jobs Caucus that is led by dynamic members from Chicago and from Ohio and members from around the Nation that we need to expand our domestic energy resources by exploring natural gas.

I also believe it is important to address those individuals who have been chronically unemployed, which the legislation that I offer will.

In addition, I support the Durbin-Hoyer relief to automobile dealers, but I want to ensure that mediation and arbitration is not so expensive that they cannot participate. Automobile dealers equal jobs, 40,000 jobs in the State of Texas alone.

It is important to create an opportunity for Americans to work. They have me as a partner along with hundreds of members of this caucus, the Democratic Caucus, who know that real jobs equal a great America.

OBAMA'S RISKY-SEX CZAR

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

Mr. BURGESS. Mr. Speaker, the silence of the administration and, indeed, the House of Representatives on the subject of a senior presidential appointee to the Department of Education is astonishing. Kevin Jennings needs to be replaced. He needs to be replaced today. The so-called Safe Schools czar appointed by the Obama administration to the Department of Education is dangerous for our school children.

An editorial in yesterday's Washington Times titled ''Obama's risky-sex czar''—now, I don't know that I've ever seen an editorial in a major newspaper that came with a bolded warning, just like a new FDA drug: This editorial includes discussion of topics that are sexually graphic. Under usual circumstances, we would never entertain these subjects or the language involved. In this case, however, a very unusual exception must be made because the issues are central to the background of a senior presidential appointee in the United States Department of Education who is in a position to influence how and what our children are taught in our Nation's schools. Please do not read any further if you will be offended by the sexually graphic language.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 9, 2009.

Re Kevin Jennings.

President BARACK OBAMA,
The White House,
Washington, DC.

Secretary ARNE DUNCAN,
Department of Education,
Washington, DC.

DEAR PRESIDENT OBAMA AND SECRETARY DUNCAN: Enclosed for your reference is an editorial written in today's The Washington Times. The individual who is the subject of this article is someone with whom you are familiar, as he is a presidential appointee to the U.S. Department of Education.

On at least one prior occasion, my fellow Members and I have written to you regarding the type of behavior that Mr. Jennings has been promoting to our school-age children; however, the premise of the enclosed The Washington Times editorial heightens the complete lack of regard this Administration has followed regarding sexual relationships between adults and children.

Must I remind you that such behavior is never ''okay''—and is illegal.

The fact that this Administration stands by quietly while Mr. Jennings goes out into the public, under the cloak of protection of a presidential appointment, and informs our schoolchildren on behavior which is not only unspeakable, it is criminal.

This letter is about a grown man. Kevin Jennings, teaching school children as young as 14 years-of-age, that it is okay for them to have sex with grown adults. Mr. President, this is never okay. The callousness of this type of instruction is further evidenced by his relationship, and subsequent endorsement, of an individual who has an organization whose sole purpose is to advocate sexual relationships between grown men and adolescents. This activity is not one, and can never be one, in which the U.S. Department of Education promotes either by omission, through action or commission through silence.

The silence of this Administration with regards to Kevin Jennings cannot stand. He must be fired and must be fired today.

There are plenty of knowledgeable, honorable, respected and forceful advocates of your policies who could ably fill this job. Kevin Jennings is not that person, has never been that person and must not stay that person.

I respectfully request you remove him today and then submit an appropriate nomination to the U.S. Senate for his replacement.

With kinds regards,

MICHAEL C. BURGESS.

[From the Washington Times, Dec. 9, 2009]

OBAMA'S RISKY-SEX CZAR

Warning: This editorial includes discussion of topics that are sexually graphic. Under usual circumstances, we would never entertain these subjects or the rancid language involved. In this case, however, a very unusual exception must be made because the issues are central to the background of a senior presidential appointee at the U.S. Department of Education who is in a position to influence how and what our children are taught in our nation's schools. Thus far, out of fear or squeamishness, there has been public hesitance to examine closely the beliefs of this individual because many are afraid even to touch the risky content. Our scruples cannot be used against us when traditional moral precepts need to be defended. Simply, the deep level of depravity involved in this subject cannot be portrayed without providing a couple of examples to illustrate the inappropriate content. Please do not read any further if you will be offended by sexually graphic language.

The Obama administration is stonewalling serious inquiries about sexual filth propagated by a senior presidential appointee who is responsible for promoting and implementing federal education policy. Democrats clearly are terrified of ruffling the feathers of their activist homosexual supporters, who are an influential part of the Democratic party's base. This scandal, however, is not merely about homosexual behavior; it is about promoting sex between children and adults—and it's time for President Obama to make clear that abetting such illegal perversion has no place in his administration.

It is curious why White House officials and Education Secretary Arne Duncan believe it's worth it politically to continue taking arrows for defending Kevin Jennings, who is Mr. Obama's controversial ''safe schools czar.'' The evidence suggesting he is unfit to serve as a senior presidential appointee is startling and plentiful. It was revealed this week that Mr. Jennings was involved in promoting a reading list for children 13 years old or older that made the most explicit sex between children and adults seem normal and acceptable. This brought up anew Mr. Jennings' past controversies, such as his seeming encouragement of sex between one of his high school students and a much older man as well as his praise for Harry Hay, a notorious supporter of the North American Man Boy Love Association.

But there is more. There are shocking new revelations this week of tape recordings from a youth conference involving 14-year-old students. The conference, billed as a forum to encourage tolerance of homosexuality, was sponsored by Mr. Jennings' organization and was held at Tufts University in March 2000. Mr. Jennings was executive director of the Gay, Lesbian and Straight Education Network (GLSEN) from its founding in 1995 until August 2008. The conference sessions appear to have had less to do with promoting tolerance and more to do with teaching children how to engage in sex.

Andrew Breitbart's Biggovernment.com provides tapes of some of the sessions. Describing the subject matter as smut would be putting it lightly. The conference discussions were very graphic and cannot be relayed in full detail in a family newspaper. A few examples are sufficient to describe the depravity of the subject matter. During one session about oral sex, a presenter asked the 14-year-old students: ''Spit or swallow? Is it rude?'' In another session, the 14-year-olds are taught about a gross practice called ''fisting,'' in which ''the man leading the discussion position[ed] his hand and show[ed] 14-year-olds how to insert their entire hand into the rectum of their sex partner.''

Teaching children sexual techniques is simply not appropriate. Unfortunately, it is part of a consistent pattern by some homosexual activists to promote underage homosexuality while pretending that their mission is simply to promote tolerance for so-called alternative lifestyles. It is outrageous that someone involved in this scandal is being paid by the taxpayers to serve in a high-powered position at the Education Department, of all places. At some point, Mr. Duncan, Mr. Jennings, Obama administration spokesmen and the president himself are going to have to start answering questions about all this. Refusing to do so won't make the issue go away.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. MCGOVERN) is recognized for 5 minutes.

(Mr. MCGOVERN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

(Mr. POE of Texas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. LANGEVIN) is recognized for 5 minutes.

(Mr. LANGEVIN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. MURPHY) is recognized for 5 minutes.

(Mr. MURPHY of Connecticut addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

THE WAR POWERS ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. KUCINICH) is recognized for 5 minutes.

Mr. KUCINICH. Madam Speaker, yesterday I began circulating to Members of Congress a letter that would enable Members to be able to sign on to legislation that will be introduced when we return in January that would be aimed at creating a vote in this House on whether or not we keep our troops in Afghanistan and continue operations in Pakistan. This action is being done pursuant to the War Powers Act.

The War Powers Act was passed in 1973, and the intention of it was to claim Congress's constitutional authority under article I, section 8 to be able to take this Nation into war, commit our troops to war, or to continue to stay at war.

Congress cannot remain on the sidelines in this matter. We have the lives of our troops at stake. We have trillions of dollars at stake. Congress must engage in this debate over whether or not to stay at war in Afghanistan and to continue operations in Pakistan.

It's comforting to let the President do everything, but we can't do that, because whether we agree with the President or not, we have a responsibility, a constitutional responsibility, to make a decision on these wars.

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Now, some will say the authorization for use of military force dispensed with that. Oh, no, it didn't. A reading of that authorization makes it very clear that it does not supersede the War Powers Act.

And so when I put this resolution to the Congress in January, it will be an automatic mandatory referral to the International Relations Committee. They will have 15 days to report it back to the House, where we can expect a debate. When the bill is introduced, it will be introduced with broad bipartisan support because this is not a Democrat or Republican issue.

We have learned recently that U.S. contractors are paying the Taliban to ensure safe shipment of U.S. goods to U.S. soldiers, who then use those supplies to strengthen their war with the Taliban. We have learned that Blackwater is involved in ''black ops'' in Pakistan working as independent contractors for the purposes of assassination. We cannot let these things happen without Congress being directly involved and taking direct responsibility.

All across this country people are worried about their jobs, their homes, their health care, their investments, their retirement security. Why is it that war becomes the centerpiece of our national experience? Some can say, well, it makes us safer. Oh, has it? Did the invasion of Iraq make us safer? Over 1 million innocent people perished in a war based on a lie; let us never forget that.

The policies of unilateralism preempted at first strike were a dead-end. And for those who say war is inevitable, I say you're dead wrong. Peace is inevitable if you tell the truth. Peace is inevitable if you're ready to confront the difficulties of diplomacy.

We have a right to defend ourselves, and I stand upon that right. I voted for this country to defend itself in those days in September of 2001. But we can never mistake defense for offense. We can never claim the right to aggress against another nation in the name of trying to make us safer because all we do is create more enemies. Occupations

fuel insurgencies. If you want peace, you work for peace. If you want war, you create war, but we can never claim that war is peace. It's not. It often is a path to more war.

The Constitution, when it was written, our Founders were very clear they didn't want an imperial government, they wanted to make sure the dog of war was chained. And the way to do it, they put that decision in the hands of the Congress. This is about our Constitution, our Constitution, which I always carry a copy of. This Constitution requires us to take a stand and to have a vote. And in January, we will have a vote whether to remain in Afghanistan and continue operations in Pakistan.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

(Ms. ROS-LEHTINEN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Pennsylvania (Mrs. DAHLKEMPER) is recognized for 5 minutes.

(Mrs. DAHLKEMPER addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

AMERICA NEEDS REAL BANKING REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, maybe someday real banking reform will be considered by this Congress. Real reform means breaking up the big banks. Real reform means empowering community banks and local capital accumulation. Real reform means separating speculation and investment. Real reform means restoring prudent lending. Real reform means restructuring troubled housing mortgages. Real reform means rewarding institutions that play by the rules and don't over-leverage. Real reform means prosecuting financial white-collar criminals and keeping them out of finance permanently.

Real reform means directly connecting executive pay and bonuses to the performance of the company and recouping the $145 billion in unwarranted bonuses for the American taxpayer. Real reform means regulating all derivatives openly and clearly. Real reform means limiting interconnectedness between large financial institutions. Real reform means independent supervisory and regulatory agencies that do their job—independent supervisory and regulatory agencies.

The bill that will be considered tomorrow, as it was today, merely bunts at wrestling casino capitalism to the ground. This bill, like so many before it, will simply lead to more abuse, more risky behavior, and more reward for the most hazardous and imprudent characters.

Wall Street needs our help in rescuing them from their own bad behavior, not because Wall Street deserves it or is worthy; they need to be disciplined because our natural interest is more important than Wall Street.

Let's dissect America's economic predicament and what Congress has passed to fix it. In the fall of 2008, Congress passed the ''Wall Street bailout.'' It told America that the TARP would work to steady the housing market. It not only didn't steady the housing market, but its purpose was totally changed by Secretary of Treasury Paulson, who gave the money to the biggest banks in our country whose risky behavior caused the meltdown. And Congress, it just looked the other way.

Now the housing foreclosure crisis has worsened coast to coast; 2 million Americans have lost their homes, and another 6 to 12 million are projected to lose their homes. Meanwhile, the biggest perpetrators of this disaster—the Bank of America, JPMorgan Chase, Citigroup, Wells Fargo and Goldman Sachs—have gone from controlling 30 percent of all deposits in this country when this mess began to 40 percent now.

The big 5 are just eating us up and taking bigger bonuses too. It is estimated they will reward themselves with that $145 billion in bonuses this year. Credit remains frozen across our country until today, seizing up economic recovery, and this bill calls itself the ''Wall Street Reform Bill.''

This bill, like those before it, will not meet the serious challenges crippling our financial system and it surely will not give a good signal to the future. Congress said the TARP bailout would save us from depression, but TARP passed, and the American people went into depression. Only the big banks were saved.

The bills passed by Congress today protect Wall Street and their shareholders. Main Street pays the price. Is this bill a reform bill? No. It will not break up the big banks. It will not create a strong, independent financial institution regulatory agency. It will not separate speculation from investment activity. It will not require loan workouts to stem rising foreclosures. It will not recoup undeserved Wall Street bonuses to help pay for this economic mess and put America back to work. In fact, the bill merely asks for nonbinding votes of shareholders.

It will not rein in nonbanking firms, but instead provide them with a golden sandbox. It will not rein in the power of the Federal Reserve. It will not regulate all over-the-counter derivatives. It will not provide the requisite number of FBI agents and prosecutors to put behind bars the financial world's white-collar criminals whose fraudulent behavior caused this mess. It will not bring to justice the wrongdoers at Fannie Mae and Freddie Mac. There are bills in this House to do that; they're not included in this bill.

And it places the Treasury Department, a politically appointed superstructure, so much a part of the problem, in charge of the Finance Services Oversight Council. Importantly, it fails to institute and strengthen independent financial regulatory and supervisory agencies. The political appointees on this oversight council are surely clapping in the wings. This bill gives more power to the opaque Federal Reserve.

You know, you would think that after all the damage that has been done in the Republic, this Congress would have the guts for real reform. This bill isn't it, and I urge my colleagues to vote ''no'' on final passage.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

(Mr. PAUL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

(Ms. WOOLSEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. SMITH) is recognized for 5 minutes.

(Mr. SMITH of New Jersey addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the Northern Mariana Islands (Mr. SABLAN) is recognized for 5 minutes.

(Mr. SABLAN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. PITTS) is recognized for 5 minutes.

(Mr. PITTS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. STUPAK) is recognized for 5 minutes.

(Mr. STUPAK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina (Ms. FOXX) is recognized for 5 minutes.

(Ms. FOXX addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. BALDWIN (at the request of Mr. HOYER) for today on account of illness.

Ms. SLAUGHTER (at the request of Mr. HOYER) for today after 7 p.m. and the balance of the week on account of official business.

Mr. MICA (at the request of Mr. BOEHNER) for today until 6 p.m. on account of attending the funeral of former Senator Paula Hawkins.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SABLAN) to revise and extend their remarks and include extraneous material:)

Mr. MCGOVERN, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. LANGEVIN, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Mrs. DAHLKEMPER, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. SABLAN, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. STUPAK, for 5 minutes, today.

(The following Members (at the request of Mr. DANIEL E. LUNGREN of California) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, December 17.

Mr. JONES, for 5 minutes, December 17.

Mr. BURTON of Indiana, for 5 minutes, December 14, 15, 16 and 17.

Mr. PAUL, for 5 minutes, December 15, 16 and 17.

(The following Member (at his request) to revise and extend his remarks and include extraneous material:)

Mr. KUCINICH, for 5 minutes, today.

ADJOURNMENT

Mr. KUCINICH. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10:30 p.m.), the House adjourned until tomorrow, Friday, December 11, 2009, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4979. A letter from the Under Secretary, Department of Defense, transmitting a report entitled ''Report on Civilian Health Professions Scholarship Program (HPSP) for Mental Health Providers''; to the Committee on Armed Services.

4980. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Promoting Diversification of Ownership in the Broadcasting Services [MB Docket No.: 07-294] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4981. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Crandon, Wisconsin) [MD Docket No.: 08-62] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4982. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (McNary, Arizona) [MB Docket No.: 09-7] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4983. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Cut Bank, Montana) [MB Docket No.: 09-50] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4984. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments Television Broadcast Stations. (Lexington, Kentucky) [MB Docket No.: 09-163] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4985. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations. (Opelika, Alabama) [MB Docket No.: 09-162] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4986. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 104-09, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad, pursuant to section 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4987. A letter from the Assistant Secretary, Department of State, transmitting Transmittal No. DDTC 125-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4988. A letter from the Assistant Secretary, Department of State, transmitting Transmittal No. DDTC 127-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4989. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 123-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4990. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 124-09, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad, pursuant to section 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4991. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 132-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4992. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 128-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4993. A letter from the Deputy Assistant Administrator, Bureau of Legislative and Public Affairs, United States Agency International Development, transmitting a letter in response to the GAO report entitled ''Information Technology: Federal Agencies Need to Strengthen Investment Board Oversight of Poorly Planned and Performing Projects''; to the Committee on Oversight and Government Reform.

4994. A letter from the Director, Department of the Interior, transmitting the Department's second report entitled, ''Estimates of Natural Gas and Oil Reserves, Reserves Growth, and Undiscovered Resources in Federal and State Water off the Coasts of Texas, Louisiana, Mississippi, and Alabama'', pursuant to Public Law 109–58, section 965(c); to the Committee on Natural Resources.

4995. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule—Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments [Docket No.: 30697; Amdt. No. 3348] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4996. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments [Docket No.: 30698; Amdt. No. 3349] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4997. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule—Amendment of Class D and Class E Airspace; New Orleans NAS, LA [Docket No. FAA-2009-0405; Airspace Docket No. 09-ASW-12] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4998. A letter from the Division Chief, Division of Legislation and Regulation, Department of Transportation, transmitting the Department's final rule — Capital Construction Fund [Docket No.: MARAD-2008-0075] (RIN: 2133-AB71) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4999. A letter from the Attorney, Department of Transportation, transmitting the Department's final rule — Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2008 [FRA-2007-0018] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5000. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Mankato, MN [Docket No.: FAA-2009-0677; Airspace Docket No. 09-AGL-17] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5001. A letter from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Technical Amendments to List of User Fee Airports: Removal of User Fee Status for Roswell Industrial Air Center, Roswell, New Mexico and March Inland Port Airport, Riverside, California and Name Change for Capital City Airport, Lansing, Michigan [CBP Dec. 09-41] received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5002. A letter from the Chief, Trade and Commercial Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Electronic Payment and Refund of Quarterly Harbor Maintenance Fees [Docket No.: USCBP 2007-0111] (RIN: 1505-AB97) received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5003. A letter from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Technical Amendment to List of User Fee Airports: Termination of User Fee Status of Santa Maria Public Airport, Santa Maria, California received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5004. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Information Reporting Requirements Under Internal Revenue Code Section 6039 [TD 9470] (RIN 1545-BH69) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5005. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Further Extension of Effective Date of Normal Retirement Age Regulations for Governmental Plans [Notice: 209-86] received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. PERLMUTTER: Committee on Rules. House Resolution 964. Resolution providing for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes (Rept. 111–370). Referred to the House Calendar.

Ms. ZOE LOFGREN of California: Committee on Standards of Official Conduct. In the matter of Marc Goldberg (Rept. 111–371). Referred to the House Calendar.

Mr. BRADY of Pennsylvania: Committee on House Administration. H.R. 2843. A bill to provide for the joint appointment of the Architect of the Capitol by the Speaker of the House of Representatives, the President pro tempore of the Senate, the Majority and Minority Leaders of the House of Representatives and Senate, and the chairs and ranking minority members of the committees of Congress with jurisdiction over the Office of the Architect of the Capitol, and for other purposes (Rept. 111–372, Pt. 1). Referred to the Committee of the Whole House on the State of the Union and ordered to be printed.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII the Committee on Transportation and Infrastructure discharged from further consideration. H.R. 2843 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. POLIS:

H.R. 4259. A bill to facilitate foreign investment by permanently reauthorizing the EB-5 regional center program, and for other purposes; to the Committee on the Judiciary.

By Mr. GENE GREEN of Texas (for himself, Ms. DEGETTE, Ms. BALDWIN, and Mr. ENGEL):

H.R. 4260. A bill to provide adjusted Federal medical assistance percentage rates during a transitional assistance period; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THORNBERRY:

H.R. 4261. A bill to amend the National Security Act of 1947 to provide additional procedures for congressional oversight; to the Committee on Intelligence (Permanent Select), and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCALISE (for himself, Mr. LAMBORN, Mr. POSEY, Mr. THOMPSON of Pennsylvania, Mr. AKIN, Mr. WAMP, Mr. BROUN of Georgia, Mr. HUNTER, Ms. FALLIN, Mr. LEE of New York, Mr. GINGREY of Georgia, Mr. PITTS, Mr. MARCHANT, Mr. SHADEGG, Mr. ALEXANDER, Mr. FRANKS of Arizona, Mr. CONAWAY, Mr. COLE, Mr. KING of Iowa, Mr. GOHMERT, Mr. HALL of Texas, Mr. ROE of Tennessee, Mr. BARTLETT, Mr. BISHOP of Utah, Mr. CHAFFETZ, Mr. FLEMING, Mr. BOUSTANY, Mr. PAULSEN, Mr. MORAN of Kansas, Mr. CARTER, Mr. GRAVES, Mr. ROONEY, Mr. SHIMKUS, Mrs. BLACKBURN, Mr. BARTON of Texas, Mr. BRADY of Texas, Mr. SOUDER, Mr. PAUL, Mr. CRENSHAW, Mr. WILSON of South Carolina, Mr. KINGSTON, Mr. JONES, Mr. LUETKEMEYER, Mrs. CAPITO, Mr. INGLIS, Mr. BLUNT, Mr. DAVIS of Kentucky, Mr. JORDAN of Ohio, Mr. HENSARLING, Mr. CULBERSON, and Mr. HELLER):

H.R. 4262. A bill to amend the Congressional Budget Act of 1974 to require a two-thirds recorded vote in the House of Representatives and in the Senate to increase the statutory limit on the public debt, and for other purposes; to the Committee on Rules, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. BALDWIN (for herself, Mr. GENE GREEN of Texas, Ms. DEGETTE, Ms. SCHAKOWSKY, Mr. BLUMENAUER, Mr. GRIJALVA, Mr. MCGOVERN, Ms. PINGREE of Maine, and Mr. PIERLUISI):

H.R. 4263. A bill to amend the American Recovery and Reinvestment Act of 2009 to extend for 1 year the period of temporary increase in the Medicaid FMAP; to the Committee on Energy and Commerce.

By Ms. DELAURO (for herself and Ms. ESHOO):

H.R. 4264. A bill to provide for resolution of certain discrimination claims against the Department of Agriculture, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Agriculture, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YARMUTH:

H.R. 4265. A bill to direct the Administrator of the Small Business Administration to establish and carry out a direct lending program for small business concerns, and for other purposes; to the Committee on Small Business, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. JACKSON-LEE of Texas (for herself, Mr. EDWARDS of Texas, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. HALL of Texas, Mr. HINOJOSA, Mr. CUELLAR, Mr. DOGGETT, Mr. GENE GREEN of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. REYES, Mr. ORTIZ, and Mr. RODRIGUEZ):

H.R. 4266. A bill to designate the facility of the United States Postal Service located at 4110 Almeda Road in Houston, Texas, as the ''George Thomas 'Mickey' Leland Post Office Building''; to the Committee on Oversight and Government Reform.

By Mr. CARTER (for himself, Mr. ROGERS of Kentucky, Mr. WILSON of South Carolina, Mrs. SCHMIDT, Mr. OLSON, Mr. CULBERSON, Ms. GRANGER, Mr. MCCAUL, and Mr. ADERHOLT):

H.R. 4267. A bill to amend title 10, United States Code, to extend whistleblower protections to a member of the Armed Forces who alerts Department of Defense investigation or law enforcement organizations, a person or organization in the member's chain of command, and certain other persons or entities about the potentially dangerous ideologically based threats or actions of another member against United States interests or security; to the Committee on Armed Services.

By Mr. ELLISON (for himself, Ms. CHU, Mr. CONYERS, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HARE, Ms. KILPATRICK of Michigan, Ms. FUDGE, Mr. HASTINGS of Florida, Mr. DAVIS of Illinois, Mr. CLEAVER, Mr. JACKSON of Illinois, Mr. SCOTT of Georgia, Ms. LEE of California, Mr. TOWNS, Mr. COSTA, Mr. COHEN, Mr. DELAHUNT, Mr. THOMPSON of Mississippi, Ms. CLARKE, Mr. LEWIS of Georgia, Mr.

PAYNE, Mr. WATT, Mr. PRICE of North Carolina, Mr. GRIJALVA, Mr. KENNEDY, Mr. CUMMINGS, Mr. GUTIERREZ, Ms. WATERS, Ms. KAPTUR, Mr. KUCINICH, Ms. EDWARDS of Maryland, Mr. BACA, Mr. SIRES, Ms. SCHAKOWSKY, Mr. HONDA, Mr. RAHALL, Mr. LOEBSACK, Ms. JACKSON-LEE of Texas, and Mr. CLAY):

H.R. 4268. A bill to direct the Secretary of Labor to make grants to States, units of general local government, and Indian tribes for the purpose of creating employment opportunities for unemployed and underemployed residents in distressed communities; to the Committee on Education and Labor.

By Mr. FILNER (for himself, Mr. OBERSTAR, Mr. HINCHEY, Mr. ANDREWS, Mr. MORAN of Virginia, Mr. JOHNSON of Georgia, Mr. STARK, Mr. FARR, Ms. KAPTUR, Mr. DICKS, Mr. PETERS, Mr. GUTIERREZ, Mr. ROTHMAN of New Jersey, and Mr. GRIJALVA):

H.R. 4269. A bill to amend title 10, United States Code, to require the Secretary of Defense to use only human-based methods for training members of the Armed Forces in the treatment of severe combat and chemical and biological injuries; to the Committee on Armed Services.

By Mr. FRELINGHUYSEN:

H.R. 4270. A bill to amend the Internal Revenue Code of 1986 to make permanent certain temporary provisions, including the sales tax deduction, the child credit, the repeal of the estate tax, the deduction for higher education expenses, and extending the current capital gains and dividend tax rates; to the Committee on Ways and Means.

By Mr. GUTHRIE (for himself, Mr. MCKEON, Mr. KLINE of Minnesota, Mr. SOUDER, Mr. WILSON of South Carolina, Mr. HUNTER, and Mr. ROE of Tennessee):

H.R. 4271. A bill to reform and strengthen the workforce investment system of the Nation to put Americans back to work and make the United States more competitive in the 21st Century; to the Committee on Education and Labor.

By Mr. HODES:

H.R. 4272. A bill to require the public tracking of undisbursed balances in expired grant accounts; to the Committee on Oversight and Government Reform.

By Ms. KILPATRICK of Michigan (for herself, Mr. GRIJALVA, and Mr. WILSON of Ohio):

H.R. 4273. A bill to establish and carry out a pediatric specialty loan repayment program; to the Committee on Energy and Commerce.

By Mr. LARSEN of Washington (for himself and Mrs. EMERSON):

H.R. 4274. A bill to amend section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) to permit certain service institutions in all States to provide year-round services; to the Committee on Education and Labor.

By Mr. LEWIS of Georgia (for himself, Mr. JOHNSON of Georgia, Mr. SCOTT of Georgia, Mr. BISHOP of Georgia, Mr. MARSHALL, Mr. BARROW, Mr. DEAL of Georgia, Mr. WESTMORELAND, Mr. GINGREY of Georgia, Mr. PRICE of Georgia, Mr. BROUN of Georgia, Mr. KINGSTON, and Mr. LINDER):

H.R. 4275. A bill to designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold United States Judicial Administration Building''; to the Committee on Transportation and Infrastructure.

By Mr. LUJÁN (for himself and Mr. HEINRICH):

H.R. 4276. A bill to authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo; to the Committee on Natural Resources.

By Mr. MELANCON (for himself, Mr. BOUSTANY, Mr. CAO, and Mr. ALEXANDER):

H.R. 4277. A bill to authorize the Secretary of Education to continue to waive certain requirements in order to ease fiscal burdens in States affected by Hurricane Katrina or Hurricane Rita; to the Committee on Education and Labor.

By Mr. NEAL of Massachusetts (for himself, Mr. BRADY of Texas, Mr. BLUMENAUER, Mr. HERGER, Mr. DEFAZIO, Mr. REHBERG, Mr. LYNCH, and Mr. DENT):

H.R. 4278. A bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers; to the Committee on Ways and Means.

By Mr. QUIGLEY:

H.R. 4279. A bill to amend titles 38 and 10, United States Code, to authorize accelerated payments of educational assistance to certain veterans and members of the reserve components of the Armed Forces; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. VISCLOSKY:

H.R. 4280. A bill to prohibit business enterprises that lay off a greater percentage of their United States workers than workers in other countries from receiving any Federal assistance, and for other purposes; to the Committee on Oversight and Government Reform.

By Mr. VISCLOSKY:

H.R. 4281. A bill to amend the Employee Retirement Income Security Act of 1974 and title 11, United States Code, to provide necessary reforms for employee pension benefit plans; to the Committee on Education and Labor, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WELCH:

H.R. 4282. A bill to amend title XII of the Social Security Act to extend the provision waiving certain interest payments on advances made to States from the Federal unemployment account in the Unemployment Trust Fund; to the Committee on Ways and Means.

By Mr. SCHRADER:

H. Con. Res. 220. Concurrent resolution encouraging the Secretaries of the military departments to maximize opportunities for space-available travel for members of the Armed Forces in a leave or pass status who are traveling between December 18, 2009, and January 3, 2010; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of Rule XXII, memorials were presented and referred as follows:

224. The SPEAKER presented a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 90 memorializing Congress to require that the forms for the 2010 census include a statement of citizenship; to the Committee on Oversight and Government Reform.

225. Also, a memorial of the House of Representatives of the State of Tennessee, relative to House Joint Resolution No. 108 affirming Tennessee's sovereignty under the Tenth Amendment; to the Committee on the Judiciary.

226. Also, a memorial of the House of Representatives of the State of California, relative to House Resolution No. 16 thanking the Congress for its support of the Local Law Enforcement Hate Crimes Prevention Act and calling for the Senate to pass the Matthew Shepard Hate Crimes Prevention Act; to the Committee on the Judiciary.

ADDITIONAL SPONSORS TO PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Ms. JACKSON-LEE of Texas.
H.R. 39: Ms. DEGETTE.
H.R. 208: Mr. RODRIGUEZ and Mrs. DAHLKEMPER.
H.R. 272: Mr. WAMP and Mr. SHIMKUS.
H.R. 413: Mr. PIERLUISI, Mr. SCHOCK, and Mr. BUCHANAN.
H.R. 482: Mr. WITTMAN.
H.R. 537: Mr. SABLAN.
H.R. 644: Ms. DEGETTE and Mr. LIPINSKI.
H.R. 731: Mrs. DAVIS of California.
H.R. 836: Mr. CRENSHAW, Ms. RICHARDSON, Mr. SMITH of Nebraska, and Mr. GINGREY of Georgia.
H.R. 930: Mr. SCHRADER.
H.R. 1030: Mr. KISSELL.
H.R. 1132: Ms. FUDGE.
H.R. 1238: Mr. GOHMERT and Mr. KING of Iowa.
H.R. 1250: Mr. ROTHMAN of New Jersey and Mr. SCHOCK.
H.R. 1265: Ms. BALDWIN.
H.R. 1283: Mr. GARAMENDI.
H.R. 1351: Mr. JOHNSON of Georgia.
H.R. 1362: Mr. HALL of New York.
H.R. 1389: Mr. HALL of New York.
H.R. 1526: Ms. WATERS, Mr. JOHNSON of Georgia, Mr. JACKSON of Illinois, Mr. ROGERS of Michigan, Mr. ALEXANDER, Mr. SPRATT, and Mr. LINCOLN DIAZ-BALART of Florida.
H.R. 1625: Mr. COURTNEY.
H.R. 1806: Mr. BOSWELL.
H.R. 1826: Mr. CASTLE.
H.R. 1844: Ms. WOOLSEY and Mr. HIGGINS.
H.R. 1944: Ms. LINDA T. SÁNCHEZ of California.
H.R. 1964: Mr. DAVIS of Alabama, Ms. KILPATRICK of Michigan, Mr. CLEAVER, and Mrs. MALONEY.
H.R. 2006: Ms. LEE of California.
H.R. 2024: Mr. SCHAUER.
H.R. 2112: Ms. SCHWARTZ, Mr. WOLF, and Mr. MICHAUD.
H.R. 2135: Mr. SHUSTER.
H.R. 2142: Mr. CARNEY, Mr. CHILDERS, Mr. DONNELLY of Indiana, Mr. ELLSWORTH, Ms. GIFFORDS, Mr. MARSHALL, Mr. MICHAUD, Mr. SALAZAR, Mr. SCHRADER, and Mr. SPACE.
H.R. 2149: Mr. HEINRICH.
H.R. 2159: Mr. CROWLEY.
H.R. 2190: Ms. BERKLEY.
H.R. 2277: Mr. GERLACH.
H.R. 2429: Mr. BISHOP of Georgia.
H.R. 2502: Mr. MURPHY of New York.
H.R. 2528: Mr. NUNES.
H.R. 2567: Mr. DAVIS of Illinois.
H.R. 2584: Mr. COHEN, Mr. BLUNT, Ms. WASSERMAN SCHULTZ, and Mr. ROONEY.
H.R. 2590: Mr. BRALEY of Iowa.
H.R. 2698: Mr. CASTLE.
H.R. 2699: Mr. MOORE of Kansas.
H.R. 2748: Mr. PAUL.
H.R. 2766: Ms. BALDWIN.
H.R. 2777: Mr. CARNAHAN.
H.R. 2882: Mr. DAVIS of Illinois.
H.R. 3101: Mr. CAPUANO.
H.R. 3105: Mr. HUNTER.

H.R. 3171: Mr. CLAY.
H.R. 3212: Ms. DEGETTE.
H.R. 3227: Mr. LARSEN of Washington.
H.R. 3259: Mr. CASTLE.
H.R. 3339: Mr. BLUMENAUER.
H.R. 3343: Ms. CORRINE BROWN of Florida, Mr. MEEKS of New York, and Mr. MCGOVERN.
H.R. 3401: Mr. BISHOP of Georgia.
H.R. 3427: Mr. DAVIS of Illinois.
H.R. 3448: Mr. INGLIS.
H.R. 3464: Mr. ELLSWORTH and Mr. PETERSON.
H.R. 3560: Mr. JOHNSON of Georgia.
H.R. 3586: Mr. PETERS.
H.R. 3668: Mr. ARCURI, Mr. LUJÁN, Mr. DRIEHAUS, Mr. WU, Mr. HINCHEY, Mr. NEAL of Massachusetts, Mr. ABERCROMBIE, Mr. HEINRICH, Ms. RICHARDSON, Ms. HERSETH SANDLIN, and Mr. MASSA.
H.R. 3695: Ms. FUDGE.
H.R. 3734: Mr. SABLAN.
H.R. 3758: Mr. SHIMKUS and Mr. SENSENBRENNER.
H.R. 3764: Mr. ELLISON and Ms. CHU.
H.R. 3790: Mr. GRIJALVA, Mr. BROWN of South Carolina, Mr. LANGEVIN, Mr. HEINRICH, Ms. PINGREE of Maine, and Ms. CORRINE BROWN of Florida.
H.R. 3852: Mr. RUPPERSBERGER.
H.R. 3855: Ms. LINDA T. SÁNCHEZ of California.
H.R. 3905: Mr. BARTON of Texas.
H.R. 3918: Mr. INSLEE.
H.R. 3936: Mr. ROSKAM, Mr. LINDER, and Mr. LEWIS of Georgia.
H.R. 3943: Mrs. LOWEY, Mrs. CAPPS, Mr. MEEKS of New York, Mr. BARROW, Ms. RICHARDSON, Mr. MCINTYRE, and Mr. DAVIS of Illinois.
H.R. 3982: Mr. ELLISON.
H.R. 4036: Ms. NORTON and Mr. CLAY.
H.R. 4058: Mr. MURPHY of New York.
H.R. 4079: Mr. SKELTON.
H.R. 4085: Mr. LEE of New York, Ms. TITUS, Mr. LEVIN, and Mr. MCNERNEY.
H.R. 4091: Mr. SALAZAR.
H.R. 4100: Mr. KLINE of Minnesota, Mr. DREIER, Mr. MCCLINTOCK, Mr. YOUNG of Alaska, Mr. PENCE, Mr. BONNER, and Mr. FLEMING.
H.R. 4111: Mr. MICA, Mrs. MYRICK, Mr. SIMPSON, and Mr. ADERHOLT.
H.R. 4112: Mr. BOREN, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. LATTA, and Mr. UPTON.
H.R. 4127: Mr. MCCOTTER.
H.R. 4130: Ms. SPEIER.
H.R. 4138: Mr. MILLER of Florida and Mr. FRANKS of Arizona.
H.R. 4140: Mr. CUMMINGS, Ms. FUDGE, Ms. BALDWIN, Mr. MEEK of Florida, and Ms. DEGETTE.
H.R. 4149: Mr. CROWLEY.
H.R. 4177: Mr. THOMPSON of Mississippi and Mr. GRIFFITH.
H.R. 4179: Ms. JACKSON-LEE of Texas.
H.R. 4180: Mr. PASTOR of Arizona, Mr. HONDA, Mr. COURTNEY, Mr. JACKSON of Illinois, and Mr. SCOTT of Virginia.
H.R. 4188: Ms. DEGETTE.
H.R. 4204: Mr. DRIEHAUS.
H.R. 4216: Mr. BOUSTANY.
H.R. 4219: Ms. JENKINS and Mr. BROWN of South Carolina.
H.R. 4255: Mr. BARROW, Mr. ARCURI, Mr. GRIFFITH, Mr. MOORE of Kansas, Mr. LOEBSACK, Mr. SHIMKUS, Mr. CUELLAR, Mr. ALEXANDER, Mr. COBLE, Mr. BURGESS, and Mr. MASSA.
H. Con. Res. 158: Ms. KOSMAS.
H. Con. Res. 198: Mr. JACKSON of Illinois, Mr. FORBES, and Ms. TITUS.
H. Con. Res. 201: Mrs. CAPITO.
H. Res. 111: Mr. LIPINSKI.
H. Res. 200: Mr. HOEKSTRA.
H. Res. 278: Mr. FRANK of Massachusetts.
H. Res. 859: Mr. CONYERS, Mr. MILLER of North Carolina, and Ms. JACKSON-LEE of Texas.
H. Res. 864: Ms. BERKLEY, Mr. ADLER of New Jersey, Mr. CARNEY, Ms. DELAURO, Mr. FOSTER, Mr. MINNICK, Mr. PATRICK J. MURPHY of Pennsylvania, and Mr. SESTAK.
H. Res. 873: Mr. FALEOMAVAEGA and Mr. WILSON of South Carolina.
H. Res. 888: Mr. COLE, Mr. POE of Texas, and Mr. HOLT.
H. Res. 898: Mr. MASSA.
H. Res. 911: Mr. ROGERS of Michigan, Mr. MCCOTTER, Mr. WITTMAN, Mr. SMITH of New Jersey, and Mr. GOODLATTE.
H. Res. 943: Ms. MARKEY of Colorado.
H. Res. 946: Mr. BACA, Mr. HINCHEY, Mr. CARDOZA, Mrs. DAHLKEMPER, and Mr. FILNER.
H. Res. 951: Mr. WILSON of South Carolina, Mr. WHITFIELD, Mrs. CAPITO, Mr. OLSON, Mr. TIBERI, Mr. PRICE of Georgia, Mr. KING of Iowa, Mr. LATHAM, Mr. PENCE, Mr. BUCHANAN, Mr. CRENSHAW, Mr. ROGERS of Michigan, Mrs. LUMMIS, Mr. BURGESS, and Mr. WOLF.
H. Res. 954: Mr. POSEY, Mr. MARIO DIAZ-BALART of Florida, and Mr. BACHUS.
H. Res. 958: Mr. MCGOVERN, Mr. DOYLE, Mr. CAO, and Mr. ROTHMAN of New Jersey.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H. Res. 951: Mr. DAVIS of Illinois.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

90. The SPEAKER presented a petition of Jefferson County Board of Legislators, New York, relative to Resolution No. 255 urging the Congress to direct further stimulus programs focus on rural economies of the state and the nation; to the Committee on Agriculture.

91. Also, a petition of the President of the Republic of the Philippines, relative to Expressing the deep appreciation of the Filipino people to the United States House of Representitives for their concern over the loss of lives and destruction caused by Typhoons ''Ketsana'' and ''Parma''; to the Committee on Foreign Affairs.

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, THURSDAY, DECEMBER 10, 2009 *No. 185*

Senate

The Senate met at 10 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

PRAYER

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

Let us pray.

Gracious and merciful God, You promised never to leave us alone, and we are grateful for Your comforting presence. Thank You for your whispers of love and peace. Help us to see Your face in others and to show them Your love.

Today, give our Senators the wisdom to know Your will and to choose Your way and purpose. When the choice is between honor and self-interest, help them to do right. May they exercise themselves to have a conscience void of offense toward You and humanity. Lord, give them strength equal to their task, as You undergird them with Your loving providence.

We pray in Your precious Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

NOTICE

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

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

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster/secretary/cong__record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Sec.Senate.gov''.

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

Members of Congress desiring to purchase reprints of material submitted for inclusion in the *Congressional Record* may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 10, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. PRYOR thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader marks, the Senate will resume consideration of H.R. 3590, the health care reform legislation. The time until 1 p.m. today will be equally divided and controlled and will be for debate only, with the time until 11 a.m. controlled between the two leaders or their designees and the remaining time controlled in 30-minute alternating blocks. The majority will control the first block and Republicans will control the next. Senators will be permitted to speak for up to 10 minutes each.

I expect the House of Representatives to send a conference report to the Senate this afternoon. When it arrives, we will consider it. If cloture needs to be invoked, the Senate will have to be in session this weekend for a Saturday vote and a Sunday vote in order to complete action on these bills. This bill includes the bills we have tried to complete. We have been held up by the minority on these bills, but we have made progress. The first will be the Transportation appropriations bill, Commerce-Justice-Science, Military Construction, Labor-HHS, financial services, and State-Foreign Operations. That would leave the only remaining bill to be the Defense appropriations bill, which we will do sometime before the end of the year. We hope we can get word from the Republicans today what they want to do. Whatever they want to do, it is in their hands.

Everyone should understand that procedurally, no one can stop us from moving to the appropriations bills. It is bipartisan. We have worked closely with Republicans on this matter. We automatically go off the health care bill when we get on this. We are waiting for the score to come back from the Congressional Budget Office. There isn't a lot we can do until we get that done, which would be next week. So no time is lost on health care. We have to complete our work for the year anyway. So we have to do this bill.

Whenever we hear from the Republicans, Senators will know what their schedules can be. We could complete our work today and come back and work something out so that we can have a Monday vote. But whatever the Republicans want, we will be happy to cooperate with them—I shouldn't say whatever they want.

RESERVATION OF LEADER TIME

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

SERVICEMEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Dorgan amendment No. 2793 (to amendment No. 2786), to provide for the importation of prescription drugs.

Crapo motion to commit the bill to the Committee on Finance with instructions.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11 a.m. shall be equally divided and controlled by the two leaders or their designees.

The Senator from Montana.

Mr. BAUCUS. Mr. President, for the benefit of all Senators, let me lay out today's program. It has been 3 weeks since the majority leader moved to proceed to the health care reform bill. This is the 11th day of debate. The Senate has considered 18 amendments or motions. It has conducted 14 rollcall votes. Today, the Senate will continue debating the amendment by the Senator from North Dakota on prescription drug reimportation, we will continue debating the motion by the Senator from Idaho on taxes, and we will continue debate on the bill. Under the previous order, the time until 1 p.m. today will be for debate only, with the time equally divided and controlled between the two leaders or their designees. Beginning at 11 o'clock, Republicans will control the first half hour, and the majority will control the second half hour. We will continue discussions to try to find a way forward.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I appreciate the statistics the Senator from Montana cited about how long we have been debating this and how many amendments we have done. That is how few amendments we have done, actually. The majority is now filibustering their own bill. I have no idea why that is happening. We have been calling for votes on both of these amendments that have been proposed so far and haven't been able to get the votes. I don't understand how they can talk about how many amendments are being done.

I also have to voice some other frustration. I don't know how many times I have heard the exact same speech by the Senator from Illinois, Mr. DURBIN, on this floor talking about the amount of hours that have been spent together working on these bills in the HELP Committee and the Gang of 6 in the Finance Committee. It isn't about how many hours we spend together. It isn't about how many hours we spend on the floor. It is whether we are accepting ideas. I understand the other party won the last election, but somehow they will have to get over this attitude that they won the election, they get to write the bill, they don't have to take any ideas from anybody else.

In the HELP Committee, I keep pointing out that most of the things we turned in were kind of punctuation corrections and spelling corrections. Any ideas we actually had that appeared to be accepted to be in the bill were ripped out of the bill before it was actually formally printed, without talking to us. What kind of bipartisan deal is that?

Another thing with the HELP Committee, we have only had 10 days of debate on this. We did more than that in the HELP Committee when we were marking up the bill.

But we are having, in the words of Yogi Berra, déjà vu all over again. When we were having that markup, the majority withheld a significant part of the bill, a big part of the bill. It was the government-run option part of the bill. They wouldn't give us the wording on that. I think they were still writing it. Maybe that is what is happening right now too. But we couldn't get the text we were going to write amendments on so that we could deal with the bill. I think America noticed that in August. People said: How come everybody isn't reading the bill? You can't read what you don't have.

The point I am making is, right now the newspapers are full of information—well, speculation; it has to be speculation—about what this new Medicare expansion does. I haven't run into anybody who has seen the text of that. I have asked some of the media, and they didn't see the text. They got a briefing. We haven't even had a briefing. The majority side has had a briefing, but our folks who have talked to those folks said: Wow, that was pretty general. How could you make up your mind on whether you are going to support it based on the little bit of information you received? That is not the way to run any kind of an organization, especially if you want bipartisan votes.

You can't write the bill in secret, which is what was done with this bill. There wasn't a Republican involved in the behind-the-door stuff Leader REID did to put together the bill we have now. That is not bipartisan. There

hasn't been a single person from the Republican side briefed on this new proposal that is going to save the world.

Actually, I noticed that the American Medical Association suddenly left the bill and said: This will be the worst thing that could happen to us. The hospital associations, which have been strong supporters of the bill, have also said this won't work, particularly the Mayo Clinic, which we have been holding up as one of the prime examples of the way to do health care, saying: If this Medicare expansion happens, it will cost us millions. We won't be able to provide the kind of care we have been providing.

What is the deal around here? When are we going to actually get to see something? When is the majority actually going to share with us this marvelous idea they have had? What kind of a way to run a business is that?

Are we going to recess for the weekend? I don't want to recess for the weekend. I am conscious of the 11 days we have been debating, and we have only covered 14 amendments. We have a lot of important amendments that either will be a part of the bill or will help the people in this country to understand what is being thrust on them. There has never been a bill of such importance as this one from the standpoint of how many people it affects. We are talking about reforming health care in America. That is everybody. That is every single individual, every single provider. Every single business will be affected by this bill.

We talk about 2,074 pages, which seems like a lot. It would be for a normal bill that you could debate in a limited period, which is what we are being asked to do. But 2,074 pages isn't nearly enough to cover health care for America.

So why is it only 2,074 pages? There are hundreds of references in there to how the Secretary of Health and Human Services is going to solve all the problems. The things we aren't able to put into detail in there we just assign to her, and she will magically be able to solve the problems for American health care. After all, it is her Department. But that is not going to happen. You can't give that many assignments to any agency, any department, any group of people and expect them, in a reasonable amount of time, to come up with solutions, solutions that ought to be decided on by this body, the elected officials—not appointed officials but elected officials. That is not going to happen with this bill.

The only way that could happen is if we took significant parts of it and put it up one piece at a time and solved it. That is what seniors are asking for. They are asking for us to take the Medicare part and give them some assurance that when we are through, it will work. We are not even getting to see a significant part of it. We have been pointing out how taking $464 billion out of Medicare will break it, will ruin it. You just can't steal $464 billion out of Medicare and have it come out good. The majority recognizes that. That is why they put in the special commission that is going to come to us each and every year and suggest the kinds of cuts we ought to make to keep that solvent.

The biggest thing we ought to do is take these cuts that are provided and make them actually apply only to Medicare. But how are you going to fund the expansion of Medicare now down to age 55? How do you do that? I guess you charge a premium to those people. That is kind of the rumor that is out there. How big of a premium? How big of a premium are you going to thrust on those people? I suspect it is going to be the older and the sicker people in that 55- to 64-age category who are going to want to shift over to Medicare.

If it is a higher premium so the system stays solvent—having nothing to do, of course, with age, because we cannot do that under the bill, or sickness, because we cannot do that under the bill—and those are good ideas—but those better be up in that range of the high-risk pools that the States already have.

People come to me and say: You have to do something about health care because we cannot afford that high-risk pool; it is too expensive. Well, how much more are we going to expect the young people to pitch in in their paycheck? That is where the Medicare money comes from right now. They deduct a portion of the paycheck from every single working American, and that goes into Medicare, and gets paid out right away to Medicare recipients, none of whom or hardly any of whom are the ones paying into the system. They are hoping that system is going to be there when they get older.

What I am asking for is for the majority to show us the paper and give us a reasonable time to look at it and give America a reasonable time to look at it. I do not think it is unreasonable for that to be on the Internet. That is a significant part of the bill. That would be a significant bill all by itself. It was held from our view when the HELP Committee did it. Incidentally, that HELP Committee bill—that was put together in 2 weeks without our help and put on us—parts of it were withheld, as this has been withheld, until the last minute and then thrust in.

That is what created this enormous outrage across America of: Did you read the bill? How can you read the bill if you have not seen anything in it, if it has not been given to you? I do not think it is intended to be given to us until we have to shuffle this thing through at the end.

The anticipation was to get this done by Christmastime, and the majority side keeps talking about getting this done by Christmastime. Will we have time to read it before Christmastime? Will we have a chance to do any amendments on it before Christmastime? I am willing to stay around and work through the weekend and keep doing amendments, but I would like to see this marvelous idea that is going to solve the whole problem. If it was that marvelous and that good of an idea, I think it would be shared already.

Mr. President, I yield the floor and reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be equally charged against both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, commenting on the budget process in the 1980s, former CBO Director Rudy Penner said:

> The process is not the problem; the problem is the problem.

The chairman and ranking member of the Budget Committee have proposed another new budget process. No one has shown greater zeal in taking on the budget deficit than the chairman and ranking Republican Member of the Budget Committee. I commend their good intentions. They work hard. But we should reject this process. Instead, we should solve the problem.

In their press release yesterday, Senators CONRAD and GREGG said that ''Everything needs to be on the table, including spending and revenues.'' That is a quote: ''Everything needs to be on the table, including spending and revenues.'' But why stop there?

If Congress is going to outsource its core fiscal responsibilities, why stop with those responsibilities? Why not cede to this Commission all of the legislation in the next Congress? Why don't we outsource the entire year's work and then adjourn for the year?

Come to think of it, if we do cede all of our powers to this Commission, what is to stop them from inserting any and all business for the next Congress into the Commission's one, nonamendable, omnibus vehicle? No restrictions. They could put anything they want into it.

There is the rub. For if the Commission were merely a farce, then we could be satisfied with ridiculing it. But this Commission and its new fast-track process are truly dangerous. If we were to cede all of our responsibilities to this Commission, and we were to tie our hands so we could not amend its recommendations, then we would risk setting in motion some truly terrible policy.

Under the proposed fast-track procedures, we would not be able to amend the proposal. What if we did not like

the Commission's recommendations? We would not be able to replace the Commission's recommendations with our own.

It is clear from their press release that Senators CONRAD and GREGG have painted a big red target on Social Security and Medicare. That is what this Commission is all about. It is a big roll of the dice for Social Security and Medicare.

Advocates of the task force say the regular order is not working. They say we need a new process to address our long-term fiscal challenges. But they are wrong. The regular order is working. We are enacting health care reform. And serious people know that controlling the costs of health care is the central path to addressing our long-term budget challenges.

The lion's share of the reason why deficits are projected to grow so much in the long run is the enormous increase in the costs of health care. We are doing something about it. We are doing it the right way. We held open hearings. We legislated in committee. We are voting on amendments. We are legislating. We are doing what our people back home sent us here to do.

The Congressional Budget Office says that health care reform will cut the deficit $130 billion in the first 10 years and $650 billion in the second 10 years. That is nearly $800 billion in CBO-certified deficit reduction in health care alone. And next year we will legislate fundamental tax reform.

But some appear to want to throw in the towel. Some want to punt our responsibilities away. I can see that a commission may be attractive to some. After all, it is an easy way out. It takes away our accountability for what we do. Senators can blame it all on the Commission. Senators could say: The Commission made me do it.

But this is no time to abdicate responsibility. This new Commission and this Congress are less than a year old. We should not shirk our responsibility. Rather, we should do the job our constituents sent us here to do.

Luckily, we already have a process to address the budget. It is called the congressional budget process. Here is a novel idea: Why don't we use the budget process to address the budget deficit? If the chairman and ranking Republican Member of the Budget Committee are in such broad agreement on their goals, why don't they skip the Commission and go straight to their recommendation? That is exactly why Congress created the budget resolution and the reconciliation bill in the first place.

We do not need a new commission to do our work. We do not need a new process to solve the problem. To solve the problem, we just need to solve the problem.

I urge my colleagues to reject this Commission idea. Let's get back to solving the problem. Let's get back to enacting real health care reform.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I am fascinated by the speech we heard. There has been a bipartisan proposal. The chairman of the Budget Committee and the ranking member of the Budget Committee have proposed a commission, and that bipartisan deal is being chastised here. So we are on the bill, where 64 percent of the amendments that have been filed so far were filed by the Democrats, and I keep wondering why they are filibustering their own bill.

Then when something bipartisan does come up, they are opposed to that too. I know they think the only good ideas come from the other side of the aisle, and I do get frustrated with that.

Mr. BAUCUS. Mr. President, will the Senator yield on that one point? Just on that one point, will my good friend from Wyoming yield, on our time?

Mr. ENZI. Certainly.

Mr. BAUCUS. The question is this: Doesn't the Senator agree—it is kind of a hard question to ask—that this Senator spent an inordinate amount of time in the last year trying to get a bipartisan solution to health care reform; that is, in our committee, in the Finance Committee, having an open process, fully consulting on both sides of the aisle? Then we had that other group called the Group of 6, of which the Senator is a part. I think we had 130—I have forgotten how many days and meetings we had, how many hours we met.

But isn't it true that at least this Senator tried as hard as he could to get a bipartisan solution?

Mr. ENZI. I cannot fault the Senator from Montana for his efforts to get a bipartisan solution. As I have said many times, I am sorry he had to be cut off by phony time deadlines that kept us from reaching that kind of a solution, and then winding up with things that are in this bill we are talking about that were not a part of our discussions—again, the things that were proposed by people on this side of the aisle that are not in that bill.

There were some possibilities for solutions. But we wound up with that same situation of: We won the election, we get to write the bill, and it has to be done quickly. So I am disappointed in the whole process.

Mr. GREGG. Will the Senator yield for a question on that point?

Mr. ENZI. I will.

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

Mr. GREGG. I certainly respect that the Senator from Montana worked very hard to have a bipartisan initiative here, but this bill we are dealing with has no bipartisanship to it at all. Was this not written in camera behind closed doors for 8 weeks by the majority leader? Was there a Republican in that room at any time? And we have now been on it for what, 8 days or something, while they wrote it for 8 weeks. And furthermore, is there not rumored to be floating around this Congress somewhere, in some room, again—that we have not been invited to—a major rewrite of this bill called the managers' amendment, which supposedly is going to expand coverage to people under Medicare to 55 years of age, with Medicare already being bankrupt, and already cannot afford the people they have on Medicare? It is going to expand it. We have not seen it. Yet this is going to change this bill fundamentally and change health care fundamentally.

Is that bipartisan? I ask the Senator from Wyoming if that is the case? Was this bill written in a bipartisan manner? Were any Republicans in the room? Did it go through a committee process? Was it amended? Did it not take 8 weeks to write it, and it has now been on the floor for 8 days, and all of our amendments are being pushed to the side? And are we not hearing about a massive—a massive—rewrite of this bill that is going to appear deus ex machina from the majority leader's office and fundamentally change the way health care is delivered in this country? Is that going to be bipartisan?

Mr. ENZI. The Senator is absolutely right. We have not even seen this new piece. Nobody wants to show us the new piece. They keep talking about it. They have leaked it to the newspapers, but they will not show it to us, and then they keep talking about how this bill is going to solve the deficits for this country; that there is $157 billion or something saved in the first 10 years. That is only—only—if you use the phoney accounting they are using. It is only if you don't do the doc fix. It is only if you don't solve the myriad of other things we have brought out.

We have a bill they keep talking about as being the solution. America has figured it out, but the Democrats haven't figured it out.

I see the leader is on the Senate floor. I yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I apologize to my colleagues for interrupting their conversation. Hopefully, it can continue upon completion of my remarks, and I may well wish to join in.

HEALTH CARE REFORM

Mr. MCCONNELL. Mr. President, the American people have seen what Democrats in Congress plan to do with seniors' health care. They have looked on in disbelief as almost every Democrat in the Senate voted again and again and again to slash Medicare. Now they are watching in disbelief as Democrats float the idea of herding millions more—millions more—into this nearly bankrupt program as part of a backroom deal to force their plan for health care on the American people by Christmas.

Every day it seems we hear new revelations about secret conference room deliberations where Democrats are

frantically working to get their 60 votes by Christmas. And every day we hear about some new idea they have come up with for creating a government plan by another name. This week's version would have the Office of Personnel Management running the program, an idea that was shot down almost as soon as it was announced by the former OPM Director who said it couldn't be done.

This is what he said: ''I flat out think that OPM doesn't have the capacity to do this type of role.''

This is precisely the kind of approach Americans are tired of in Washington, and this is precisely the kind of health care plan Americans did not want.

Seniors thought they could expect lower costs. What they are getting instead is an assault on their Medicare. Small business owners thought they could expect lower costs. What they are getting instead are higher taxes, stiff fines, and costly mandates. Working Americans thought they would get more efficiency, less fraud, cheaper rates. What they are getting instead are new bureaucracies and higher costs.

Business leaders from across the country enthusiastically support the idea of health care reform. They know better than anyone that costs are out of control and that something needs to be done. But they have read the bill Democrats in Congress have come up with and they are telling us this isn't it. This isn't it, they are saying. Not only won't this bill solve the problem, they say, it makes the existing problems actually worse.

The Vice President of the U.S. Chamber of Commerce was here yesterday. He said there is a desperate need for reform—reform that bends the cost curve down. He said, unfortunately, this bill fails the test. He says this bill will only lead businesses to lower wages, decrease working hours, reduce hiring, and cut jobs. He said it adds to the deficit; it adds to the debt. It includes massive new spending programs and entitlements and incredibly, as I have noted, it also borrows from existing entitlement programs. It borrows from existing entitlement programs that are already in trouble.

Businesses look at this bill and they see $½ trillion in new taxes, as many as 10 million employees at risk of losing coverage, and crushing new mandates. This is not reform. This bill doesn't solve our problems, it spreads them. That is why seniors don't like this bill. That is why job creators don't like this bill. That is why public opinion has dramatically shifted against this bill.

Americans want reform, but this is not the one they asked for. This bill is fundamentally flawed and it can't be fixed. There is no way to fix this bill.

Americans want us to stop, they want us to start over, and they want us to get it right. Democrats should stop talking at the American people and start listening to them.

Now, Republicans are prepared to provide a platform for the debate as long as it takes—as long as it takes. The majority leader said we would be working every weekend. We take him at his word. We expect to be here this weekend, and we look forward to it. Republicans are convinced there is nothing more important we could do than to stop this bill and start over with the kind of step-by-step reforms Americans really want.

We have amendments. We want votes. We have been waiting since Tuesday to have more votes. We are eager to continue the debate.

Here is what my good friend, the majority leader, said when we started the debate on November 30:

> Debating and voting late at night. It definitely means the next weekends—plural—we'll be working. I have events I'll have to postpone, some I'll have to cancel. There is not an issue more important than finishing this legislation. I know people have things they want to do back in their States, and rightfully so. I know people have fundraisers because they're running for reelection. I know there are other important things people have to do, but nothing could be more important than this, and we notified everybody prior to the break that we would be working weekends.

We took the majority leader at his word when we started this debate on November 30 that we would be working weekends. Actually, it is a week later—this past Monday of this week—he said, ''It appears we certainly will be here this weekend again.''

My Members understood we would be here on the weekends. We don't think there is anything more important we can do, and we are a little bit upset—maybe more than a little bit—that we were not able to vote on an amendment yesterday. We have been prepared to vote for several days. There are amendments that have been offered that we can't seem to get a vote on. The American people are expecting us to vote on this bill, and we are here and prepared to do it. We would like to get started voting on amendments today.

Mr. GREGG. Mr. Leader, if I might ask a question through the Chair.

The PRESIDING OFFICER (Mr. BENNET). The Senator from New Hampshire.

Mr. GREGG. On that last point, it does seem there is a slowdown occurring on amendments. As I understand it, we have four or five very substantive amendments dealing with taxes, dealing with employer mandates, that we are ready to go to, and we are ready to vote on; is that not correct?

Mr. MCCONNELL. I say to my friend from New Hampshire, that is absolutely the case. We waited around all day to get a vote on the amendment by the Senator from Idaho, Mr. CRAPO. We were told there would be a side-by-side, and it mysteriously has not yet appeared. But we are here ready to work. We share the view of the majority leader that this is an extremely important issue, and we want to vote.

Mr. GREGG. I hope at some point today maybe we should propound a unanimous consent setting those four items up for votes on Saturday and Sunday.

Mr. MCCONNELL. Well, I think that is a good idea. Of course, we would prefer to vote today. We are going to be voting Saturday and Sunday too. I think the sooner the better. The American people are actually expecting us—they thought we were here voting and debating amendments on this bill, and we are going to continue to press forward and try to get that done.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, could I inquire of the Chair before the Senator from North Dakota speaks how much time remains.

The PRESIDING OFFICER. The majority has 14 minutes, and the Republicans have just under 8.

Mr. GREGG. Mr. President, I would ask, is the Senator from North Dakota recognized under an order of a colloquy at this point?

The PRESIDING OFFICER. The Chair simply recognized the Senator from North Dakota.

Mr. CONRAD. Mr. President, was there a time reserved for a colloquy between myself and the Senator from New Hampshire?

The PRESIDING OFFICER. No.

Mr. CONRAD. Mr. President, the reason we are here on the floor is our understanding was we had time reserved at 10:30 for a colloquy between the Senator from New Hampshire and myself.

Mr. GREGG. Mr. President, I ask unanimous consent that we have 20 minutes equally divided between myself and the Senator from North Dakota at this time. I see the Senator from Connecticut obviously wishes to speak also.

Mr. DODD. Mr. President, I was not a party to the request, but I am certainly prepared to yield 10 minutes of our time to our colleagues for a colloquy and whatever time the Republican side may want to yield to Senator GREGG from their time remaining for that purpose as well. Is that satisfactory?

Mr. GREGG. Do we have time remaining on our side?

Mr. DODD. Mr. President, I ask unanimous consent that 10 minutes of our time be allocated to Senator CONRAD for the purpose of a colloquy or whatever other purpose he may have.

Mr. CONRAD. Do the Republicans have 10 minutes remaining for Senator GREGG?

Mr. ENZI. Mr. President, it is my understanding the leader spoke under leader time.

The PRESIDING OFFICER. That is correct.

Mr. ENZI. So we should have an adequate 10 minutes to allocate to the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senators may engage in a 20-minute colloquy.

Mr. CONRAD. I thank the Chair. I thank our colleagues. I especially thank our colleague, the Senator from Wyoming, and our colleague from Connecticut. Thank you for your courtesy. We appreciate it very much.

Mr. President, this is a headline from Newsweek, December 7. In fact, it was the cover story: ''How Great Powers Fall. Steep Debt, Slow Growth, High Spending Kill Empires—and America Could Be Next.''

If you go to the story—by the way, interestingly enough, this was on December 7, Pearl Harbor day. If you go into the story that is in the magazine, it says:

This is how empires decline. It begins with a debt explosion. It ends with an inexorable reduction in the resources available for the Army, Navy, and the Air Force. If the United States doesn't come up soon with a credible plan to restore the Federal budget to balance over the next 5 to 10 years, the danger is very real that a debt crisis could lead to a major weakening of American power.

All we have to do is look at the facts. This shows the debt of the United States from 2001 projecting to 2019. Obviously, the first half of this chart is not a projection. It has already happened. We are approaching a debt that is 100 percent of the gross domestic product of the United States, the highest the debt has been since after World War II and the only time in our Nation's history it has been that high. The projection is by 2019 the debt will be high. The projection is by 2019 the debt will be 114 percent of the gross domestic product of the United States.

More alarming, the long-term outlook of the Congressional Budget Office says we will have a debt that will reach 400 percent of the gross domestic product of the United States by 2050 on the current trend line. No one believes that is a sustainable circumstance. We have had testimony from the head of the General Accounting Office, the Congressional Budget Office, the Secretary of the Treasury, and the Chairman of the Federal Reserve all saying this is a completely unsustainable circumstance.

The Congressional Budget Office said this in June of 2009:

The difficulty of the choices notwithstanding, CBO's long-term budget projections make clear that doing nothing is not an option.

Doing nothing is not an option.

The National Journal, in an article entitled ''The Debt Problem is Worse Than You Think'' said this in a story just weeks ago:

Simply put, even alarmists may be underestimating the size of the debt problem, how quickly it will become unbearable, and how poorly prepared our political system is to deal with it.

I hope people are listening. I hope they are paying attention. I hope our colleagues are.

Yesterday a group of us introduced legislation to confront this debt threat head on. There are now 31 cosponsors of that legislation: 19 Republicans, 12 Democrats. This legislation offers the following: to address the unsustainable long-term fiscal imbalance; that a task force should be created with everything on the table. It would consist of 18 Members: 8 Republicans from the Congress, 8 Democrats from the Congress, and 2 representatives of the administration.

All task force members must be currently serving in Congress or the administration so they are accountable to the public. If 14 of the 18 Members could agree on a report, that report would come to Congress for a vote.

There would be no filibustering, a straight up-or-down vote on the recommendations. The report would be submitted after the 2010 election to insulate it from politics. And, the vote would be designed to occur before the end of the 111th Congress. It would receive fast-track consideration in the Senate and the House. There would be no amendments. It would be a straight up-or-down vote. A supermajority of the House and the Senate would have to vote for it, and the President would retain his ability to veto.

This is legislation that is designed to get to the floors of the House and the Senate, legislation to deal with our long-term debt threat, to face up to it. All of us know that with a problem, the sooner you deal with it, the less draconian the solutions need to be. For those who say this poses a threat to Social Security and Medicare, the opposite is true. A failure to act is what threatens Social Security and Medicare.

The trustees of Medicare have told us Medicare will go broke in 8 years. They have also told us Medicare is cash negative today. That means more money is going out than is coming in. The same is true of Social Security today. It is cash negative.

Now is the time. We are the ones who have an opportunity to help our country face up to a critical threat to the economic security of America. Some suggest the bill before us on health care is an example that the regular order will deal with this problem. Again, I believe the reverse is true.

I believe the health care bill before us does modestly deal with the deficit and debt—modestly. But it doesn't come close to dealing with the debt bomb I have outlined. In fact, the reality is, we are on a course that is absolutely unsustainable. It is our responsibility to face up to it.

In our past, we have chosen special processes, commissions, a summit, or some other special process to deal with fiscal challenges because we have learned, in our history, that going through the regular process and regular order is simply not going to succeed.

I have been here 23 years. I am on the Finance Committee. I am chairman of the Budget Committee. I have been on those committees for many years. If there is one thing that is absolutely clear to me, it is the regular order cannot and will not face up to a crisis of this dimension. It is going to take a special process, a special commitment of the Members and representatives of the administration to develop a plan that gets us back on track. It is going to take a special process to bring that plan to this floor for a vote up or down. That holds, I believe, the best prospects for success.

I believe this is a defining moment for this Chamber, for this Congress, for this administration. It is imperative that we find a way to deal with this debt threat. It poses one of the most dramatic challenges to American economic strength that we have confronted in the history of this country. It is time to stand and be counted.

Thirty-one of us have sent forward a proposal—a bipartisan proposal—that would assure a vote on a plan to bring America back from the brink. Let's give it a chance.

I thank the chair, and I especially thank the ranking member, Senator GREGG, for his energy, his commitment, and his devotion to facing up to, I believe, one of the greatest challenges confronting America.

I yield the floor.

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

Mr. GREGG. Mr. President, I am privileged to join the Senator from South Dakota, the chairman of the Budget Committee, on this initiative. We have worked on it for a while, and we have come to a position of having a piece of legislation that accomplishes the goal as outlined by the Senator from North Dakota. That is good news.

The outpouring of support in the Senate—over 31 cosponsors in just a brief period of time—is a sign that there is a willingness to move in a bipartisan way. That is good news.

Right now, for this country, after the possibility of a terrorist getting a weapon of mass destruction and using it against us in the United States, the single biggest threat we have as a nation is the fact that we are on course toward fiscal insolvency. You cannot get around it. If we continue on the present course, this Nation goes bankrupt. We are already seeing the early signs of it. The early signs are devastating enough. We are seeing some of the nations who lend to us—and remember we are a debtor nation now of massive proportions—saying: Hold on, you folks are not being responsible, especially about your outyear debt.

Two days ago, we saw one of the rating agencies, Moody's, say England and the United States now are going to be put into a special category relative to the rest of the industrialized world because their fiscal situation is in such risk, and they are not managing their fiscal house correctly.

We know, as the Senator from North Dakota has outlined so correctly, that within 10 years—maybe sooner—we are

going to get to a point where our debt has gotten so large we simply cannot pay it or, if we have to pay it, we are going to have to do some extraordinary things to do that, such as inflating the currency or raising taxes to a level where we reduce productivity and the opportunity for jobs. It is akin to a dog chasing its tail when you get your debt to a certain level. When you have spent so much more than you have taken in and you have promised so much more than you can afford to pay and your debt gets to such a level, as a nation, you only have two choices: You inflate the currency and destroy the quality of people's lives, destroying the value of their savings, and you put in an inflation economy, which is one of the worst things that can ever happen to a country or you have to radically increase your tax burden to levels that are simply going to choke off the capacity of the Nation to create prosperity because people will not be able to be productive. You will start to lose tax revenues as a result of that.

This is not a theoretical case. This is no longer something that is over the horizon. This problem is directly in front of us. We are hearing it from the people who lend us money, from the rating agencies, and we know it from intuitive common sense. Most Americans know this is an extraordinary problem.

We talked about this for a long time and we worked on it for a long time. Yes, regular order should take care of this, but we know it will not because we have seen what happens. When you put an idea on the table to deal with major entitlement programs that affect so many people, in such a personal way, immediately, those ideas are attacked and savaged, misrepresented, exploited, exaggerated, and hyperbolized by the interest groups that populate this city and other parts of the country for the purpose of making their political agenda move forward or their money-raising formula move forward.

When substantive, good ideas have been put on the table to try to correct this fiscal imbalance by dealing with questions of Social Security and Medicare or tax policy, we get clobbered on the policy side. We came to the conclusion from the right and the left that it is equally outrageous and equally destructive of constructive public policy. We came to the conclusion that the only way you can do this is to create a process that drives the policy, rather than put the policy on the table first, saying here is the policy and everybody jumps on it and kicks it and screams at it and so it never even gets to the starting line. We decided let's get to a process that leads to policy and leads to an absolute vote.

The theory is, basically, threefold: One, the process has to be absolutely fair and bipartisan. Nobody can feel they are being gamed. The American people will not allow major policy to occur in these areas unless they are comfortable the policy is bipartisan and fair. So this process we have set up is a bipartisan affair. There will be 18 people. We decided to go with people who actually have a responsibility for making decisions and understand the issues intimately; 16 from the Congress, as was mentioned—8 Republicans and 8 Democrats—and the 2 from the administration, with a supermajority to meet, to report, and there will be cochairmen from each party. That gives us the bipartisan nature.

The second part that is critical to the exercise is that it be real and that it not end up being a game. We have seen so many commissions end up being just commissions. They put their report out and it ends up on a shelf somewhere.

Something has to happen. What happens is, when this Commission reports with a supermajority and comes to Congress, by supermajority it must be voted up or down. So there is an absolute right to a vote, and the vote occurs on the policies proposed. That is critical. It is much along the lines of what we did for base closures, for many of the same reasons. You couldn't close bases politically, so we did it by fast-track approval.

Third, there will be no amendments. Why? Amendments allow Members to hide in the corners. It is that simple: Somebody throws an amendment up—even if it is well intentioned—and people vote for the amendment and then say it didn't pass or I will not vote for the final product. You have to have a policy put forward, and it will either attract a bipartisan supermajority and be a fair policy or it is not. If it doesn't attract a bipartisan supermajority, clearly, it wasn't well thought out.

That is the process we have come to. The amount of sponsors we have reflects the fact that it is viable and that it is bipartisan. We have 12 Democratic sponsors already and 19 Republicans. What else around here has that with serious legislation? This is it.

I congratulate the Senator from North Dakota for his efforts. I am hopeful we can get a vote on it. Then, I hope it can pass, and I am hopeful we can get White House support and House support to do this.

We are running out of time. If we don't accomplish this fairly soon, the outcome is very simple: We will pass on to our children less opportunity, a lower standard of living, and a weaker Nation than we received from our parents. No generation in American history has done that. But that is what we are going to do if we don't take action. That is exactly what is going to happen. How can one generation do that to another? In American history, that has never happened. This is an opportunity to avoid having that occur or at least help avoid it. I hope it will move forward.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, how much time remains of the 20 minutes?

The PRESIDING OFFICER. Two minutes 40 seconds.

Mr. CONRAD. How much on my side?

The PRESIDING OFFICER. The time is equally shared.

Mr. CONRAD. Let me sum up by saying this: I have been here 23 years. We saw the debt double in the previous 8 years. We know the debt is scheduled to more than double over the next 8 years if we fail to act. That will be a debt, as I indicated earlier, of well over 100 percent of the gross domestic product of the United States.

The Congressional Budget Office tells us, on the current trend line, we are headed for a debt that will be 400 percent of the gross domestic product of the United States. That is absolutely beyond the pale. We know, from every serious expert who advises the Congress of the United States, we can't go there. We can't possibly be on a course to have a debt that is 400 percent of the gross domestic product of the country.

The question is, What do we do about it? There are some who say: Well, you stick with the status quo approach. It hasn't worked so far. Why is there any reason to believe it will work now? I would say the health care legislation before us is a perfect example. The President had a health care summit; he had a fiscal responsibility summit. At those summits, it was asserted—and I think it was well intended—that health care reform would deal with a major part of the debt projection facing us. Well, here we are. My belief is, this bill does modestly reduce the deficit in the short- and long-term. But it in no way deals with the trajectory that is headed for a debt of this country of 400 percent of the GDP, because when you are in this circumstance, the regular legislative process cannot face up to short-term pain in exchange for long-term gain. It will not do it. This is our opportunity. We must act.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, the time until 1 o'clock will be controlled in 30-minute alternating blocks, with the majority controlling the first block and the Republicans controlling the second 30 minutes.

The Senator from Connecticut.

Mr. DODD. Mr. President, before my colleagues from North Dakota and New Hampshire leave, let me commend them for their efforts in this regard. There may be debates about the details of this legislation.

One of the first amendments I ever offered, sitting back in the far corner, as a freshman Member of this body was a pay-as-you-go budget in the Reagan administration. Then I was a cosponsor of Gramm-Rudman-Hollings back in 1985—that was 24 years ago—which was an effort to try to put some restraints on the exploding process at the time.

While I am not prepared necessarily to sign on this morning, I would be remiss if I did not thank them for their efforts. And either something like this

or a variation of it is needed so there is some process in place to allow us to deal with these issues.

Before they wandered off and we were back on the health care debate, I wanted to thank them for their efforts.

Let me once again address issues that need to be clarified. We have disagreements about the health care bill.

I want the record to reflect the efforts that have been made for over a year now to involve our colleagues across the spectrum, beginning with my predecessor, Senator Kennedy, who would be otherwise standing at this very podium but for his illness and his death. My office and his staff worked closely together and I want to share the details of those meetings that occurred beginning about a year ago to formulate the very bill we are grappling with today. I was not a participant in those early meetings. Senator Kennedy was, with his staff and Members of the minority staff right after the elections. I began to work in his place starting around the first of the year or shortly thereafter.

There were numerous meetings between Members from across the spectrum from the Budget Committee, the Finance Committee, the HELP Committee, countless meetings of staff in all three of these committees. Many of them occurred in Chairman BAUCUS's office, the chairman of the Finance Committee.

Battling over the substance of the bill is a very legitimate process. There are 100 of us representing various constituencies and various ideas. There is nothing inherently wrong about that. In fact, it is a healthy process to go through. But I cannot stand here and accept the notion that people have been excluded from the process. That is not the case at all.

There are times when the majority, who has the responsibility to pose ideas, will meet together to formulate an idea or a series of ideas to bring forward. To say this is a historical, unprecedented occurrence defies what anyone who has known 5 minutes of the history of this institution knows. I recall only a few years ago when the minority leader and others were excluded from conference meetings between the House and the Senate. If Tom Daschle showed up, the word was, the conference committee would be canceled. Imagine, the minority leader, a conferee, dealing with the House and Senate, would show up and the meeting would be canceled. With all due respect, it is that old line of Claude Rains in the famous movie ''Casablanca,'' walking into Rick's Café, looking around with Humphrey Bogart there and saying: ''Is there gambling going on here? Shocking.'' Is politics going on in the Senate? Yes, it is. And it has back to 1789, to the founding of the Republic. Politics has happened in this institution where people try to formulate ideas to bring together on behalf of our constituents across the country.

It needs pointing out, as I will, and I will lay out and provide shortly every single amendment offered by the other side—hardly technical, so everybody can read them—the provisions in this bill that were specifically offered by Members of the minority that were accepted either in our committee or in other places and are reflected in the substance of this bill.

Is it their bill? No. Obviously, they have not voted for it. But a lot of the substance in it is theirs, and to suggest otherwise is not true. The notion that people have been excluded from this process is just not the case at all. In fact, going back, if you will, since January of 2007 the HELP Committee has held 30 bipartisan hearings on health care reform, with 15 alone in 2009. Taken together, the HELP and Finance Committees held more than 100 bipartisan meetings. Beginning in December 2008, the bipartisan leadership of the HELP Committee, the Finance Committee, and the Budget Committee met 10 times to discuss health care reform legislation. Staff met even more frequently. Ideas discussed in those meetings are reflected in this bill. In 2008, the HELP Committee held 15 bipartisan health reform staff roundtables, which included Republican and Democratic staff from the HELP, Finance, and Budget Committees. Over 80 stakeholders from the pharmaceutical industry, the insurance industry, those who advocated single-payer approaches—80 stakeholder meetings were held in the health care debate from across the political spectrum. Democrats, Republicans, patients, providers, employers, unions, insurers, and drug device manufacturers contributed recommendations to this bill. They were not all accepted. The idea that we would take everyone's idea that comes to the table is ludicrous on its face. But certainly the opportunity to affect the outcome of this bill was very much an open process.

In addition, committee staff held regular meetings with smaller representative groups. Since April of 2009, these meetings have included staff from Senator ENZI's office, Senator GREGG's office, and Senator HATCH's office. These meetings included groups from across the political spectrum who met for 2-hour sessions twice a week to provide detailed and thoughtful contributions to this bill.

In addition to these stakeholders, hundreds of groups attended larger stakeholder meetings on March 13 and May 15 where further recommendations on reform were heard.

On June 10 and 11, prior to beginning of the markup of the HELP Committee bill, Members had detailed, bipartisan discussions of the draft legislation, including extensive options contributed by our Republican colleagues. Options provided by Republican Members were reflected in the legislation approved by the committee.

On June 22, HELP Committee Senators also met with the nonpartisan Congressional Budget Office Director Doug Elmendorf and other CBO staff.

The markup in the HELP Committee lasted almost a month—a record for that committee, by the way. The committee held 56 hours of executive consideration of the legislation, stretching across 23 different sessions over 13 days. Taken together with the Finance Committee, more than 20 days were devoted to the amendment process alone. During the HELP Committee markup—I have mentioned this over and over again—we considered 287 amendments, almost 300 amendments, and 161 of those 287 were accepted Republican amendments.

I ask unanimous consent to have printed in the RECORD all of those amendments that were accepted and the description of those amendments.

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

HELP and SFC Republican Amendments in the PPACA

HELP/ SFC	AHCA/AHFA Title	AHCA/AHFA Amendment	Page in PPACA	Line on Page	Amendment Purpose
HELP	I	Burr 202	200	7	To apply the same laws to private plans and the community health insurance option.
HELP	I	Burr 217	184	9	To provide for the application of certain State laws to the public plan
HELP	I	Burr 235	31	3	To strike provisions that prevent a full accounting of costs.
HELP	I	Burr 242	142	6	To limit the use of Gateway surcharges
HELP	III	Burr 5	1166	15	To require all services to be age appropriate under the school-based health clinic program
HELP	III	Burr 6	1143	23	To require the Preventive Services Task Force to consider clinical preventive best practice recommendations
HELP	I	Coburn 225	367	7	To provide that no insurer shall be required to participate in any Federal health insurance program.
HELP	I	Coburn 226	156	6	To require Members of Congress and congressional staff to enroll in a Federal health insurance program.
HELP	I	Coburn 228	195	7	To require the use of available technologies to reduce and help prevent waste, fraud, and abuse.
HELP	I	Coburn 229	364	21	To ensure taxpayers are not forced to fund assisted suicide.
HELP	I	Coburn 231	143	1	To provide for a full accounting of costs.
HELP	I	Coburn 237	364	21	To ensure health care providers are not forced to participate in assisted suicide or discriminated against because they choose not to participate in assisted suicide.
HELP	III	Coburn 25	1151	17	To for Federal messaging on health promotion and disease prevention
HELP	I	Coburn 280	366	10	To Preserve and Protect Patient's Rights.
HELP	VI	Coburn 293			To ensure that scientific data used by the Federal Government is publicly available for the general betterment of scientific research.
HELP	I	Coburn 307	150	6	To allow for independent insurance agents
HELP	VI	Coburn 312	1864	4	To clarify the definition of interchangeability.
HELP	I	Coburn 315	196	20	Ensure taxpayer dollars do not fund waste, fraud, or other abuse in the Community Health Insurance Plan.
HELP	I - CLASS	Coburn 4	1973	2	Merged bill also includes a Coburn 4, an amendment to ensure that no federal money will be used to fund CLASS
HELP	II	Enzi 11	1660	24	To provide special safeguards for comparative effectiveness research on rare diseases.

HELP and SFC Republican Amendments in the PPACA

HELP	II	Enzi 12	1670	22	To require that experience regarding the actual practice of medicine be among the "diverse and broad range of perspectives" represented on the comparative effectiveness research Advisory Council.
HELP	II	Enzi 15	1659 (conceptual)	25 (conceptual)	To allow expert advisory panels comprising doctors and other clinical experts with relevant specialized experience to advise the government how to conduct comparative effectiveness research studies.
HELP	I - CLASS	Enzi 16	1958	15	To increase the period in which premium payments are required for purposes of eligibility for CLASS benefits.
HELP	I - CLASS	Enzi 17	1931	8	To increase the number of benefit plan as alternatives for consideration for designation by the Secretary.
HELP	I - CLASS	Enzi 18	1933	22	To require health care practitioner certification of functional limitation for the benefit trigger.
HELP	I - CLASS	Enzi 20	1936	17	To strike the Secretarial response to the public comment on the designation of benefit plan.
HELP	I - CLASS	Enzi 21	1937	13	To require the Secretary to consider the Inspector General's annual report on waste, fraud, and abuse related to the program in setting the premium amount.
HELP	I	Enzi 210	186	9	To prohibit the community health insurance option from limiting access to end of life care.
HELP	I - CLASS	Enzi 22	1937	13	To require the Secretary to consider the Inspector General's annual report on waste, fraud, and abuse related to the program in setting the premium amount.
HELP	I	Enzi 241	185	22	To ensure that an individual enrolled in the community health insurance option has access to all services.
HELP	I	Enzi 250	30	8	To require the GAO to conduct a study and report on the quality and cost of health care.
HELP	I - CLASS	Enzi 26	1945	7	To require coordination with the Secretary of the Treasury with respect to payroll deductions.
HELP	I - CLASS	Enzi 27	640	15	To provide for the development of regulations concerning the process for eligibility determinations.
HELP	I	Enzi 272	105	18	To prevent denial of care based on patient age, disability, medical dependency or quality of life
HELP	I	Enzi 274	143	19	To protect pro-patient plans and prevent rationing

HELP and SFC Republican Amendments in the PPACA

HELP	I	Enzi 278	105	18	To prohibit rationing on the basis of patient age, disability, medical dependency or quality of life
HELP	I - CLASS	Enzi 28	1950-51	22	To clarify that advocacy services and advise and assistance counseling services are included as administrative expenses.
HELP	I	Enzi 285	105	9	To prohibit the Secretary of Health and Human Services from limiting access to end of life care
HELP	VI	Enzi 295	1859	12	To set forth the Sense of the Senate that a biosimilars pathway balancing innovation and consumer interests should be established.
HELP	I	Enzi 296	29; 163; 1509	9; 22; 14	To make technical amendments.
HELP	VI	Enzi 297	1859	24	To amend the Public Health Service Act to establish a pathway for the licensure of biosimilar biological products, to promote innovation in the life sciences.
HELP	I - CLASS	Enzi 31	1969	11	To clarify provisions relating to reports on amounts in the Independence Fund.
HELP	I - CLASS	Enzi 32	n/a		To require an option with respect to burdens on the disability determinations of the Social Security Administration.
HELP	I - CLASS	Enzi 33	1967	18	To clarify provisions relating to the soundness of the Independence Fund.
HELP	I - CLASS	Enzi 35	966	7	To provide for an Inspector General's report.
HELP	I - CLASS	Enzi 36	1946	19	To require coordination with the Secretary of the Treasury.
HELP	I - CLASS	Enzi 37	277;810	4;3,8	To require coordination with the Commissioner of Social Security.
HELP	III	Enzi 44	1248	11	To ensure that data is collected on underserved rural populations.
HELP	III	Enzi 45	1248	20	To require that data collection requirements are not effective without a direct appropriation for that purpose.
HELP	III	Enzi 50	1254	24	To ensure that the Secretary conducts workplace wellness evaluations in publicly funded programs before evaluating privately funded programs.
HELP	III	Enzi 51	1255	9	To ensure that information under the workplace wellness provisions are not used to establish Federal requirements.
HELP	III	Enzi 62	1139	1	To modify provisions relating to the national prevention, health promotion, and public health strategy.
HELP	III	Enzi 69	1146	5	To provide that all members of the Preventive Services Task Force are independent.
HELP	III	Enzi 81	1166	19	To strike the definition of community under the school-based health clinic program.

HELP and SFC Republican Amendments in the PPACA

HELP	III	Enzi 82	1159	3	To strike the authority for optional services under the school-based health clinic program.
HELP	III	Enzi 85	1167	16	To clarify that certain oral health activities are subect to appropriations.
HELP	III	Enzi 89	1209	13	To prohibit the use of funds to create video games or other similar tools that lead to higher rates of obesity under the community transformation grant programs.
HELP	III	Enzi 92	1207	21	To clarify provisions relating to community measures under the community transformation grant program.
HELP	II	Enzi 96	1658	10	To require comparative effectiveness research to assess whether treatments benefitting the "average" patient might nevertheless benefit many individuals
HELP	I	Gregg 213	198	13	To require new Federal health entitlement programs to be fiscally solvent.
HELP	I	Gregg 224	Conceptually	Conceptually	To protect taxpayer funds.
HELP	I - CLASS	Gregg 6	1931	18	To protect the long-term fiscal health of the United States
HELP	I - CLASS	Gregg 7	1972	13	To ensure honest budgeting by requiring CLASS Act payments, reciepits, and deficits are reflected in the Budget.
HELP	II	Gregg 9	1111	4	To modify provisions relating to distribution of information to the public.
HELP	III	Hatch 10	1257	14	To promote research and treatment of pain care
HELP	III	Hatch 14	1172	23	To define tooth-level surveillance for purposes of oral healthcare surveillance activities
HELP	III	Hatch 17	1237	9	To utilize community health centers to test several approaches to improve wellness and promote the adoption of healthy lifestyles among several at-risk populations
HELP	III	Hatch 19	1265	11	To ensure that better methodologies are developed to measure prevention and wellness programs
HELP	VI	Hatch 209	1924	15	To authorize a GAO study on the 340B program once the Affordable Health Choices Act is implemented.
HELP	IV	Hatch 22	1355	1	To make technical corrections and improve the bill
HELP	I	Hatch 223	151	19	To modify provisions relating to navigators
HELP	IV	Hatch 23	1302	6	To make technical corrections to improve the bill

HELP and SFC Republican Amendments in the PPACA

HELP	IV	Hatch 24	1295	10	To ensure that the language in the Affordable Health Choices Act is consistent with professional terminology
HELP	III	Hatch 25	1225	21	To ensure that there is no decrease in children's access to immunizations
HELP	II	Hatch 27	1069	3	To ensure that community health teams include doctors of chiropractic
HELP	II	Hatch 9	1133	7	To ensure that the Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (PL 109-18) has minimum core proficiency standards for patient navigators
HELP	III	McCain 2	1265	22	To determine whether existing Federal Government sponsored health and wellness initiatives are effective in achieving their stated goals
HELP	I	McCain 205	Conceptually in Section 1252	Conceptually in Section 1252	To establish certain policies for small group health plans.
HELP	III	Murkowski 13	1159	8	Strike lines 4-5 on page 368 and replace with "residents of an area designated medically underserved areas or health professional shortage areas"
HELP	III	Murkowski 14	1163	10	Strike lines 9-12 on page 372 and replace language
HELP	III	Murkowski 20	1224	15	Add language to page 397, line 16 "(I) and immunization information systems to allow all states to have electronic databases for immunization records"
HELP	I	Murkowski 202	80	23	To allow insurers to adjust premium rates for tobacco use.
HELP	IV	Murkowski 23	1274	7	Add definition to page 429
HELP	IV	Murkowski 26	1280	1	Add language to page 433, line 8: "and frontier"
HELP	IV	Murkowski 28	1311	5	Add language to page 463 "(c)(1)(A)..."
HELP	II	Murkowski 3	719	9	Add language to page 243, line 10 "Federal Indian Health Service programs and tribally-operated health programs."
HELP	IV	Murkowski 32	1421	14	Add language to page 558, line 16: "and community health workers."
HELP	III	Murkowski 34	1168	5	Add language to page 376, line 22 after the word "disabilities"; and American Indian, Alaskan Native, and Native Hawaiian
HELP	III	Murkowski 35	1168	5	Add language to page 376, line 22 after the word "disabilities"; and American Indian, Alaskan Native, and Native Hawaiian
HELP	II	Murkowski 38	1091	21	Add language to page 281, line 21 after the word "and"; "expenses associated with physician services."

HELP and SFC Republican Amendments in the PPACA

HELP	II	Murkowski 4	1063	23	Add language to page 255, line 15 "and Federal Indian Health Service programs and tribally-operated health programs."
HELP	IV	Murkowski 40	1357	2	Add language after line 7 on page 510
HELP	IV	Murkowski 44	1316	22	Strike lines 12-13 of page 470; "rate of 2 percent less than the.."
HELP	IV	Murkowski 47	1318	18	Line 12 replace "cost-of-living" with "cost of attendance"
HELP	IV	Murkowski 48	1322	22	"(1)" and place it at (2)(c)
HELP	II	Murkowski 5	1068	11	Add language to page 259, line 22 "or Tribe or tribal organization as defined under the Indian Self-Determination and Education Assistance Act."
HELP	IV	Murkowski 51	1325	13	Add Section (4) "must not have received loan forgiveness through public service loan forgiveness under the Higher Education Act."
HELP	IV	Murkowski 53	1327	16	Strike "other reasonable education expenses"
HELP	II	Murkowski 6	1069	5	Add language to page 260, line 12 "and physicians' assistants"
HELP	II	Murkowski 60	1063	17	Add "Indian health organization" before "quality improvement organization"
HELP	II	Murkowski 61	1082	15	Add "and an Indian tribe or parnership of 1 or more Indian tribes."
HELP	III	Murkowski 65	1246	1	Revise language on line 1
HELP	IV	Murkowski 67	1291	17	Line 8 after "State and local health departments," add "the Indian tribes,"
HELP	III	Murkowski 7	1136	21	Add language to page 348, line 24 "and an Indian tribe and tribal organization"
HELP	III	Murkowski 70	1235	5	Add language to line 10 on page 406 and t line 11 on page 407
HELP	IV	Murkowski 71	1356	8	On page 509, line 20 add "dental health aides"
HELP	IV	Murkowski 72	1356	21	Add language to line 6
HELP	IV	Murkowski 73	1358	18	Add language to page 501, line 10
HELP	III	Murkowski 74	1168	5	Add language to page 376, line 22
HELP	III	Murkowski 75	1169	8	Add language to page 377, line 23
HELP	III	Murkowski 76	1171	1	Add language to page 379, line 13
HELP	I	Roberts 210	105	18	To protect patients by preventing the rationing of health care
HELP	I	Roberts 211	105	18	To protect patients by preventing the rationing of health care
SFC	II	Baucus Amdt. To Hatch C10	604	3	To establish Side-by-side provision to restore $50 million in federal funding to Personal Responsibility Education for Adulthood Training

HELP and SFC Republican Amendments in the PPACA

SFC	III	Baucus Amdt. To Hatch D7	733	11	To grant the Secretary and Chief Actuary of CMS the authority to terminate implementation of Medicare reforms if proven to reduce benefits
SFC	IX	Bunning F4 (as modified)	2033	18	To require a study of how the provisions in the bill will affect the cost of medical care provided to veterans
SFC	I	Cornyn C14	172	12	To strike the political appointment process for the Co-op Advisory Board
SFC	I	Cornyn C15	171	1	Restriction of Federal fund use by the CO-Ops for propoganda
SFC	I	Cornyn C16	171	4	Restriction of Federal fund use by the CO-Ops for marketing
SFC	I	Cornyn C17	176	1	To require that the CO-Ops must meet state solvency standards
SFC	I	Cornyn C18	176	13	To specify that before CO-Ops can operate, the state must have implemented all the insurance reforms required by AHFA
SFC	I	Cornyn C20	176	1	To clarify that CO-Ops must comply with the same state laws as private health insurers
SFC	I	Cornyn C5	157	8	Clarification that existing minimum creditable coverage is exempt from penalty
SFC	III	Ensign D6	739	18	Requires Medicare savings to stay in Medicare
SFC	I	Ensign/Carper C8	87	14	Healthy Behaviors Amendment- To allow a premium discount rate of 30% of the cost of employee-only coverage (with the opportunity to increase to 50%
SFC	I	Enzi C3 (as modified)	356	23	To require a study of how the provisions in the bill will affect employer wages
SFC	I	Grassley C2	177	7	Prohibiting Group Purchasing Councils from Setting Payment Rates
SFC	VI	Grassley D4	1670	7	Would eliminate requirement that Cabinet secretaries and other high ranking officials be appointed to board of PCOR
SFC	I	Grassley/ Bunning C3	156	4	To Require Members of Congress/Congressional Staff to Purchase Healthcare through the Exchange
SFC	III	Grassley/ Hatch D2	797	19	To assure Medicare physician payment equity (Modification: Change "1/2" to "3/4" the difference between the relative costs of employee wages and rents and the national average for the year 2010)
SFC	II	Grassley/ Snowe C11 (incorporates Snowe C5)	407	1	To allow states to scale back coverage to 133%FPL by striking maintenance of effort provision

HELP and SFC Republican Amendments in the PPACA

SFC	II	Hatch C10	618	13	Restores $50 million in federal funding to Abstinence Only-Until-Marriage programs
SFC	I	Hatch C12	364	21	To prohibit Federal funds from being used to pay for assisted suicide and offer conscience protections to providers
SFC	I	Hatch C9	176	1	To Ensure a level-playing field for fair competition
SFC	III	Hatch D7	903	16	Medicare Advantage Benefit Protection
SFC	I	Schumer C6 (and Snowe F4)	326	18	Lower the responsibility penalty and index up to $750 in 2016
SFC	IX	Schumer F1 (Snowe F3, Roberts F3, Enzi F1)	1999	1	To establish a $2500 limit on salary reductions by an employee for a taxable year for purposes of coverage under a health FSA under a cafeteria plan
SFC	I	Schumer/ Snowe C3	332	9	To change the affordability level to no greater than 7% of a beneficiary's income level (modification: changed to 8% in the merged bill)
SFC	I	Snowe C10	159	9	To allow small businesses that grow beyond the upper employee limit in the SHOP exchange to continue to purchase in the SHOP exchange
SFC	I	Snowe C6 (Modified)	109	16	To require small employers to provide a plan with a deductible that does not exceed $2000 for individuals and $4000 for families, unless offering contributions which offset any icnrease in deductible above these limits
SFC	I	Snowe C9	149	24	To allow Small Business Development Centers to receive grants to assist in navigation of the system
SFC	II	Snowe D1	547	1	Establishment of a Medicaid Emergency Psychiatric Demonstration Project
SFC	I	Snowe F5	115	17	To allow individuals who would otherwise qualify for the exemption from the individual assessment (due to low income) in the Exchange could purchase the "young invincibles" policy
SFC	I	Snowe/ Lincoln C3 (Snowe C8)	130	11	Establishment of Small-business Health Options Program (SHOP) in the Exchange
SFC	I	Wyden C8 (Grassley C15 & C16)	212	12	A State may apply to the Secretary for the waiver of all or any requirements of the Exchange beginning 2017

Mr. DODD. Mr. President, specific pages in this bill and the language of these amendments or a synopsis of the language is included. These were not just technical amendments. Let me mention some that were included.

Our colleague from North Carolina, Mr. BURR, offered an amendment that subjects the public option to the same laws and requirements as private plans. This discussion that they were not involved in the public option—here are amendments offered by Republicans accepted in the committee dealing with the public option. Did we take all of them? Of course not. Of the 287 amendments, 161 of them, as you will now read, are reflected in these efforts.

Follow-on biologics: A bipartisan, Enzi-Hatch-Hagan—HAGAN, a Democrat, and HATCH and ENZI, Republicans—amendment establishes the pathway for biosimilar biological products. This Republican amendment is reflected in the bill on page 1859.

Long-term care: Senator GREGG ensured that the new voluntary program to approve long-term care options would remain solvent for 75 years—the CLASS Act—reflected on page 1931 of the bill.

Prevention—again, a bipartisan amendment offered by Senator GREGG and Senator HARKIN that expands and strengthens the incentives available for participation in workplace wellness programs, reflected in the bill on page 80.

The Murkowski of Alaska amendment will allow insurance companies to offer discounts for those who do not smoke. This is a Republican amendment reflected on page 80 of the bill.

Coverage: Several amendments were offered by Senators ENZI, COBURN, ROBERTS, and others to make certain that nothing in the legislation would allow for rationing of care and that no one would be denied care based on age, disability, medical dependency, or quality of life. That is reflected as well on page 105 of the bill.

My colleague from Wyoming, the ranking member of the committee, had 41 amendments that were included in the bill. For instance, in Title I, Enzi amendment No. 241 appears on page 185 of the marked-up bill. Line 22: to ensure that individuals enrolled in the community health service option have access to all services. Senator ENZI's amendment is included in the bill. He offered amendments on page 272 to prevent denial of care based on patient age, disability, medical dependency, quality of life, and antirationing proposals; follow-on biologics; amendments to protect and ensure that data and prevention programs include rural populations. Again, I will provide a list of the 41 amendments so my colleagues and others can read a synopsis of those amendments—hardly punctuation marks in the bill. We may not agree with every one. We accepted them. I thought they contributed to the bill, made a better bill. I did not decry them; I welcomed them.

So the suggestion that this somehow has been jammed down the throats of people, with secret meetings going on—I don't think people ought to engage in that. You can vote against the bill if you want, but don't suggest to me this process denied people a chance to be heard, to be involved, to be engaged. I went out of way my in the markup of that bill to stay for as many hours as people wanted to, for as long as they wanted to, to offer as many amendments as they wanted to. Staff worked all during the weekends of that process to go through these amendments. I remember on one occasion, after work over one weekend, I proposed accepting 40 amendments. I offered to accept all 40 of them, and my Republican friends objected to a request to accept their amendments in the committee.

So the notion we marked up titles of this bill without adequate notice of language is false. Titles of the bill had to be scored by CBO. The idea that we would markup our bill without notice of language or CBO scores again is false. The markup dates were postponed by me to allow more time to read language and to ensure that CBO scores were distributed to all Members as well.

As someone who has been around here a number of years, I know when there is a true willingness to have a bipartisan effort and I know when there is one that is not going to happen. Senator Kennedy understood that as well. I have had numerous bipartisan agreements with my colleagues on committees I have served on over the years. It is certainly far better when you can achieve that, I don't deny that at all, but I will not accept the notion that there has been a refusal to accept or willingness to listen to bipartisan ideas as part of this bill.

Again, there is a debate that I know is going on on the other side as to whether to have amendments or not have amendments, whether Rush Limbaugh is controlling the show, or the Republican leader. Those things happen. I understand that. But the fact is, we have a bill here, far from perfect—I will be the first to acknowledge it. It is not a bill I would have written on my own. But we serve in a body of 100 coequals who bring to our debate and discussion various backgrounds, experiences, and viewpoints. It is not an easy task.

Every Congress going back to the 1940s to one degree or another has tried to deal with this issue. Every administration, from Harry Truman through every Republican and Democratic administration since the 1940s, has, to one degree or another, grappled with this issue of health care. To a large extent, everyone has failed or has not tried because it has been so monumental an undertaking that it has been daunting. Certainly, we are seeing that as we grapple with it in our hour of watch. Those of us who are privileged to be here serving with an administration that has made this a priority have been challenged to do what no other Congress and no other administration has been able to achieve over the past 70 years. We are close to achieving a major beginning, and it is a beginning. Anyone who suggests otherwise does not understand the complexity or the largeness of this undertaking—a beginning, to begin to change and bring down costs, increase access, and affordability, as well as the quality of something that ought to be a basic right in the United States of America, and that is health care.

I am excited and optimistic about the possibility of achieving that. It is less than what I wished we could have done, but it is far more than has ever been achieved by others.

The product we have before us, while it is not one that has been endorsed on a bipartisan basis, reflects a lot of good contributions made by all Members. In fact, every single member of the HELP Committee—every single member—offered amendments that were adopted as part of our product—every single one. Substantive amendments were offered as well. I find it somewhat intriguing, that people claim to feel excluded from the public option idea. I had no idea they were interested in one. It is exciting to know they have some ideas on the public option. The reflection that occurred during our debate was they were totally opposed to any public option in this bill. So we adopted one as part of the HELP Committee process, under the leadership of SHERROD BROWN and SHELDON WHITEHOUSE and KAY HAGAN of North Carolina, who sat together and, working with others outside, came up with an option that we thought would appeal on a bipartisan basis. It did not, and we are very much involved in that debate as we speak.

Anyway, I wanted to respond to these earlier suggestions, and I will leave them as suggestions, that somehow this product and process has been totally written on a partisan basis. It is anything but that, and I want the RECORD to reflect that, hence the decision to include the specific amendments, the pages on which they exist in our product, and the substance of the ideas that were contributed by our Republican friends.

Mr. President, I saw my colleague from Montana a moment ago, who may be interested in addressing some of these ideas and thoughts as well that are coming before us. But while I wait for him to come to the floor, let me say that, again, I hear constantly this talk about Medicare and the cutting of Medicare. Let me reflect on how false those allegations are.

Again, what we are trying to do is to reduce the overpayments under the Medicare Advantage Program. That is what has happened here. These private plans—and that is what they are—operating under Medicare Advantage have two options: They can cut benefits or reduce their profits. We have to bring down these costs when you have an average of 14 percent overpayments occurring in the country that are being

borne by 80 percent of Medicare recipients.

We talk about the numbers. I have a number: 96,000 people in the State of Connecticut who utilize the Medicare Advantage plan. I am not opposed to that. I think it is a wonderful option for people. But the fact is 470,000 other people in my State, who are Medicare recipients, are paying $90 extra in order to subsidize the Medicare Advantage plan and they are getting none of the benefits for it. So there is a huge percentage—about 80 percent of the elderly in this country—who are writing a check every year to subsidize private health care plans. These plans are profiting at the expense of people who never get a benefit from it.

What Senator BAUCUS and others have suggested is let's reduce these overpayments. It is up to the plans to decide what they want to do with that. They can decide to cut the benefits or take less profit. These are for-profit plans that are doing this. Maybe they don't want to take less profit. That might be a part of the motivation. But traditional Medicare, the guaranteed benefits under that—a nonprofit operation—are not touched in this bill—not a single guaranteed benefit. For over a week now I have challenged any Member in this body to identify a single guaranteed benefit under Medicare that is affected by this bill. Not one. Eliminating the overpayments under Medicare Advantage are, clearly, because we don't think that 80 percent of the population who qualify for Medicare ought to bear the financial burden of financing a benefit they never get.

None of us are opposed to Medicare Advantage, but we are opposed to the idea that these for-profit companies can play the game by suggesting they don't want to take less profit, they don't want to reduce any benefit, so they want to leave it exactly as it is. You want to know why Medicare is in trouble? That is why. If you want to put it on a solid footing for an additional 5 years, then take the proposal we have in the bill to reduce these overpayments. In the absence of doing that, the very people who are worried about the solvency of Medicare are going to be correct, because Medicare will be in financial jeopardy far earlier if we have these amendments adopted that would jeopardize the traditional Medicare Program.

Clarity is needed on all of this. The fact something is called Medicare Advantage, as I have said repeatedly, doesn't make it Medicare and it is certainly not an advantage. It is only an advantage for those private companies that are benefitting in terms of the profits they make. In fact, studies done by independent analysts say, that these companies have seen a 75 percent growth in profits as a result of this program. They are doing very well financially as a result of this. But they shouldn't be doing necessarily that well at the expense of others who are paying an additional $90, on average per couple of retirees, elderly people, who are contributing that amount every year without receiving a single benefit under Medicare Advantage.

Our simple question is: Why should they be asked to pay that much more? Ninety dollars a year may not sound like that much to a Member of Congress, but if you are a retired elderly person, living on a fixed income, that $90 a year can make a huge difference. It may not be much to a Member of Congress, many of whom, of course, are very wealthy indeed, but it is if you are sitting out there across America writing a check each year for $90 to go into a program you never get a benefit from, which serves 20 percent of the senior population.

I don't blame the 20 percent at all. I understand how they feel. They wish to continue to get those benefits. And they can get them, provided the companies they are getting those benefits from are willing to take less in profits. That is what our bill is designed to do—to provide that choice. Obviously, we can't mandate that from them—although we were promised early on they would be able to reduce the cost of Medicare. That was the original proposal when Medicare Advantage was adopted many years ago—a number of years ago.

Again, it is anything but Medicare and it is anything but an advantage, except for the profit-making companies that have done very well off this program. Our bill here merely restrains the overpayments. I know that may bother these companies. They would like to make more, if they could, and I respect that, from their vantage point. But we should not, as the Senate, sanction and necessarily approve a proposal that allows them to make more money out of the pockets of people on fixed incomes to support a fraction of the population at the expense of the overwhelming majority. Where is the equity in that, when 80 percent of Medicare recipients are writing a check each year to private companies, in effect, to pay for benefits they never get?

I appreciate the support of organizations across the country—AARP and certainly the National Committee to Preserve Social Security and Medicare—and we thank them for their very strong letters. These major organizations, representing 43 million of our elderly in this country, have taken a very strong position against the assaults on this bill regarding the overpayments that are occurring, and we thank them for it. That may not be enough for some people to appreciate, but I believe if they look and listen to what is going on here, they will understand what is at stake. If you are part of the 80 percent of seniors out there who are writing those checks every year and getting none of the benefits, those who oppose our bill want to maintain and probably expand on it in the years ahead. So for you out there who are worried about the cost and solvency of Medicare, our bill is a major step in the direction of reducing those overpayments and providing the options that ought to exist to reduce profits or extend benefits.

Again, I think it is important to remind our colleagues that under this bill, there is $130 billion in budget reductions in the first 10 years. It is the largest single reduction. We listened to our colleagues from North Dakota and New Hampshire talk about deficit reduction. This bill provides $130 billion in deficit reduction in the first 10 years and $650 billion of deficit reduction in the second 10 years.

We are now told by the Congressional Budget Office there are the millions of people today who are paying insurance and watching the costs escalate almost on an hourly basis. Even with zero inflation, we are watching private companies raise the cost of premiums—going up dramatically. There are 32 million people in the individual insurance market, according to the Congressional Budget Office, and they would pay 14 to 20 percent less in premiums for an equivalent plan than under the status quo. That is a huge reduction, potentially, in the years ahead for 32 million of our fellow citizens in the individual market. If you are in the small-group market—there are 25 million people in that, according to the CBO's analysis—you are eligible for tax credits and would pay 8 to 11 percent less in premiums. If you work for a small business and don't qualify for a tax credit, you would see a reduction, potentially, of 2 to 3 percent in premiums. If you are in the large-group market—and there are 134 million of our fellow citizens who are in that market, according to the Congressional Budget Office—again, you could see a reduction.

So in any category, you have a choice here to make—and we do in the coming hours. Do you want to continue the present process? And when people say status quo, it is such a misnomer. The status quo might even be acceptable to people if you could freeze everything. But you can't freeze everything. The status quo allows for a dramatic increase in premiums—dramatic increase. If we don't take steps to deal with rising costs, as we do in this bill, you are looking at premiums going from $12,000 a year for a family of four in this country to $24,000 to $35,000 in the next 7 to 10 years.

If this gets defeated—and, obviously, our Republican friends want this bill defeated—the idea that we are going to jump back into this is a pipe dream. We will end up with dramatically increasing costs to millions of our fellow citizens, which this bill restrains because of the hard work done by the Finance Committee, particularly, that had to work on these issues. So for those who suggest the status quo is okay, it is anything but okay.

In terms of cost reduction overall, as well as premium reduction, which is so important—and I thank my colleague from Indiana, Senator BAYH, who was

the one who insisted CBO give us the analysis of what the impact of this bill would be on premiums—the fact is we see significant reductions of premium costs.

I see my colleague from Montana is now here, but I would give the example that in Connecticut, premiums in the year 2000 for a family of four were about $6,000. In the year 2009, that family of four in Connecticut is now paying around $12,000. So in 9 years, premiums have jumped from $6,000 to $12,000. And those numbers continue to escalate. So for those who say no to this bill, then—if you succeed in these efforts—prepare to answer the question why is it the premiums of those people you claim you are defending around here—if they have insurance—will escalate to the rates we have talked about. That is what is at stake—nothing less than that.

Whether it is so-called Medicare Advantage or cost reduction or premium reduction, this bill, with all of its imperfections, is a major, giant, positive step forward for our country. Again, I thank the members of the Finance Committee and Members of the HELP Committee, both staffs, and others who have worked to include many of the ideas that our friends on the other side wisely and thoughtfully made a part of these efforts.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I want to underline the huge bipartisan effort that this side undertook to put this bill together in many, many ways. I very much appreciate the comments of the Senator from Connecticut on that point.

Let's go back. A year ago, I held an all-day health care summit at the Library of Congress for members of the Finance Committee, Republicans and Democrats. They were all there. We spent a whole day. In addition, I talked to all the groups. I called them up and said: Look, we are all in this together—we Americans—consumer groups, labor, big business, small business, the pharmaceutical industry, hospitals, hospice, all these CEOs. I said: We are all working together to get health care reform passed for our country—for all Americans.

So we kept that process up to keep it—and I don't like that word ''bipartisan.'' It is more accurate to say that everybody was working together. If you don't like something, maybe you will like something else somewhere else.

The PRESIDING OFFICER (Mr. KIRK). The time of the majority has expired.

Mr. BAUCUS. Just as I was getting wound up, Mr. President. I will continue when the majority's half-hour comes around.

Mr. MCCAIN. Mr. President, I ask unanimous consent the Senator from Montana be given 2 additional minutes.

Mr. BAUCUS. I appreciate very much the 2 minutes from the Senator from Arizona. This could take a couple more than 2 minutes, but I very much appreciate the offer. I will just wait.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I ask unanimous consent to enter into a colloquy with the Senators from Oklahoma, Tennessee, and Tennessee, both of them.

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

Mr. MCCAIN. Mr. President, we are here, obviously, as we are on a daily basis, to discuss the issue of health care reform. But we are in a rather unusual situation this morning because we don't know what we are discussing or debating. We find ourselves in an interesting situation.

After almost a year of consideration of health care reform, with a measure that has been—at least a couple of the outlines of it we know but, frankly, we have had no details except that Medicare is going to be extended, eligibility for Medicare is going to be extended to age 55.

I just would quote: There was a meeting yesterday amongst Senate Democrats. Many Senate Democrats emerged from yesterday's caucus meeting saying they had learned little about the public option agreement and there were many outstanding concerns.

Senator MARY LANDRIEU called the agreement ''a very good idea.'' Senator BLANCHE LINCOLN said, ''More information is needed.'' And Senator BEN NELSON said, ''I just want to know what the costs are.''

So do the rest of us. So do the rest of us. Here we have a proposal after nearly a year that is being assessed by the Congressional Budget Office, and here we are with no knowledge of what that bill is about, with the exception of some bare essentials that have been leaked.

What did this have to do with change? What does this have to do with bipartisanship? What does this have to do with anything?

Frankly, we have an editorial in the Washington Post this morning that calls it ''Medicare Sausage?''

I ask unanimous consent the editorial from the Washington Post be printed in the RECORD.

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

[From the Washington Post]

MEDICARE SAUSAGE?

THE EMERGING BUY-IN PROPOSAL COULD HAVE COSTLY UNINTENDED CONSEQUENCES

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour ''compromise'' on health-care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus (D-Mont.) originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last-minute introduction of this idea within the broader context of health reform raises numerous questions—not least of which is whether this proposal is a far more dramatic step toward a single-payer system than lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out, but the basic notion is that uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead to purchase coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses. So would near-seniors who buy in to Medicare get Medicare-level benefits? If so, who would tend to purchase that coverage? Sicker near-seniors might be better off purchasing private insurance on the an exchange. But the educated guessing—and that's a generous description—is that sicker near-seniors might tend to place more trust in a government-run program; they might assume, with good reason, that the government will be more accommodating in approving treatments, and they might flock to Medicare. That would raise premium costs and, correspondingly, the pressure to dip into federal funds for extra help.

In addition, the insurance exchanges proposal is being increasingly sliced and diced in ways that could narrow its effectiveness. Remember, the overall concept is to group together enough people to spread the risk and obtain better rates. But so-called ''young invincibles''—the under-30 crowd—would already be allowed to opt out of the regular exchange plans and purchase high-deductible catastrophic coverage. Those with income under 133 percent of the poverty level would be covered by Medicaid. The exchanges risk becoming less effective the more they are Balkanized this way.

Presumably, the expanded Medicare program would pay Medicare rates to providers, raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out, and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

Mr. MCCAIN. ''The emerging buy-in proposal could have costly unintended consequences.''

But we don't know what it is. But we know that never before in this entire year—I ask my colleagues—have we seen a proposal that would change eligibility for Medicare down to age 55, never before.

The majority leader came to the floor this morning and said if we accept

an omnibus, a multitrillion-dollar bill by unanimous consent—by the way, the Omnibus appropriations bill is six bills totaling $450 billion, 1,351 pages long, with 4,752 earmarks totaling $3.7 billion. And, by the way, spending on domestic programs is increased by 14 percent except for veterans, which is increased by only 5 percent.

The majority leader wants us to go out for the weekend, after keeping us in all last weekend. Here we have an unspecified proposal—none of us know the details or the cost—so I am supposed to go home to Arizona this weekend and say: My friends, we have been working on health care reform for a year. And guess what. I can tell you nothing.

We need to stay in, we need to know what the proposals are, we need to have votes on it, and we need to tell the American people what is going on behind closed doors.

Mr. MCCONNELL. Will the Senator from Arizona yield?

Mr. MCCAIN. Gladly.

Mr. MCCONNELL. I recall our good friend, the majority leader, telling us on November 30 that we would be here the next two weekends. Then I recall our friend, the majority leader, saying Monday of this week we would be here this weekend.

My assumption was we were here to deal with this important issue that the majority has been indicating to everyone is so important, that we must stay here and do it. We are prepared to be here.

Mr. MCCAIN. And vote.

Mr. MCCONNELL. And vote. In fact, we have been trying to vote for a couple of days now, and it has been difficult to vote.

Mr. MCCAIN. If we are not going to have a vote, maybe we ought to have a vote to table the pending amendments, at least to have the Senate on record.

Could I finally say, I know New Orleans is very nice this time of year, but perhaps we ought to stay here and get this job done?

Mr. ALEXANDER. I think it is important to reflect on the season we have here. A couple of nights ago, the Senator from Arizona gave an impressive speech in front of the Capitol for the lighting of the Christmas tree. This is the Christmas season coming up, 2 weeks from tomorrow, a very important season. The majority leader said it is very important for us to stay through Christmas if necessary to debate this bill. We said: All right, that is what we will do. We will stay to New Year's Day. We will stay to Valentine's Day because this is indeed a historic bill and we don't want to make a historic mistake because it affects our children, our grandchildren, 17 percent of the economy, all 300 million Americans.

None of us have ever seen our constituents more involved in an issue than in this issue. So we are here ready to go to work.

I am wondering, as I listen to the Senator from Arizona, not only do we not know what this bill is that we are supposed to enact by 2 weeks from today, our friends on the other side don't know what it is. They cannot tell each other what it is.

They came out of—they had sort of a rally yesterday. One of the Senators described it as sort of a ''go team, go'' rally, but they did not know what they were going to. All we have heard they are going to—and I imagine the Senator from Oklahoma, who is a physician, who has delivered many babies, seen many patients, still continues to do it, would have some comment on this—all we have heard is they may try to expand Medicare.

We heard yesterday from the executive director of the Mayo Clinic Health Policy Center, I ask unanimous consent to have his letter printed in the RECORD.

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

MEDICARE EXPANSION WON'T GET US THERE

PROPOSAL WOULD NOT INCREASE ACCESS TO HEALTH CARE SERVICES OR CONTROL COSTS

The current Medicare payment system is financially unsustainable. Any plan to expand Medicare, which is the government's largest public plan, beyond its current scope does not solve the nation's health care crisis, but compounds it. We need to fix Medicare by moving it to a system that pays for value—quality health outcomes that are affordable over time—and ensure its success, before bringing more people into a broken system.

Expanding this system to persons 55 to 64 years old would ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country. A majority of Medicare providers currently suffer great financial loss under the program. Mayo Clinic alone lost $840 million last year under Medicare. As a result of these types of losses, a growing number of providers have begun to limit the number of Medicare patients in their practices. Despite these provider losses, Medicare has not curbed overall spending, especially after adjusting for benefits covered and the cost shift from Medicare to private insurance. This is clearly an unsustainable model, and one that would be disastrous for our nation's hospitals, doctors and eventually our patients if expanded to even more beneficiaries.

It's also clear that an expansion of the price-controlled Medicare payment system will not control overall Medicare spending or curb costs. The Commonwealth Fund has reported this result for Medicare overall by looking at two time periods—one four-year period where Medicare physician fees increased and one four-year period where Medicare physician fees decreased. Overall cost per beneficiary increased at the same rate during each time period. This scenario follows the typical pattern for price controls—reduced access, compromised quality and increasing costs anyway. We need to address these problems—not perpetuate them—through health reform legislation.

We believe insurance coverage can be achieved without creating or expanding a government-run, price-controlled, Medicare-like insurance model.

Mayo Clinic supports the proposed insurance exchange model based on the Office of Personnel Management's Federal Employees Health Benefit Plan (FEHBP). This system will improve access to insurance, make reforms to the current insurance system that eliminate pre-existing condition exclusions, and create an individual mandate where individuals can purchase private insurance in various ways: through employers; on the individual market; through co-operatives; or through an exchange model like the FEHBP.

We also believe that the government should help people pay for insurance premiums through sliding scale subsidies as needed.

JEFFREY O. KORSMO,
Executive Director,
Mayo Clinic Health Policy Center.

Mr. ALEXANDER. I will just read one sentence from it:

Expanding the current Medicaid system to persons 55 to 64 years old would ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across this country.

I am very puzzled why ideas like this are being cooked up behind closed doors 2 weeks before Christmas, and we do not know what they are, they don't know what they are, and the suggestion is we not vote today and we go home this weekend.

Mr. MCCAIN. Not only are there questions—not only is there opposition from the Mayo Clinic but the American Hospital Association and the AMA. They have all come up steadfastly against this.

Could I ask my colleague from Oklahoma—and I quote from this editorial. Here we are supposedly going out for the weekend and the editorial from the Washington Post says:

Presumably, the expanded Medicare program would pay Medicare rates to providers raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

Mr. COBURN. I will answer my colleague as somebody who has practiced medicine for 25 years: MedPAC, last year, said 29 percent of Medicare beneficiaries it surveyed were looking for a primary care doctor and had great difficulty in finding somebody to treat them.

That is now. In the State of Texas, 58 percent of the State's doctors took new Medicare patients, but only 38 percent of the State's primary care doctors took new Medicare patients.

I would make the case to you that if you delay care, that is denied care. It is exacerbated in our older population because an older person with a medical need is much more susceptible to the complications that can come from that initial problem. So if you delay the care, you are denying the care and you are actually increasing the cost.

There are 15 million people in this population. I have no idea if their plans include all of them. But if you add 15

million new people to Medicare, what you are going to have is 50 percent of them are not going to find a primary care physician to care for them because the rate of reimbursement does not cover the cost of care.

I think the editorial you quote is exactly right.

I would also note, if I may, that President Obama loves the Mayo Clinic, and rightly so. I had a brain tumor removed the summer before last by the Mayo Clinic. I am standing here on the Senate floor because of their expertise.

Mr. MCCAIN. There are many who believe the Senator from Oklahoma could not have a heart attack.

Mr. COBURN. I will ignore that comment.

The fact is, what Mayo says is we have to figure out how we create incentives in terms of how do we get people cared for at a lower cost. Medicare is not the way to do it.

As a matter of fact, I heard our colleagues talk. We have had eight votes since last Saturday. We are ready to vote. This is a 2,074-page bill. I have 15 amendments in the queue. I want to vote on them.

They don't want to vote because they don't want the American people to hear all the bad things about what is going to happen to their health care if this bill passes. If we do Medicare, what is going to happen is Medicare costs are going to skyrocket, but access is going to go down.

Mr. MCCAIN. Apparently, I would ask my colleague from Tennessee, we do not know what we would be voting on because there has been a whole rewrite of this health care reform here after a year. We do not even know what the provisions of that bill are except what has been leaked. Apparently, my colleagues on the other side of the aisle, with the exception of the majority leader, don't know what it is either.

Mr. COBURN. If the Senator will yield, there are some things we could vote on. President Obama outlined some very specific things that ought to be in this bill. We ought to vote to put them in the bill.

What he said he wanted and what this bill presents are two different things. We ought to vote on making sure everybody has access. We ought to vote on making sure we are under the same plan as everybody else we are going to put into any new expanded health care coverage. We ought to vote in making sure everybody is treated fairly in this country. We ought to vote on your prescription drug reimportation. We ought to vote. But what we are doing is we are getting a slowdown.

We heard we are obstructing the bill. We are not obstructing the bill. Any other bill that comes before this body that had 2,000 pages in it we would allot 8 weeks, 10 weeks to debate.

As our colleague from Maine knows, there is not a more complicated subject that will affect more people that this body has ever taken up. We are trying to squeeze that into 3½ weeks, and the last 2 weeks we don't know what is in the bill.

Time out.

Mr. CORKER. I would like to thank the Senator from Arizona for his great leadership on this issue. I agree with all here. I would like to continue to discuss this, ''colloquize,'' if you will, and vote. That is what we need to do all weekend is talk about this issue and vote.

There are numbers of amendments. But the thing that is interesting to me, I say to the Senator from Arizona—he has been one of the great champions in this country as it relates to how we live within our means. He has pointed out waste in government. He has pointed out overspending.

What has happened during this Christmas season is, for our friends on the other side of the aisle Medicare has become the gift that just keeps on giving.

I know the Senator talked about, during his campaign—and all of us have—that we need to get Medicare to a point where it is solvent, where seniors actually have the ability to use the benefits later on that now are in place. We have all talked about the need to make it solvent.

What does the base of this bill do? It takes $464 billion out of Medicare to create a whole new entitlement. It doesn't even deal with the doc fix, as we have said many times.

The reason, by the way, we do not know what this says is the leadership on the other side—this is another one of those yellow post-its. They are throwing it up on the wall just to see if it works. They are not telling us what the game plan is because they don't yet know whether it works. What they are hoping to do is to solve a major problem they have within their caucus, again, by taking from Medicare.

If you think about the fact that the Mayo Clinic, which is the model for all of us, would not even take new Medicare patients, and yet our friends on the other side of the aisle are trying to throw a whole new decade of seniors into the plan, what that means is less and less seniors are going to have access to care. That is what this means.

The other side of the aisle, I will have to say, based on history, I am surprised, but they continue, through their policies, to throw seniors under the bus.

I do not understand what has happened. This must be about a political victory and not about health care reform. What we would do is more firmly put in place, again, bad policy. The problem with Medicare today is physicians and providers are paid fees to do more work. So now what we would be doing, instead of health care reform, which is what Senator COBURN and all of us have talked about for some time, we are putting in place, in cement, something that works poorly, that the Mayo Clinic said is damaging to them and their patients, we would be putting it in place for even more people.

I thank the Senator for his leadership. I hope to be with him all weekend discussing amendments that are important and voting on those amendments. I can't imagine a better place for all of us to be.

Mr. MCCAIN. I thank the Senator. May I ask the Republican leader, again, to be very clear that it is his view and that of all Republican Members that we will stay in for as long as it takes to get this issue resolved and we are prepared to vote throughout the entire weekend. If the majority leader moves to the Omnibus appropriations bills, we will have a conference report, and we will certainly have discussion about a bill that has 4,752 earmarks totaling $3.7 billion. But we should not get off this, should we?

Mr. MCCONNELL. My friend is entirely correct. I can only quote the majority leader himself who said we were going to be here this weekend. We expect to be here this weekend. If he tries to leave, we will have a vote to adjourn, and I am confident every Republican will vote against adjourning. This either is or it isn't as important as the majority says it is. If it is that important, we need to be here. More importantly than being here, equally important to being here is to vote. We tried to get a vote all day yesterday on a motion by Senator CRAPO. What we heard from the other side is: We are working on a side-by-side. That is kind of parliamentary inside talk for delay. We are ready to vote. As several of our colleagues have suggested, we keep hearing about these new iterations of this bill. It reminds me of the end of a football game, trying to throw a ''Hail Mary'' pass, just somehow, some way find a way to pass this bill. I think it important to remember what happens to most Hail Marys. They fall to the ground incomplete. You get the impression they are far less interested in the substance of the bill than just passing something.

When the President came up here last Sunday, he said: Make history. Make history? The American people are not asking us to make history by passing this bill. They don't believe it is about the President. They believe it is about the substance. We are out here prepared to talk about the substance of this measure, offer amendments, and we fully intend to do it for as long as it takes. As the Senator has suggested, if the majority leader pivots to a conference report, which he is able to do under our process, we will spend all the time it takes to deal with the conference report.

Mr. MCCAIN. May I point out, again, as the Senator from Maine, Ms. SNOWE, pointed out—and it was highlighted in the Wall Street Journal—no major reform in the modern history of this Senate has been enacted without bipartisan support, a reason for us to go back to the drawing board.

I know the Senator from Texas has been heavily involved in the issue of

hospitalization and the American Hospital Association's reaction to what appears to be an expansion of Medicare.

Mrs. HUTCHISON. I thank the Senator from Arizona. I am pleased our leader is standing strong to say nothing should take precedence over our handling of this bill and making sure it is done right. That is what the Republicans are trying to do, to make sure this is done right. We talked about the Medicare expansion that is in the purported bill that we have not seen yet but that Democrats appear to be putting forward. We have also been spending the week talking about $½ trillion in cuts to Medicare. Now we are talking about possibly expanding Medicare at the same time we are cutting $½ trillion out of the care Medicare patients would get.

I have an amendment. It would stop the $135 billion in cuts in the underlying bill to hospitals, cutting hospital reimbursements for Medicare patients. That is my amendment. Now we are talking about possibly expanding Medicare. The American Hospital Association put out an alarm, an action alert. It says:

Medicare pays hospitals 91 cents for every dollar of care provided. Medicaid pays just 88 cents for each dollar of care provided.

Medicaid, which may also be expanded, and the cuts in Medicare, which we are talking about possibly expanding, would go forward. Which means what? The hospital association knows what. ''What'' is rural hospitals that care for Medicare patients are going to go under. What kind of services can be provided if there is no hospital in the whole county that can provide care to these senior citizens? I ask the Senator from Arizona, who has been such a leader on this, we are going to cut $135 billion out of Medicare coverage for hospitals. We are going to now talk about expanding the coverage of more Medicare patients, which will mean we will cut more from the hospitals than is even envisioned in the underlying bill. Help me understand this, Senator. How would you suggest that passes the commonsense test?

Mr. MCCAIN. May I say, having stood fifth from the bottom of my class at the Naval Academy, I cannot explain it. But perhaps before I turn to the Senator from South Dakota, maybe we could get a response from Dr. COBURN to that question.

Mr. COBURN. They are going to cut care. We are going to have more complications and worse outcomes. That is what is going to happen. Rather than changing the payment formula, which is what we should do, by rewarding quality and rewarding outcome, rather than rewarding flipping a switch, that is what needs to happen. We are going to take the same antiquated system, we are going to cut $465 billion from it, and then we are going to add, as my colleague from Tennessee said, it is 34 million people, if they include everybody from 55 to 64 in the same program.

Mrs. HUTCHISON. Is the Senator saying that whether you were at the top of your class, such as the Senator from Oklahoma or the Senator from Tennessee or the Senator from South Dakota, or the bottom of your class, as the Senator from Arizona has admitted he held down the fort, regardless of where you are on the quotient of where you stood in your class, you know what the bottom line is.

Mr. COBURN. Care is going to be impacted. Here is a survey of 90,000 physicians. That is more than the active practicing physicians of the AMA. More than 8 in 10 physicians surveyed think payment reform is best to improve the system for all Americans. Only 5 percent of the physicians surveyed rated the current government health care program as effective, 5 percent.

Mr. MCCAIN. I yield to the Senator from South Dakota.

Mr. THUNE. I ask my colleague from Arizona if this is what happens when you end up with one-party rule, one party trying to go this on their own. This seems to be a model of dysfunction in how to come up with a solution to one of the major problems facing the American people, dysfunctional by Washington's twisted standards. They seem to be desperately throwing things at the wall, hoping something will stick. Surely, there has to be a better suggestion coming from the other side than to expand a program that is destined to be bankrupt in the year 2017. It is the equivalent of a ship that is sinking. It is similar to the Titanic. You will put more people on the deck of a sinking ship. Clearly, the overall objective, at least among some, and I think some have been very transparent about it—someone quoted earlier today the Congressman from New York in the other body who said this is the mother of all public options. He went on to say:

Never mind the camel's nose. We have his head and neck in the tent on the way to a single-payer system.

Obviously, there are people here who want to see a single-payer system, who want to see government-run health care. We don't happen to believe that is the best solution for America's health care system, but the amazing thing about this proposal is, it takes a program that is destined to be bankrupt in a few short years, cuts $1 trillion out of it over 10 years, when fully implemented, and then adds millions of new people into that program. It is hard to come up with any rational explanation for what is going on here, other than that they are left with, in desperation, trying to throw something at the wall, hoping it will stick. Is this typically what happens around here when one party tries to go on its own on something that is this consequential to America? One-sixth of our economy is represented by health care.

Essentially, what they are saying is, we want to expand that part of the economy that isn't working today, that is headed for bankruptcy, that underreimburses doctors and hospitals, put more money into that failed system, exacerbate the cost-shift problem by forcing people in the private-payer market to pay higher premiums. It seems like this creates all sorts of problems that make matters even worse.

I appreciate my colleague's leadership on this issue of pointing out what inevitably is going to happen. When you have the Washington Post editorial this morning even acknowledging the terrible problems this creates for health care and the way this is being conducted, sausage being made here in Washington, DC. Even by Washington's twisted standards, this process has become so dysfunctional, I don't know how they can recover.

One thing they could do is decide to sit down with Republicans and actually figure out some things we could do that would drive health care costs down, rather than making them go up.

Mr. MCCAIN. I thank the Senator from South Dakota. I have to say I have never, in the years I have been here, seen a process such as this. It is incredibly bizarre that after a year, after hundreds of hours in the HELP Committee, after how many hundreds of hours in the Finance Committee, products are here on our desks. Yet there is a meeting yesterday of the Democrats. They come out, and they don't know what the proposal is either. Apparently, there is only one Senator who knows what the proposal is and that is the majority leader. Also, then it is OK to go home for the weekend. I honestly say to my colleague from South Dakota, I have never seen anything quite like this, especially when we are talking about one-sixth of the gross national product. Of course, already from what they know, the hospitals and doctors and others have come out in strong opposition to expansion of a program, as the Senator points out, that is going broke.

Mr. MCCONNELL. I say to my friend from Arizona, he made reference today to the senior Senator from Maine and her very insightful and thoughtful and correct speech a couple weeks ago about how an issue of this magnitude was historically dealt with here and how it was not being dealt with this way. She pointed out, major domestic legislation in modern U.S. history was, without exception, done on a largely bipartisan basis. That whole process, as the Senator from Maine pointed out, has been entirely missing, as we have moved along toward developing this 2,074-page monstrosity of a bill, designed to entirely restructure one-sixth of our economy on a totally partisan basis.

I don't think that is what the American people had in mind. They want us here, as we have all indicated, debating, discussing, and amending this proposal. That is what we would like to do for as long as it takes.

Mr. ALEXANDER. Mr. President, if the Republican leader will think back

when he first came to the Senate as a young aide in 1969, the year before I was a young aide in the Senate,

I can remember President Johnson, a Democrat, and Everett Dirksen, the Republican leader, dealing with the open housing legislation in 1968, a very controversial bill. How did they deal with it? The Democratic President had the bill literally written in the office of the Republican leader, with staff members and Senators trooping in and out. The country looked to Washington and said: Well, the Republican leader and the Democratic President both think it is important. They are trying to work it out. In the end, they voted for cloture. In the end, they got the bill.

Mr. MCCONNELL. My friend from Tennessee is entirely correct. Right before we got here—right before we got here—in 1964 and 1965, the Democrats had overwhelming majorities, as they do now, and the civil rights bill of 1964 and the voting rights bill of 1965 passed on an overwhelming bipartisan basis. The leader of the Republicans, Everett Dirksen, was every bit as much involved in that, if not more involved in it, than even the Democrats. Republicans supported it. On a percentage basis, a greater number——

The PRESIDING OFFICER (Mr. BURRIS). The minority time has expired.

Mr. MCCONNELL. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. MCCONNELL. An even greater percentage of Republicans ended up supporting the civil rights bills of 1964 and 1965 than Democrats. But it was a truly bipartisan landscape for our country—a landmark, important. It was widely accepted by the American people because of the broad bipartisan support it enjoyed. That is what has been lacking here from the beginning.

Mr. MCCAIN. Mr. President, I ask unanimous consent that a list of physician organizations that oppose this act, representing nearly one-half million physicians, be printed in the RECORD.

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

PHYSICIAN ORGANIZATIONS THAT OPPOSE SENATE'S PATIENT PROTECTION AND AFFORDABLE CARE ACT

To date over 40 state, county and national medical societies, representing nearly one-half million physicians, have stated their public opposition to the Senate healthcare overhaul bill, the Patient Protection and Affordable Care Act (H.R. 3590). It is time for Congress to slow down, take a step back, and change the direction of current reform efforts to ensure that it is done right!

NATIONAL MEDICAL ASSOCIATIONS

American Academy of Cosmetic Surgery, American Academy of Dermatology Association, American Academy of Facial Plastic and Reconstructive Surgery, American Academy of Otolaryngology Head and Neck Surgery, American Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, American College of Obstetricians and Gynecologists, American College of Osteopathic Surgeons, American College of Surgeons, American Osteopathic Academy of Orthopaedics, American Society for Metabolic & Bariatric Surgery, American Society of Anesthesiologists, American Society of Breast Surgeons, American Society of Cataract and Refractive Surgery, American Society of Colon and Rectal Surgeons, American Society of General Surgeons, American Society of Plastic Surgeons, American Urological Association, Association of American Physicians and Surgeons, Coalition of State Rheumatology Organizations, Congress of Neurological Surgeons, Heart Rhythm Society, National Association of Spine Specialists, Society for Vascular Surgeons, Society of American Gastrointestinal and Endoscopic Surgeons, Society for Cardiovascular Angiography and Interventions, Society of Gynecologic Oncologists.

STATE AND COUNTY MEDICAL ASSOCIATIONS

Medical Association of the State of Alabama, California Medical Association, Medical Society of Delaware, Medical Society of the District of Columbia, Florida Medical Association, Medical Association of Georgia, Kansas Medical Association, Louisiana State Medical Society, Missouri State Medical Association, Nebraska Medical Association, Medical Society of New Jersey, Ohio State Medical Association, South Carolina Medical Association, Texas Medical Association, Westchester (NY) County Medical Society.

DECEMBER 1, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR LEADER REID: On behalf of the over 240,000 surgeons and anesthesiologists we represent and the millions of surgical patients we treat each year, the undersigned 19 organizations strongly support the need for national health care reform and share the Senate's commitment to make affordable quality health care more accessible to all Americans. As you know, we have been working diligently and in good faith with the Senate during the past year and have provided input at various stages in the process of drafting the Senate's health care reform bill. To this end, we have reviewed the Patient Protection and Affordable Care Act of 2009.

As you may recall, on November 4 our coalition sent you a letter outlining a number of serious concerns that needed to be addressed to ensure that any final health care reform package would be built on a solid foundation in the best interest of our patients. Since those concerns have not been adequately addressed, as detailed below, we must oppose the legislation as currently written.

We oppose:

Establishment and proposed implementation of an Independent Medicare Advisory Board whose recommendations could become law without congressional action;

Mandatory participation in a seriously flawed Physician Quality Reporting Initiative (PQRI) program with penalties for non-participation;

Budget-neutral bonus payments to primary care physicians and rural general surgeons;

Creation of a budget-neutral value-based payment modifier which CMS does not have the capability to implement and places the provision on an unrealistic and unachievable timeline;

Requirement that physicians pay an application fee to cover a background check for participation in Medicare despite already being obligated to meet considerable requirements of training, licensure, and board certification;

Relying solely on the limited recommendations of the United States Preventive Services Task Force (USPSTF) in determining a minimum coverage standard for preventive services and associated cost-sharing protections;

The so-called ''non-discrimination in health care'' provision that would create patient confusion over greatly differing levels of education, skills and training among health care professionals while inappropriately interjecting civil rights concepts into state scope of practice laws;

The absence of a permanent fix to Medicare's broken physician payment system and any meaningful proven medical liability reforms; and

The last-minute addition of the excise tax on elective cosmetic medical procedures. This tax discriminates against women and the middle class. Experience at the state level has demonstrated that it is a failed policy which will not result in the projected revenue. Furthermore, this provision is arbitrary, difficult to administer, unfairly puts the physician in the role of tax collector, and raises serious patient confidentiality issues.

This bill goes a long way towards realizing the goal of expanding health insurance coverage and takes important steps to improve quality and explore innovative systems for health care delivery. Despite serious concerns, there are several provisions in the Patient Protection and Affordable Care Act of 2009 that the surgical community supports, strongly believes are in the best interest of the surgical patients, and should be maintained in any final package. Specifically these include: health insurance market reforms, including the elimination of coverage denials based on preexisting medical conditions and guaranteed availability and renewability of health insurance coverage; strengthening patient access to emergency and trauma care by ensuring the survival of trauma centers, developing regionalized systems of care to optimize patient outcomes, and improving emergency care for children; well-designed clinical comparative effectiveness research, conducted through an independent institute and not used for determining medical necessity or making coverage and payment decisions or recommendations; and the exclusion of ultrasound from the increase in the utilization rate for calculating the payment for imaging services.

Further, while redistribution of unused residency positions to general surgery is a positive step in addressing the predicted shortage in the surgical workforce, we believe that the Senate should look more broadly at the issue of limits on residency positions for all specialties that work in the surgical setting that are also facing severe workforce problems.

Finally, we are pleased that you have accepted our suggestion and removed language which would reduce payments to physicians who are found to have the highest utilization of resources—without regard to the acuity of the patient's physical condition or the complexity of the care being provided. We thank you for making this important change.

While we must oppose the Patient Protection and Affordable Care Act as currently written, the surgical coalition is committed to the passage of meaningful and comprehensive health care reform that is in the best interest of our patients. We are committed to working with you to make critical changes that are vital to ensuring that this legislation is based on sound policy, and that it will have a long-term positive impact on patient access to safe and effective high-quality surgical care.

Sincerely,

American Academy of Facial Plastic and Reconstructive Surgery; American Academy of Otolaryngology-Head and

Neck Surgery; American Association of Neurological Surgeons; American Association of Orthopaedic Surgeons; American College of Obstetricians and Gynecologists; American College of Osteopathic Surgeons; American College of Surgeons; American Osteopathic Academy of Orthopedics; American Society of Anesthesiologists; American Society of Breast Surgeons.

American Society of Cataract and Refractive Surgery; American Society of Colon and Rectal Surgeons; American Society for Metabolic & Bariatric Surgery; American Society of Plastic Surgeons; American Urological Association; Congress of Neurological Surgeons; Society for Vascular Surgery; Society of American Gastrointestinal and Endoscopic Surgeons; Society of Gynecologic Oncologists.

DECEMBER 7, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR REID: The undersigned state and national specialty medical societies are writing you on behalf of more than 92,000 physicians in opposition to passage of the ''Patient Protection and Affordable Care Act'' (H.R. 3590) and to urge you to draft a more targeted bill that will reform the country's flawed system for financing healthcare, while preserving the best healthcare in the world. While continuance of the status quo is not acceptable, the shifting to the federal government of so much control over medical decisions is not justified. We are therefore united in our resolve to achieve health system reform that empowers patients and preserves the practice of medicine—without creating a huge government bureaucracy.

H.R. 3590 creates a number of problematic provisions, including:

The bill undermines the patient-physician relationship and empowers the federal government with even greater authority. Under the bill, (1) employers would be required to provide health insurance or face financial penalties; (2) health insurance packages with government prescribed benefits will be mandatory; (3) doctors would be forced to participate in the flawed Physician Quality Reporting Initiative (PQRI) or face penalties for nonparticipation; and (4) physicians would have to comply with extensive new reporting requirements related to quality improvement, case management, care coordination, chronic disease management, and use of health information technology.

The bill is unsustainable from a financial standpoint. It significantly expands Medicaid eligibility, shifting healthcare costs to physicians who are paid below the cost of delivering care and to the states that are already operating under severe budget constraints. It also postpones the start of subsidies for the uninsured long after the government levies new user fees and new taxes to cover expanded coverage and benefits. This ''back-loading'' of new spending makes the long-term costs appear deceptively low.

The government-run community health insurance option eventually will lead to a single-payer, government run healthcare system. Despite the state opt-out provision, the community health insurance option contains the same liabilities (i.e., government-run healthcare) as the public option that was passed by the House of Representatives. Such a system will ultimately limit patient choice and put the government between the doctor and the patient, interfering with patient care decisions.

Largely unchecked by Congress or the courts, the federal government would have unprecedented authority to change the Medicare program through the new Independent Medicare Advisory Board and the new Center for Medicare & Medicaid Innovation. Specifically, these entities could arbitrarily reduce payments to physicians for valuable, lifesaving care for elderly patients, reducing treatment options in a dramatic way.

The bill is devoid of real medical liability reform measures that reduce costs in proven demonstrable ways. Instead, it contains a ''Sense of the Senate'' encouraging states to develop and test alternatives to the current civil litigation system as a way of addressing the medical liability problem. Given the fact that costs remain a significant concern, Congress should enact reasonable measures to reduce costs. The Congressional Budget Office (CBO) recently confirmed that enacting a comprehensive set of tort reforms will save the federal government $54 billion over 10 years. These savings could help offset increased health insurance premiums (which, according to the CBO, are expected to increase under the bill) or other costs of the bill.

The temporary one-year SGR ''patch'' to replace the 21.2 percent payment cut in 2010 with a 0.5 percent payment increase fails to address the serious underlying problems with the current Medicare physician payment system and compounds the accumulated SGR debt, causing payment cuts of nearly 25 percent in 2011. The CBO has confirmed that a significant reduction in physicians' Medicare payments will reduce beneficiaries' access to services.

The excise tax on elective cosmetic medical procedures in the bill will not produce the revenue projected. Experience at the state level has demonstrated that this is a failed policy. In addition, this provision is arbitrary, difficult to administer, unfairly puts the physician in the role of tax collector, and raises serious patient confidentiality issues. Physicians strongly oppose the use of provider taxes or fees of any kind to fund healthcare programs or to finance health system reform.

Our concerns about this legislation also extend to what is not in the bill. The right to privately contract is a touchstone of American freedom and liberty. Patients should have the right to choose their doctor and enter into agreements for the fees for those services without penalty. Current Medicare patients are denied that right. By guaranteeing all patients the right to privately contract with their physicians, without penalty, patients will have greater access to physicians and the government will have budget certainty. Nothing in the Patient Protection and Affordable Care Act addresses these fundamental tenets, which we believe are essential components of real health system reform.

Senator Reid, we are at a critical moment in history. America's physicians deliver the best medical care in the world, yet the systems that have been developed to finance the delivery of that care to patients have failed. With congressional action upon us, we are at a crossroads. One path accepts as ''necessary'' a substantial increase in federal government control over how medical care is delivered and financed. We believe the better path is one that allows patients and physicians to take a more direct role in their healthcare decisions. By encouraging patients to own their health insurance policies and by allowing them to freely exercise their right to privately contract with the physician of their choice, healthcare decisions will be made by patients and physicians and not by the government or other third party payers.

We urge you to slow down, take a step back, and change the direction of current reform efforts so we get it right for our patients and our profession. We have a prescription for reform that will work for all Americans, and we are happy to share these solutions with you to improve our nation's healthcare system.

Thank you for considering our views.

Sincerely,

Medical Association of the State of Alabama, Medical Society of Delaware, Medical Society of the District of Columbia, Florida Medical Association, Medical Association of Georgia, Kansas Medical Society, Louisiana State Medical Society, Missouri State Medical Association, Nebraska Medical Association, Medical Society of New Jersey, South Carolina Medical Association, American Academy of Cosmetic Surgery, American Academy of Facial Plastic and Reconstructive Surgery, American Association of Neurological Surgeons, American Society of Breast Surgeons, American Society of General Surgeons, Congress of Neurological Surgeons.

Past Presidents of the American Medical Association: Daniel H. Johnson, Jr., MD, AMA President 1996–1997; Donald J. Palmisano, MD, JD, FACS, AMA President 2003–2004; William G. Plested, III, MD, FACS, AMA President 2006–2007

Mr. McCAIN. Mr. President, I thank the Senator from Montana for his courtesy.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I must say, some of the debate on the other side of the aisle is a little surreal. They say they want to move ahead, and then they refuse to enter into any reasonable time agreement to consider a necessary appropriations measure. I find it very impressive—I am very impressed—how the minority can maintain both that they want to move more quickly and not move at all—surreal.

I wish to also explain, despite what the claims on the other side are, that we have attempted mightily to work together on both sides of the aisle to get health care reform passed. They claim it is all one-party rule. Nothing could be further from the truth. Let me explain why.

When we began this effort over a year ago, we had many hearings. In fact, last year I think I had 10 hearings in the Finance Committee on health care reform to educate ourselves because we knew health care reform was going to be a big issue in the year 2009. So, in 2008, we had many Finance Committee hearings on all different aspects of health care. How does our system work? How do parts fit together? How does this all work? We were there to educate ourselves. We did not have a political ax to grind. We were not trying to make points. We got the experts in and asked: How does it work? How do the different parts of our system work together?

Then we issued a white paper. It was in November of last year. It was basically a call to action, which is what we called it. It was about an 80-, 90-page paper. It was a statement of the health care options: delivery system reforms, various ways to get increased health

care coverage, various ways to help with insurance market reform—lots of different provisions.

I might say, casting all modesty to the wind, that white paper, that call to action, back in November of 2008, is probably the basis and springboard from which most of the ideas we have been debating, both in the House and in the Senate and on both sides of the aisle, come from. They basically come from there.

I might say, it has all been totally transparent. It is all on the Internet. It has all been open for everybody. Republicans and Democrats participated fully. First was the Library of Congress all-day session, both sides fully—that was over a year ago.

Since then, in 2009, this year, we have had a countless number—in the Finance Committee—of what we call roundtables, a countless number of walk-throughs, a countless number of hearings on all the various aspects of health care reform—bipartisan, fully open.

Also, I instituted something else here; that is, we got to the point where we finally got to the markup, and we put the marked up bill on the Internet, again, so everybody sees everything. We also made sure all amendments were on the Internet and fully debated by both sides—totally open, totally transparent. I prided myself on doing that.

In fact, one very well-known health journalist who works for a very major paper walked up to me and said: MAX, is this a new way of doing things? Maybe you started something, MAX, in being so transparent and working so much together. Do you think this is the model for the future? I said: I don't know. But it impressed him how much we tried to work together and did work together with people on both sides of the aisle.

I cannot think of a more comprehensive, more transparent, more bipartisan effort than this.

So what happened? Well, the HELP Committee had their version passed. So we in the Finance Committee worked on ours. To move the ball, I shifted it to another group—we called it the Gang of 6; three Republicans, three Democrats—to try to get a core provision together that we could take to the full committee.

We had a countless number of meetings. I have forgotten the number of days we met—I think in the nature of 30 or 40 meetings and close to 100 hours and with Republicans and Democrats to and fro. Guess what. It was very, very constructive. I wish the American public could have been an eye on the wall at those meetings and watched these meetings proceed. There were very good questions asked by Senators on both sides, Republicans and Democrats.

I highly compliment my friend from Wyoming, Senator ENZI. I highly compliment my friend from Maine, Senator SNOWE. I highly compliment everybody who was there. They asked very good questions—and Senator GRASSLEY, of course, he is the ranking member of the Finance Committee; and the same on the Democratic side—in an effort to try to find a good, solid health care reform bill.

Well, we kept working—bipartisan—working together for days, days, hours, hours. Then, unfortunately, we got to the point where—I am just calling it as I see it; one of my failings is I am too honest about things—and the Republicans started to walk away. They pulled away from the table. They had to leave.

I ask you, why? Why did that happen? The answer—to be totally fair and above board—is because their leadership asked them to. Their leadership asked them to become disengaged from the process. I know that to be a fact. Why did their leadership ask Republicans to leave and become disengaged from the process? To be totally candid, it is because they wanted to score political points by just attacking this bill. They were not here to help be constructive, to find some bipartisan solution. They were for a while. Then, when the rubber started to meet the road, when it came time to try to make some decisions, they left and began to attack.

I think a big, unfortunate circumstance in all this—we are going to pass health care reform. It is going to pass. It is going to do wonders for the American people. We are going to dramatically reform the health insurance market. People are going to have health insurance they do not now have. We are going to help put in place delivery system reforms. That is just a fancy term for saying changing the way we reimburse hospitals and doctors in a very positive way, so we are focusing more on quality and less on quantity and volume. This bill is going to pass. It is going to be a very good bill when it finally does pass and people understand it.

But the unfortunate part is this: It is unfortunate, in my judgment, that the other side pursued a strategy of just saying no, just saying no, and attack, attack, attack. That is basically what we have heard here in the last several weeks, instead of coming up with a comprehensive alternative, instead of coming up with a comprehensive alternative health care reform package. Then it would have been wonderful if we had an honest-to-goodness, solid debate on the pros and cons of each side, the merits of each side, a constructive dialog, pursuit, inquiry, focus on which portions of this should be put in the bill and which should not. But that did not happen. We did not have this constructive alternative provision presented to us. We had no provision presented to us—and by ''to us,'' I mean the American public—so we could debate here. But, rather, they just said no.

We have worked as hard as we could to be bipartisan. But to be honest and candid about it, the other side walked away. They walked away, and I think it is very unfortunate that happened.

Mr. President, I yield 5 minutes to the Senator from Massachusetts, Mr. KIRK.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KIRK. Mr. President, before I say anything else, I wish to, once again, commend the Senator from Montana for his leadership on this historic piece of legislation. It is going to have an impact on people more widely and broadly than our Social Security system, and this will be as important a domestic piece of legislation as that. Every American who looks forward to their golden years knows what Social Security means.

The Senator from Montana has quite correctly mentioned how this legislation will have an impact on people's lives. I have only been in the Senate a short period of time, but I cannot tell you the numbers of constituents who have communicated with me about their situation in the Commonwealth of Massachusetts; whereas, in 2006, Massachusetts enacted health care reform, many of the aspects of that legislation are contained in the bill we are debating.

For the record, today the Boston Globe published a story indicating that more than 96 percent of the State's adult taxpayers had health insurance in 2008. This is close to universal coverage, and I am sure, before too long, we will be able to say we hit the 100-percent mark.

This is providing affordable insurance to people who otherwise would never have had it. When the Senator from Montana talked about how this bill would impact people's lives, I am going to tell you a story that was told to me by a family who had a situation. I will call them Daniel and Brenda. Those are their names.

They had been living without health insurance for years. In fact, Brenda said she could barely remember when they had last gone to the doctor because they did not have health insurance. But she learned about our Health Care for All on the Helpline that is in existence in Massachusetts from a close friend. Soon after she contacted it, her husband was diagnosed with a serious heart condition. With the indispensable assistance of the Helpline, her family was able to enroll in coverage they could afford.

Brenda's husband Daniel had started to feel constant fatigue. He never imagined that someday he would need to have a strong supporting device inserted in his heart. Brenda said they truly appreciated all the assistance given to them through the Helpline. But there is more.

Brenda and Daniel recently welcomed a new addition to their family. Unfortunately, their son was born with respiratory problems and had to stay in the intensive care unit for 7 days immediately after his birth. Brenda told

us she had a hard time leaving the hospital without her newborn son in her arms. But she could also take comfort in being surrounded by top medical professionals who were dedicated to caring for her son. Here is what she wrote:

Health Care for All has been such a gift to our lives. First, my husband had no idea of the seriousness of his health issue. If it wasn't for our eligibility with the [State's new health care reform] programs, we would probably have found out about his heart disease too late. And right after came the unexpected surprise of having my son in neonatal care for a week. Both of these situations were hard to go through just emotionally. We just couldn't imagine how it could have been hard financially speaking. That's why, and for many other reasons, we are just so amazed to be Massachusetts residents and count on the tremendous support we have been receiving from the Helpline counselors.

This is just one example of countless families I have heard from in Massachusetts.

It clearly shows how important it is to pass national health care reform and enable all Americans to have the quality, affordable health care that Brenda, Daniel, and their son were able to have.

So I wanted to bring to the attention of our colleagues in the Senate a real life story of what health care reform can mean and what will be great relief for the financial and health security to American families when we enact this legislation.

I ask unanimous consent that the Boston Globe article I mentioned be printed in the CONGRESSIONAL RECORD.

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

[From the Boston Globe, Dec. 10, 2009]

FEWER TAXPAYERS ARE PENALIZED FOR NOT HAVING HEALTH COVERAGE

(By Elizabeth Cooney)

Fewer Massachusetts taxpayers were penalized for lacking required health insurance last year than were fined in 2007, the state said yesterday in a report reflecting the second year that residents had to report on their tax returns whether they were covered under the state's near-universal-coverage mandate.

More than 96 percent, or 3.8 million, of the state's 3.95 million adult taxpayers said they had health insurance for at least part of 2008, according to the state Department of Revenue, and 3.65 million had coverage for the entire year.

About 45,000 tax filers did not have health insurance, although they were classified as able to afford it under state guidelines. They paid a penalty of up to $76 for each month they went without coverage, depending on a sliding scale matched to their income. Another 8,000 successfully appealed their penalties, based on hardship, to the Commonwealth Health Insurance Connector Authority.

In 2007, when 95 percent of tax filers said they were insured, more people were fined: 60,000 people lost their personal exemption, about $219 for an individual, for not having health insurance that year.

''This report gives us yet another data point demonstrating the continued success of health reform with exceptionally high rates of insurance and a smooth system for the mandate in the Commonwealth,'' Lindsey Tucker, health reform policy manager at the advocacy group Health Care For All, said in an e-mailed statement.

''The report also reminds us of one of the major gaps in our reform: the thousands of residents unable to purchase insurance due to its lack of affordability,'' she said. ''We must continue to search for ways to keep quality coverage affordable for all our residents.''

The penalty, which is pegged to one half the cost of the lowest premium offered by the Commonwealth Connector, went up to a maximum of $89 a month for 2009, and the Revenue Department has proposed raising it to $93 in 2010.

People who are deemed unable to afford insurance are not penalized, and those who have a lapse of up to three months in their coverage are also not subject to the penalty.

The high percentage of tax filers reporting they have insurance fits with other state reports saying that 97 percent of all residents have coverage, Navjeet K. Bal, commissioner of the Department of Revenue, said in an interview.

''From 2007 to 2008, we did not see a real drop in health insurance,'' she said. ''Even with the economic turmoil that started in [fall] 2008, people still had health insurance. A year from now, we'll see.''

Mr. KIRK. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I rise this afternoon to speak on two subjects as part of our health care debate. The first is what happens to our children. We have had an opportunity over the last couple of weeks, and will continue to have a full debate about so many aspects of this legislation. When it comes to the question of what happens to our children—and I speak of in this case poor children and special needs children—I have said from the beginning of this debate and even before the debate began many months ago that the standard ought to be four words: No child worse off. It is a very simple standard. I think it is a standard we can meet and I believe it is a standard we should meet for the most vulnerable children in America—those who happen to be poor or suffer from or are burdened by special needs, both the impact on that child, that individual life, as well as the impact on his or her family.

The good news is that over the last couple of years, we have gotten it right with regard to children's health insurance, a program I am proud to say had a good bit of its foundation and its origins in Pennsylvania. It became a national effort in 1997 when President Clinton signed the legislation. We have had, frankly, a lot of bipartisan support for this program over many years, although we had less bipartisan support when it was reauthorized this past year when President Obama signed it into law.

Here is what it means. The Children's Health Insurance Program, known by the acronym CHIP, has provided millions of children with health insurance coverage they would never have absent that program. We don't know the exact number as we speak today, but we are at a point now where we have in the range of 7 million or more children covered. Over the next couple of years, we will have 14 million American children covered. That is an enormous achievement, but more important than any kind of legislative achievement, it will mean that 14 million children or their families won't have to worry about whether they get quality health care.

In the first year of a child's life, the experts tell us they should get to the doctor at least six times for a so-called well child visit. A Children's Health Insurance Program in America ensures these children receive many benefits, including dental, immunization, and preventive care. But the fact I always point to is that for six times in the first year of a child's life, he or she will get to see a doctor because they are in the CHIP program, and that has an enormous impact for that one life, for that one family, but I would argue—and I think the evidence is irrefutable—it will have a positive impact on all of our lives, because of the impact of millions of children getting that kind of help in the early years of their life.

We know this program works. The Children's Health Insurance Program works. That is an understatement. It works well.

What we are worried about, though—what I am worried about—is that there have been people in Washington who have advocated putting the Children's Health Insurance Program in the new insurance exchange. The exchange is going to be a very positive development for our health care system and for adults, but I would argue strongly and vigorously that it is not good for kids. So we are going to be debating that maybe in a couple of years, but we want to make sure as we debate that question that we have as much evidence to show that and put forth the reasons why the Children's Health Insurance Program should not—should not—be part of the exchange.

In terms of why we say that, the research on this question is indisputable. The director of CBO, the Congressional Budget Office, Doug Elmendorf—and we know a lot about CBO. They make determinations about this bill and about costs. CBO has said that children will have better benefits and more cost savings in CHIP than they will in the exchange.

Yesterday, an organization many people here know as First Focus released a white paper which compared Children's Health Insurance coverage versus coverage those children would get in the exchange. Here are some of the results of that research paper.

No. 1, the question of children's coverage from 2009 through 2013:

If health reform were to repeal CHIP in 2013, States would not invest in improving coverage for those children when those very efforts will be dismantled just a few years later.

It stands to reason. Why would a State go forward to strengthen a program they know is going to change as

a matter of Federal policy a couple of years later?

The increased coverage of 4 million children that is expected from passing Children's Health Insurance legislation earlier this year would be largely lost.

That whole effort that took years—years—and two Presidential vetoes, before President Obama became President, to get to continue the CHIP program and expand.

No. 2, First Focus, another one of their conclusions:

Children in most State Children's Health Insurance Plans receive coverage for all approved vaccinations, dental care and well-baby and well-child visits. This level of benefits stand in contrast to private plans, like those in the exchanges.

What is good for an adult may not be good for a child. Children are not small adults as so many advocates have said over and over. But the level of benefits that children get in CHIP stands in contrast to the provisions in private plans such as those in the exchange which often impose limits that are particularly harmful to low-income children and children with special needs.

That is conclusion No. 2 by First Focus.

Conclusion No. 3 is the following:

An actuarial study—

A recent study—

finds that children moved from CHIP to the exchange plans would dramatically increase out-of-pocket costs for those kids. Out-of-pocket costs for a child living in a family earning 225 percent of the Federal poverty level would increase by 1,100 percent—

not 1,100 dollars, but 1,100 percent—

if the Senate were to join the House in repealing Children's Health Insurance Program.

This is another reason why it is a bad idea. We want to make sure this program is strong. We know it works. We also don't want to exponentially, radically increase out-of-pocket costs.

Conclusion No. 4, premiums:

Because Children's Health Insurance keeps premiums and other out-of-pocket costs for children at low levels, the cost of health insurance exchange plans will be many times higher than that, even for just covering children.

An increase in premiums will lead to a number of children currently enrolled in CHIP to lose coverage—to lose coverage—according to the Congressional Budget Office.

No. 5, reason to do the right thing, access to pediatric providers:

Children's Health Insurance plans specifically focus on the unique health care needs of children, which is not the case in the proposed exchanges. The recent Children's Health Insurance reauthorization—

For those who watch these Senate debates, we use words such as ''reauthorization.'' My simple way of saying that is we do it again. We take an existing program, evaluate it, see if it is working, and keep doing it. That is what reauthorization is all about. But we did that earlier in the year, thank goodness, for children's health insurance.

The recent effort to continue CHIP included improvements to pediatric-specific quality measures that may get lost in the conversion of CHIP as a stand-alone program put into the exchange. We don't want to do that for kids. We want to make sure every pediatric-specific quality measure that we have in place now, all of these years later, is maintained. We don't want to injure that. We don't want to cut that back.

Finally, in terms of another item on the list of reasons, guarantee to care:

In exchange plans, some children currently eligible for the Children's Health Insurance Program may be barred—may be barred—from receiving subsidies for coverage due to the cost of employer-sponsored plans.

Once again, what is good for an adult may not be good for our kids. We have to watch this.

Moreover, the families that are eligible for subsidies and coverage through exchange plans may find coverage so unaffordable that they are left without insurance entirely.

So we don't want to send a family into the exchange who is trying to get insurance for themselves and their kids and find out that they can't cover their kids because it costs too much. We have an existing, stand-alone Children's Health Insurance Program that we know works.

This amendment I filed for this debate on health care—the children's health insurance amendment to guarantee that we keep it strong, strengthen it and continue it—the Children's Health Insurance Program has the support of over 500 national and State organizations that focus on children's health, health policy generally, social workers, children's mental health advocates, school educators, health plans in particular, faith groups across the country, and more. These 500 national and State organizations speak volumes about why this amendment is so important. We must strengthen and ensure the continuity of CHIP in this health care reform bill. That is what our amendment is all about.

Mr. President, I ask unanimous consent to hae printed in the RECORD a letter addressed to me, dated December 9, from more than 500 organizations.

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

DECEMBER 9, 2009.

Hon. ROBERT P. CASEY, JR.,
U.S. Senate,
Washington, DC.

DEAR SENATOR CASEY: As organizations committed to ensuring that all of our nation's children get the health coverage they need and deserve, we are writing to thank you for your commitment to making children an important priority by filing Amendment #2790 to the Patient Protection and Affordable Care Act (H.R. 3590). Your amendment builds on the provisions of the underlying bill, continuing to protect and improve the country's successful Children's Health Insurance Program (CHIP) and ensuring that no child ends up worse off as a result of health reform. We applaud your leadership.

America's children have a lot at stake in health reform. More than eight million children remain uninsured, and more are losing employer-sponsored coverage daily. Families are just one playground accident away from medical bankruptcy. Each day a child is uninsured is a lost opportunity to strengthen our next generation, America's future. Your amendment goes a long way toward protecting and improving coverage for millions of children in low-income working families across the nation by:

Providing full funding for CHIP through 2019;

Maintaining current CHIP eligibility through 2013, and setting a floor for income eligibility for children in all states at 250 percent of poverty ($55,125 for a family of four) beginning in 2014;

Streamlining enrollment procedures making it easier for children to get coverage and keep it;

Ensuring that coverage for children remains affordable;

Guaranteeing all children in CHIP the comprehensive care they need from head to toe; and

Requiring an HHS report in 2016 that will compare coverage for children in CHIP with coverage for children in the new Health Insurance Exchange and if coverage (including benefits, cost-sharing, premiums, and other features) is comparable or better, children can be transitioned from CHIP into the Exchange in 2019.

Our nation has made great strides over the last decade in securing health coverage for low-income children of working families. We must now seize this historic opportunity to build on the success of prior efforts and the bipartisan CHIP program, and ensure that children will be better off, not worse off, as a result of health reform. Your amendment will do just that.

We offer our strong support for your CHIP Amendment (#2790). We stand ready to work with you and your Senate colleagues to achieve our common goal of reforming our nation's health care system and ensuring that *all* children, indeed everyone in America, have access to the health coverage they need and deserve.

Sincerely,

National Organizations.

Mr. CASEY. Thank you very much. I wish to inquire as to how much time I have.

The PRESIDING OFFICER. There is 3½ minutes remaining.

Mr. CASEY. I will move quickly.

The second part of my remarks focuses on pregnant and parenting teens and women. We have an amendment that focuses on a group of pregnant women in America that we are not doing enough about. Neither party, in my judgment, is doing enough about them, enough about help for those women. I will come back to this maybe later today. But it is vitally important, whether we are Democrats, Republicans, or Independents, but as Americans, that we give integrity and meaning to the sentiment that is often expressed that we care about pregnant women, that we care about a teen mother who decides to bear a child, that we are going to help her through if she makes that decision.

If a woman on a college campus becomes pregnant and decides to have that child, we want to give her all the help we can. If a woman is a victim of domestic violence or other sexual violence or stalking, and through all of the horrific nightmare of that violence,

she determines that she is going to go through with a pregnancy and have a child, that we help her in the midst of that darkness, that we give her some light in that darkness. What we don't want to have is women who are deciding to bear a child who feel all alone, who have to walk that path all by themselves.

That is what this amendment is about. I will return to it later today.

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

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that we be able to go into a colloquy for the next half hour.

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

Mrs. HUTCHISON. Mr. President, I rise today to talk about the taxes that are in this bill—taxes that are imposed in 3 weeks—not 3 weeks from 6 months from now, not 3 weeks from 2014, but 3 weeks from now, January 1, 2010. Three weeks from now, on January 1, 2010, we are going to see the taxes in this bill start.

I know people are saying: Wait a minute. This bill doesn't take effect until 2014. That is what we have been talking about. It is what we have been hearing. But, no, the tax part starts in 3 weeks—January of 2010.

I have partnered with Senator THUNE, who has been working on this problem, and Senator GRASSLEY and Senator HATCH and many others who will be speaking today.

I see my colleagues from Florida, Nebraska, Wyoming, as well as my colleague, Senator CRAPO, from Idaho, all of whom—Senator CRAPO, of course, is waiting for a vote on his amendment, which would stop the taxes on everyone who makes $200,000 or less.

We are talking about the taxes because it is such a huge issue. Here is what is going to happen with the taxes in the bill that start in 3 weeks. Americans will pay more in insurance premiums. Americans will pay more in prescription drugs. Americans will pay more for medical equipment. Let's walk through those taxes.

In a few weeks, in January of 2010, this will begin: $22 billion in taxes on prescription drug manufacturers; $19 billion in taxes on medical device manufacturers; $60 billion in taxes on insurance companies. That is around $100 billion, which starts in 3 weeks. Then, in 2013, the taxes on high-benefit plans take effect. That is $150 billion in taxes. So for every union member who has a good plan that gives them the benefits they have negotiated for over the years, those taxes come in at 40 percent of the benefits. That starts in 2013.

You are still saying: Wait a minute. I thought the bill started in 2014—and that is right. But the taxes start in 3 weeks, and they keep right on going. In 2013, the high-benefit plans start getting a 40-percent excise tax.

Mr. President, when the $100 billion in taxes start in 3 weeks on drug manufacturers, medical device manufacturers, and insurance companies, what happens? Premiums go up immediately, prescription drug prices go up immediately, and the medical devices—hearing aids and things people need for medical treatments—go up immediately.

We have been talking about health care reform and the need for it, and the need to make history. Yet the reform we are going to see go into effect right away is huge tax increases. I am here with many colleagues, who are so concerned about this for their constituents.

I ask the Senator from Wyoming, who is one of the two physicians in the Senate—he has been so active in this area. When the taxes go up on our insurance premiums, our prescription drugs, and our medical equipment, I ask the Senator from Wyoming, as a physician, what does he think is going to happen to the cost of health care.

Mr. BARRASSO. Mr. President, I have great concern about the cost of health care for American families. We see it with our seniors certainly, as they will be seeing Medicare cuts. In this bill, there is $464 billion in Medicare cuts, but there are taxes that are going to go up, which will impact all of the people in this country.

I remember a promise the President made. He said his plan would not raise taxes one penny. He went on to say: not your income taxes, payroll taxes, capital gains taxes—any of your taxes.

We are seeing that taxes are going up, and in a way that is basically—you hate to say it, but it is a gimmick in this bill, where they are going to collect taxes for 10 years but only give benefits for 6, and it is the last 6 years.

As my colleague from Texas said, they are going to start collecting taxes—today is December 10—on the 31st of this month, 21 days from now, but the services would not be given for 4 years. That is how they get the number under $1 trillion, and it is at a time when the President makes a statement that this would not add a penny or a dime to the deficit. Eighty percent of the American people don't believe it because they know what is in front of them. They know what it is like to live their own lives. Is this what the Senator from Texas is seeing as well?

Mrs. HUTCHISON. The President said, in his address to the joint session of Congress, that this bill had to come in at a cost of no more than $900 billion. So the CBO scored the bill at $847 billion. But the Senator from Wyoming has brought up a point that is because they started scoring the bill in 2010, but the services in the bill don't start until 2014.

If you take the years from 2010 to 2019, it probably comes in at $847 billion. But if you start when the spending starts and go to 2023, the cost is $2.5 trillion.

I just ask the Senator from Nebraska if his constituents are hearing of this $2.5 trillion cost, with one-quarter of it coming from Medicare cuts and about one-quarter of it in new taxes that start next week. What does the Senator from Nebraska say about this?

Mr. JOHANNS. Mr. President, the citizens from Nebraska are absolutely on to this gimmick. They know it is a gimmick. Here is what I tell the Senator from Texas: I had an opportunity, as she knows, to be their Governor for 6 years. Every year, I had to walk in front of the unicameral—our one-house system—and give a state of the State address and lay out a budget plan. If I had walked into that chamber with a budget plan with these kinds of gimmicks, they would have been rolling in the aisles laughing at me, literally. They would have been rolling in the aisles.

I always did a State fly-around, where I visited the communities and talked about my budget vision and my legislative package, et cetera. The people of Nebraska would have run me out of the State had I tried to balance the State budget based upon this kind of gimmicky approach.

The Senator has absolutely hit the nail on the head. What we have here is a situation where those who wrote this bill—as we all know, it was written behind closed doors and nobody knew what the bill was until a few weeks ago—but those who wrote the bill said: Oh my goodness, the President has said we have to bring this bill in under $900 billion. That is what he said. How are we going to get that accomplished? So they used gimmicks. They uploaded the bill, front-end loaded the bill on the revenues, so that starts right away. Then the benefits don't start for 3 or 4 years. So it is magic; we have made the bill come in under $900 billion.

Let me offer this thought: Who loses on this crazy accounting gimmick? Do you know who loses? The constituents we represent in the United States—not just in Nebraska. They are going to pay the taxes. They are not going to see the benefits. It is like buying a car and paying on it for 4 years but not getting the car for 4 years. They are going to pay on it.

Sadly, and most concerning to me, is that this gimmickry is going to be passed on to the next generation because, when it doesn't work, somebody has to pick up the bill. The full cost of this bill, we have come to recognize, is $2.5 trillion. This bill doesn't fit together. It doesn't pass the smell test, as we say back home in Nebraska.

My hope is that sanity will revisit what we are doing and people will say: Time out. We can't ask the American people to go along with this. We have to call a timeout and get this right.

Mrs. HUTCHISON. I thank the Senator from Nebraska. I think having been a former Governor, his view is especially important. What we have heard through the grapevine—we haven't seen any new proposals, but we heard there is going to be an expansion of Medicare and an expansion of Medicaid. Medicaid, in particular, is going

to be very costly to States because they have a matching requirement for Medicaid. Many Governors are concerned about that.

I know the former Governor of Nebraska, in his background, realizes that is one of the biggest issues in a State's budget.

I know the Senator from Florida also has experience with being in a Governor's office, being a chief of staff for a Governor. He has been very active, especially because the population of Florida has a very high rate of senior citizens. The cuts in Medicare in the bill are huge. He is on the Senate floor. I am just wondering, when we are looking at the cuts in Medicare and the huge taxes, how that will impact the State of Florida, and how he thinks we are going to have to deal with that.

Mr. LEMIEUX. Mr. President, I thank the Senator from Texas. This is budget gimmickry. As the Senator from Texas said, as a former chief of staff who worked on trying to balance the budget because our constitution in Florida requires that, we try to figure out how much revenue we have and how much we can spend. If there were not enough revenues, we either had to cut spending or find a new source of revenues. We could not engage in this budget gimmickry.

If I may borrow an analogy from my friend from Nebraska, this is like paying for a car for 4 years before you even get to drive it. Imagine you are going to make a substantial purchase—a house or car—and they show you the house, and they say here is your mortgage payment, and you will live in the house for 10 years, but you will start paying for it today. But you can't move in until 2014. That is what this bill does.

In order to make this ''budget neutral,'' we steal $½ trillion from Medicare—health care for seniors, which seniors have paid into—and we raise taxes, which is going to increase, not decrease, the cost of insurance. When we tax pharmaceutical companies and tax the providers of medical devices, what happens? They pass those costs right along to the citizens. Not only are we stealing from Medicare, not only are we raising taxes, which will be passed on to the citizens, now we are going to tell the States we are going to increase Medicaid.

We are hearing about this secret deal that has been put together behind closed doors. My friends are in the dark, and a lot of Democrats don't know what is going on either. They are trying to figure out what the deal is. The deal will put more of a burden on the States.

I know my friend from Nebraska knows this, being a former Governor. The American people need to know, when you increase Medicaid, the States pay the vast majority of that; and because they have to balance their budget, they will have to cut something else. So they are going to have to cut teachers or law enforcement. So we steal from seniors, steal from the States, raise taxes, and we don't cut the cost of health care for most Americans.

I am new to this Chamber, and perhaps my friend from Idaho can help me understand this. It doesn't make a lot of sense as to how we should proceed with health care reform.

Mr. CRAPO. No, it does not. I appreciate the comments of my colleague from Florida, all my colleagues on the Senate floor today.

As the Senator from Texas indicated, one of the items of business before us today is my motion to commit this bill to the Finance Committee to take out the taxes that the President pledged would not be in there. The President pledged that no one who makes less than $250,000 as a family or $200,000 as an individual will pay any taxes under this bill. Yet in the very first 10 years, there is almost $500 billion of those taxes, a huge portion of which falls on people who are in that category.

As has been indicated, the real implementation of the bill on the spending side does not happen until 2014. If you count the amount of taxes that start when the spending starts, it is about $1.2 trillion of new taxes. Really, the only thing that is transparent—because this was all crafted behind closed doors—the only thing that is transparent is the gimmick.

The President said, as the Senator from Texas pointed out, that he would not let a bill come across his desk and get a signature if it spent more than $900 billion. First of all, you have to say: Wow, why do we need almost $1 trillion of new spending? But when they went behind closed doors and came up with this bill, it turns out it cost around $2 trillion or $2.5 trillion.

How did they make it meet the $900 billion test? They just said: Look, let's delay its implementation for long enough that the number comes out to under $900 billion. That happened to be the year 2014. So if you don't count the first 4 years and only count 6 of the 10, then in this budget window we are working in you can get your number. It is just remarkable.

Before I ask the Senator from South Dakota about his perspective, because I know he is working with the Senator from Texas on an amendment to try to correct this gimmick, I would like to respond to one quick point I know our opposition on the other side has continued to make, and that is they actually say there are no tax increases in the bill.

How do they say that? Here is the way they say it. There are subsidies in the bill that are provided to people with low income who do not have adequate access to insurance. Those subsidies total about $400 billion in the bill in the first 10 years, which is really only 6. They count those subsidies as a tax cut. The technical term given to them is a ''refundable tax credit,'' although $300 billion of those subsidies do not go to taxpayers. The people who receive them do not have a tax liability. But then they offset those subsidies against the taxes the rest of America will pay and say, therefore, there are no taxes in the bill.

I think that is another form of gimmickry. I ask my colleague from South Dakota what his perspective is on the types of gimmicks we are seeing and whether the American people should insist that these kinds of things be removed from the bill.

Mr. THUNE. I say to my colleague from Idaho that I support his motion. I hope we get a chance to vote on it. I know right now they are scrambling to find an alternative to put up so they can have something on which to give their side political cover because they know the reason they are trying so hard is because they know this raises taxes. To say with a straight face this does not raise taxes—the American people get this. I think the gig is up. They figured out there are huge Medicare cuts in this bill, huge tax increases in this bill. And as the Senator from Idaho pointed out, when they say these refundable tax credits are going to go back in the form of premium subsidies and there are not that many people who are going to pay, as he pointed out, 73 percent of the people who will get those premium subsidies are people who do not have an income tax liability already. Therefore, it is hard to say you are going to reduce taxes on somebody who does not have an income tax liability.

More important than that, there are still 42 million Americans with incomes under $200,000 a year, according to the Joint Tax Committee, who are going to see their taxes go up under this bill. So you literally have millions and millions of Americans under $200,000 a year. And as the Senator from Idaho mentioned, the President's promise was he would not raise taxes on anybody earning under $250,000 a year. This flatly contradicts that, flatly violates that pledge. I cannot fathom anybody coming here with a straight face and saying: Oh, yes, this doesn't raise taxes. Of course it raises taxes.

What the Senator from Texas and I intend to do on our motion—and I hope we have a chance to vote on it and the Senator's motion—we will go back to the committee and figure this out. We want to offer a motion that we think makes sense because it aligns and synchronizes the dates of all this.

What has happened here, I would say, in a very deceptive way, is they understated the costs of the bill. My colleagues on the floor already alluded to this. They tried to get it under $1 trillion, and in attempt to get it under $1 trillion, they had to come up with budget gimmicks.

To illustrate that with a bar chart, we can see in the first 10 years of this bill—starting today and going to 2019—the spending in the early years does not show up much. That is because most of the spending gets put off until January 1, 2014.

So if we look at that first 10-year period, the spending under the bill is less than it will be when the bill is fully implemented. When the bill is fully implemented, looking at the years 2014 to 2023, it explodes the spending in the bill from about $1 trillion over the first 10 years to $2.5 trillion over the 10 years when it is fully implemented.

The reason they were able to do that is because of this sort of smoke-and-mirrors way of enacting the tax increases immediately and delaying the spending. The American people are going to end up spending $71 billion in tax increases out of their pockets, out of the American taxpayers' pockets, about $600 per taxpayer, before they ever see a benefit under this bill.

What the Senator from Texas, Mrs. HUTCHISON, and I are offering is a motion that would delay the tax increases until such time as the benefits begin. That, to me, seems to be a fair way to go about making public policy.

What they have done, in an effort to obscure the overall cost of this bill, is to say that 22 days from now, we are going to raise your taxes. On January 1 of this year is when most of these taxes—the taxes on prescription drugs, taxes on medical devices, taxes on health plans—all the taxes in the bill begin to take effect January 1 of next year. For 4 years, people will be paying taxes out of their pockets. I might add, because of the taxes that are going to go on all the device manufacturers, prescription drugs, and health plans, they will get passed on in the form of higher premiums. They are going to see tax increases and premium increases before they ever see a dollar of benefits.

It is 1,483 days until the benefits under this bill kick in. That is unfair. It is unfair to the American taxpayer, it is unfair to the American people, and it is unfair to try to obscure and mask the total cost of this bill and say we are only spending $1 trillion on this bill when we know full well when it is fully implemented, the total cost of that is $2.5 trillion.

I appreciate the discussion that is being held here in pointing out the smoke and mirrors, the sort of underhanded way to try to shield the cost of this bill but also to support the Senator from Idaho with his motion that would commit this bill and get these tax increases out of here because the one thing small businesses are saying right now is we want to invest, we want to create jobs. But you cannot raise taxes on small businesses when you want them to create jobs. That is what this bill does.

The National Federation of Independent Business, the Chamber of Commerce, the National Association of Wholesalers and Distributors—all the major business organizations—have come out opposed to this bill.

The National Federation of Independent Business in a letter yesterday said: We do not support policies that increase the cost of doing business and that raise taxes. Clearly, that is what this bill does.

Our motion is very simple; that is, it simply delays tax increases until such time as the benefits begin.

Mrs. HUTCHISON. I am very pleased that the Senator from South Dakota talked about what we are trying to do because it is very simple. It is very simple. The Hutchison-Thune motion to commit says, if we do nothing else, if we do nothing else in this bill, we have to be fair and transparent with the American people; that is, we do not start the taxes, we do not start the increases in premiums, increases in prescription drug benefits, increases in medical devices until at least there is an implementation of this insurance program that we hear is going to be offered to the American people. We have not seen it, but we are told that there is going to be an insurance program that Americans can sign up for, but they are going to be paying higher taxes and premiums and costs in health care for 4 years before they ever see it. All we are saying is, let's send this bill back to committee and fix that.

It does not—as the Senator from Nebraska said earlier—pass the smell test. It does not pass the smell test in Nebraska, Wyoming, Florida, Idaho, South Dakota, or Texas. To tax people for 4 years, to raise their costs until they basically are going to say, Give me an alternative, and the alternative is, guess what: A big government takeover of our health care system. That is like saying: I am from the Federal Government, and I am here to help you. We have heard that before.

I do not think the American people will in any way believe that this bill is fair or honest with them if we start the taxes 22 days from now, as the Senator from South Dakota has pointed out, but they do not see a program. They are going to go online and say: Oh, my premiums are going up, my prescription drugs are going up; my goodness, where is the insurance program they have been talking about? They are going to go online, but, hey, there is no program.

How can we go home—I ask any of the Senators who would like to add their perspective on this—how are you going to go home and tell your constituents that your taxes start in 22 days, and maybe in 4 years, roughly, maybe you are going to see a program, and we are from the Federal Government, and we are here to help you?

Mr. BARRASSO. You cannot go home and say that with a straight face. There are many rural areas in our States. People see through all this.

There are two articles next to each other in today's New York Times. One talks about the details of the secret agreement they are working on behind closed doors. It says: ''Details Are Scanty.'' Right next to it it talks about: ''For Rural Elderly, Times Are Distinctly Harder.'' These are the people who are going to see taxes going up, these are the people who are going to see cuts in Medicare.

I want to read the first paragraph because this is from Lingle, WY, a community in my State. It talks about Norma Clark, 80. It says:

Norma Clark, 80, slipped on the ice out by the horse corral one afternoon and broke her hip in four places.

I am an orthopedic doctor. I have taken care of these over the years.

Alone, it took her three hours—

These are the kind of wonderful Americans we have—

Alone, it took her 3 hours to drag herself 40 yards back to the house through snow and mud, after she had tied her legs together with rope to stabilize the injury.

This is a person who is on Medicare, and they are going to cut $464 billion from Medicare, and they are going to use gimmicks that are going to harm our people.

I have a former Governor and a former chief of staff for a Governor's office. You know in the rural parts of your community, I say to Governor, now the Senator from Nebraska, you have people like that—hard-working people who expect honesty from a government, and they are not getting it in this bill which is going to tax for 10 years and only give services for 6.

Mr. JOHANNS. That is such a compelling story. I want to add something to that. When you think the policy could not get more crazy and insane, you hear about this idea that they are going to expand Medicare, which is due to be insolvent in 2017. But the tragedy of that in relating it to the story you just told us is this: That will hammer our rural hospitals. Why? Because they cannot stay open on Medicare reimbursement rates. They cannot stay open on Medicaid reimbursement rates.

This poor woman who dragged herself to try to get some care all of a sudden could be faced with the possibility that the hospital she relies on will not stay open under this health care bill.

I have been to those hospitals. I have seen the struggles they are going through with Medicaid and Medicare reimbursement. Every hospital administrator tells me the same thing: We would close our doors if we had to live on that.

So what is their solution? Expand Medicaid and Medicare. You have got to be kidding me. Who are they listening to? You know what. Take this bill out to the rural areas of Nebraska. You will get an earful.

Mrs. HUTCHISON. How much time is left on our side?

The PRESIDING OFFICER. Seven seconds—2, 1, 0. Time has expired.

Mrs. HUTCHISON. Let me give the last 5 seconds to the Senator from South Dakota.

The PRESIDING OFFICER. Time has expired.

Mr. THUNE. I yield back my 5 seconds. I don't have enough time to distribute equally. It would not be fair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the

time for debate only be extended until 2 p.m., with the time equally divided, with Senators permitted to speak for up to 10 minutes each, with no amendments in order during this time.

Mrs. HUTCHISON. Reserving the right to object, I ask the Senator from Florida, it is 10 minutes and going back and forth. It is not 30 minutes allocated per side; is that correct?

Mr. NELSON of Florida. It is back and forth.

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

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask to be advised when I have used 8 of my 10 minutes.

The PRESIDING OFFICER. The Senator will be so notified.

Mr. BOND. Mr. President, small businesses are the backbone of our economy. They make up 99.7 percent of all employer firms. They employ just over half of all private sector employees. They pay 44 percent of the total U.S. private payroll. They have generated 64 percent—a majority—of the net new jobs over the past 15 years. They create more than half of the nonfarm private gross domestic product, and they hire 40 percent of all high-tech workers.

Small businesses drive this economy. They are also the sector most in need of real health reform that will reduce cost and make it easier to buy insurance. It is estimated that 26 million of the uninsured are small business owners, employees, and their dependents. That is a majority of the uninsured. They continue to struggle to be able to afford health care.

Here are two examples: Jim Henderson, president of Dynamic Sales in St. Louis, has made every adjustment in the book to continue to provide health insurance to his employees. He covered both employees and their families back in the 1980s, but he is now at a point where he can only afford to provide for his employees. He pays 70 percent, his employees 30 percent. Jim is one of the very few small businesses that right now have weathered the storm despite the economy. He wants reform that lowers cost and helps individuals better spend their health care dollars.

Unfortunately, the Democratic health care bills we have seen so far—and I guess we haven't seen all of them—won't help Jim to continue to provide his employees health care.

Kathie and Tom Veasey own True Value Hardware in Wilmington, DE, the hometown of Vice President BIDEN. They employ 28 people, most of whom they consider family. They cover 100 percent of the cost for their employees and half for their families. But they have seen huge increases in premiums over the years, with a 36-percent increase just this year after an employee got sick. Each year, they are forced to shop for health insurance, but they continue to have limited choices due to an uncompetitive market.

Unfortunately, the Democratic bills won't fix the problem or help Kathie and Tom continue to provide their employees health care.

If we really want to get out of this recession, if we really want to address the problem of affordable and accessible health insurance, then the majority party needs to take a hard look at health care reform.

First of all, we need to allow small businesses to go together and purchase health care across State lines so they have true competition and so they can lower costs. We need medical malpractice reform, which would cut $120 billion to $200 billion out of the cost of health care.

However, when we look closely, the bills we see before us do not address the real health care needs, and, in fact, by imposing more taxes—and taxes which the CBO said will be passed from health care companies down to those who are paying the private bills—not only will it make health care less affordable for these small businesses, it will force many of them to drop whatever coverage they have now.

Tax equity is extremely important. An employee of a large corporation or a union member who gets health care premiums paid for by their employer or by their union doesn't have to record them as income. Small businesses, their employees, farmers, and individual purchasers need the same benefit that the employees of large corporations and union members get.

Now, instead of proposing commonsense health care solutions for small businesses, the bills we have seen coming out of the smoke-filled rooms run by the majority leader continue to heap costly new burdens on small businesses that are trying to keep their doors open. More and more it seems small businesses are under attack, and that is what they are telling us. One of the universities that visited me this past week is trying to do something to help small businesses, and I said: What is the attitude? They say: The attitude of small business is that they are under attack by what is being done in Congress and what is being proposed by the administration.

The 2010 budget calls for tax increases on those earning $250,000 or more. For small businesses that are taxed at their personal rate—proprietorships, partnerships, and sub S corporations—these tax increases hit the returns of those small businesses, and they are taxed at the punitive rate. Higher energy taxes on businesses in the cap-and-trade plan will put many small businesses in my part of the country out of work. New taxes and new mandates in the health care bill will be passed on.

Randy Angst of Lebanon, MO, says the following about the Senate bill:

> The new taxes would eliminate roughly half of my profits. It would force me to let employees go, refrain from hiring new employees and prevent me from reinvesting in my business. The mandates would be very harmful and make it much more costly for me to operate my business.

This bill—the last bill we have seen—requires a costly $28 billion new mandate on businesses that do not offer health care. Who pays that mandate? Anybody looking for a job. If you tell businesses they have to spend big money on a mandate, they cannot spend it on hiring new workers. The mandates do nothing to reduce insurance costs, and because they are focused on full-time workers, the mandate gives companies an incentive to classify more of their workers as part time.

Gene Schwartz, with K&S Wire Products in Neosho, MO, says:

> We are in a recession and I am in manufacturing. The legislation would be nothing but detrimental to us. Our workforce is already down 25 percent from last year, and if this bill goes through in its current form, the new taxes and mandates will force me to make further cuts. Also, this bill will increase my costs by further raising my already sky-high insurance premiums.

This bill also includes more paperwork which is costly for a small business. Section 9006 requires that every time a business vendor sells a service or property exceeding $600 to another business, the receiving business must report the transaction to the IRS. That is an enormous new costly paperwork burden that will hit almost every business regardless of how small.

These mandates and regulations disproportionately affect small businesses and come at a high cost. According to the SBA's own Web site, very small firms with fewer than 20 employees annually spend 45 percent more per employee than larger firms to comply with Federal regulations. These very small firms spend 4½ times as much per employee to comply with environmental regulations and 67 percent more per employee on tax compliance than their larger counterparts.

The bill clearly fails to bring down the cost of health care for small businesses. It fails to bring down the cost of health care at all, but it is especially hard on small businesses that can't afford coverage under the current law.

Small business owners from my State have come to me for two decades looking for more affordable ways to make health insurance available. They want to be able to provide insurance for their people. That is why I have long been a champion of small business health care reform.

Does the majority's bill include strong reform that will allow small businesses and the self employed access to more affordable, more accessible health care? No.

Does the bill include protections for small businesses that disproportionately feel the burden of increased government mandates and taxes? No.

In fact, CBO has said that this bill will increase premiums for individuals in the non group market by 10–13 percent.

Premiums for small businesses could increase by 1 percent or be reduced by 2 percent but it is easy math. If a small business cannot afford to provide health insurance now, they will not be able to afford to do so under this bill.

According to CBO, under current law families in a small group plan today pay about $13,300. In 2016, they will pay about $19,200 if this bill becomes law.

That is the wrong direction.

Health care is already too expensive for small businesses. We need to make it cheaper. It should not cost a family $19,200 in 2016 for health insurance.

This bill continues down the path of unsustainable health care costs.

In fact that is one of the main reasons the National Federation of Independent Businesses opposes this bill. They say, ''Small businesses can't support a proposal that does not address their number 1 problem—the unsustainable cost of healthcare. With unemployment at a 26-year high and small business owners struggling to simply keep their doors open, this kind of reform is not what we need to encourage small business to thrive.''

This bill also imposes new taxes and fees, like the $6.7 billion per year tax increase on health insurance companies.

Yes, the majority wants to sock it to the insurance companies.

Well, guess what. The insurance companies are going to pass the costs along to consumers.

Small businesses cannot self-insure, they must purchase products available in the marketplace. That is why CBO has found that increased costs due to fees being passed on to the consumer will be more pronounced for small businesses. NFIB has also said this new tax will fall almost exclusively on small businesses.

This bill just does not help small businesses.

I know the argument my colleagues on the other side offer.

They say they provide a tax credit to help small businesses.

What they don't say is that this is a bait and switch.

First of all, in order to get the full credit, you cannot have more than 10 workers who get paid an average of $20,000.

After that, the credit begins to phase out for each employee you have above 10. It also phases out for each $1,000 increase in average wages above $20,000. If you have 25 employees or you pay more than an average wage of above $40,000, you don't even get the credit.

The real kicker is that the full credit is only available for 2 years after the exchange takes effect. Then that is it.

A small business will either have to offer an employee health insurance—which will really not be any cheaper than it is today—or they will have to pay a fine. Or an employee can go into the exchange as an individual where insurance will cost 10–13 percent more.

Let us examine a realistic situation using Jim from St. Louis as an example.

As I mentioned before, the small business tax credit is filled with thresholds and variations that make it of limited value for the few small businesses that are eligible to claim the credit.

The full value of the credit, which is equal to 50 percent of the business owner's costs, is available for small businesses with 10 or fewer workers that pay their employees an average annual wage of $20,000 or less. But the credit also starts to phase out as the employer adds employees or gives raises, so the entire credit is gone if the employer has 25 or more employees and pays them an average wage of $40,000 or more.

Jim has six employees and his average annual wage is about $39,000. Jim has to ask if he meets the two threshold questions before he can determine whether he gets the tax credit. He passes the first test, since he only has six employees. But Jim's credit is reduced because he has paid his employees too much in wages.

Today, Jim's health care costs are $30,540. If he qualified for the full value of the credit, his annual health care costs would be $15,270—about half of what he pays now.

But the value of his small business tax credit is directly related to wage, so the value of Jim's credit is reduced to $763 based on the formula. That is a small fraction of his health care costs and wouldn't even cover the cost of hiring an accountant to figure out how much the credit is worth.

Because Jim is already so close to the highest average wage to be eligible for any credit at all, this means if he gives his employees a well-earned and well-deserved raise, he will lose the credit altogether.

In these tough economic times, the government is encouraging small business owners like Jim to create more jobs, but if they create too many or pay people too much, then the government will reward them by taking away their small business tax credit.

And even worse, the phase-outs mean that Jim has a disincentive to hire more workers.

So this bill completely misses the mark for small businesses.

Mr. President, our small businesses are struggling. We owe more to this critical sector of our economy which is responsible for half of the private-sector jobs and employees than a bill that mandates taxes and fails to provide real health care reform.

In a recent letter to Senator REID, the NFIB outlines how the bill will adversely affect business owners.

When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business? If a bill increases the cost of doing business or fails to reduce insurance costs, then the bill fails to achieve their No. 1 goal—lower costs.

In both cases, the Patient Protection and Affordable Care Act (H.R. 3590) fails the small business test and, therefore, fails small business.

They further say in the letter:

Despite the inclusion of insurance market reforms in the small-group and individual marketplaces, the savings that may materialize are too small for too few and the increase in premium costs are too great for too many. Those costs, along with greater government involvement, higher taxes and new mandates that are disproportionately targeted at small business and are being used to finance H.R. 3590, create a reality that is worse than the status quo for small business.

It is worse than the status quo.

Mr. President, it is time to stop attacking small business and work on real reform. We should defeat this proposal that does not make insurance more affordable, is a massive government intrusion into health care and that will pay for new entitlement programs on the backs of our small businesses.

Let us put this debate in context. If small businesses do most of the hiring, and we are counting on them to help lead us out of the recession, why would we want to increase their costs of doing business and make it less likely they will hire new workers?

President Obama hosted a Forum on Jobs and Economic Growth last week, where he invited ideas to jump start job growth in our sluggish economy.

Now, he and the majority are considering a new plan to jump-start job growth using ''unspent'' or returned TARP funds. Have they forgotten that it is all borrowed money, and thus deficit spending, in the first place?

Let me submit that the bill before us will hurt job creation.

Before practicing medicine, doctors often take an oath, the Hippocratic Oath, where they promise to refrain from doing harm. I would like to see Congress and the President take the same oath.

How can you on the one hand legislate new taxes on businesses in the name of health reform—coupled with new energy taxes in the name of climate protection—and on the other hand ask businesses to generate new jobs? It cannot be done. Massive tax increases and job creation are mutually exclusive.

Employers who face uncertainty regarding new, oppressive taxes and mandates are not going to want to sink money into new jobs. It is that simple.

We should think about the harm we will do to small businesses through this legislation and instead work on commonsense reforms that have bipartisan support.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from the National Federation of Independent Businesses.

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

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
December 8, 2009.

Senator HARRY REID,
Majority Leader, Hart Senate Office Building, Washington, DC.
Senator MITCH MCCONNELL,
Minority Leader, Russell Senate Office Building, Washington, DC.

DEAR SENATORS REID AND MCCONNELL: As the Senate continues to debate the future of comprehensive healthcare reform, the National Federation of Independent Business,

the nation's leading small business association, is writing in opposition to the Patient Protection and Affordable Care Act (H.R. 3590).

When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business? If a bill increases the cost of doing business or fails to reduce insurance costs, then the bill fails to achieve their No. 1 goal—lower costs.

In both cases, the Patient Protection and Affordable Care Act (H.R. 3590) fails the small business test and, therefore, fails small business. The most recent CBO study detailing the effect that H.R. 3590 will have on insurance premiums reinforces that, despite claims by its supporters, the bill will not deliver the widely-promised help to the small business community. Instead, CBO findings report that the bill will increase non-group premiums by 10 to 13 percent and result in, at best, a 2 percent decrease for small group coverage by 2016. These findings tell small business all it needs to know—that the current bill does not do enough to reduce costs for small business owners and their employees.

Despite the inclusion of insurance market reforms in the small-group and individual marketplaces, the savings that may materialize are too small for too few and the increase in premium costs are too great for too many. Those costs, along with greater government involvement, higher taxes and new mandates that are disproportionately targeted at small business and are being used to finance H.R. 3590, create a reality that is worse than the status quo for small business. The shortcomings of the Patient Protection and Affordable Care Act include:

A New Small Business Health Insurance Tax

Unlike large businesses, which self-insure and find security under the blanket of ERISA, most small businesses are only able to find and purchase insurance in the fully-insured marketplace. The Senate bill includes a new $6.7 billion annual tax ($60.7 billion over 10 years) that falls almost exclusively on small business because the fee is assessed on the insurance companies. CBO's most recent study reinforces those costs will ultimately be passed on to their consumers, leaving the cost to be disproportionately borne by small business consumers in the individual and small-group marketplace whose only choice is to purchase those products or forgo insurance altogether.

A New Mandate That Punishes Employers, Employees and Hinders Job Creation

Employer mandates fail employers and employees in two ways. First, mandates do nothing to address the core issue facing small business—high healthcare costs. Second, mandates destroy job creation opportunities for employees. The job loss, whether through lost hiring or greater reliance on part-time employees, harms low-wage or entry-level workers the most. The employer mandate in H.R. 3590 sets up potentially troubling outcomes for this sector of the workforce. The multiple penalties assessed on full-time workers will most certainly result in a reduction of full-time workers to part-time workers and discourage the hiring of those entrants into the workforce who might qualify for a government subsidy, hardly an outcome that contributes to a greater insured population.

A Poorly-Structured Small Business Tax Credit

As structured, the small business tax credit will do little, if nothing, to propel either more firms to take-up coverage or produce greater overall affordability. Due to its short-term temporary nature and the limitations based on the business' average wage, its benefit is, at best, a temporary solution to the long-term cost and affordability problem. A tax credit that is poorly structured is not going to provide sustainable and long-term relief from high healthcare costs, and the recent CBO finding that the tax credit would benefit only 12 percent of the small business population illustrates its lack of effectiveness.

A Benefit Package That Is Too High a Hurdle for Small Business

NFIB has voiced concern over establishing a benefit threshold that is too high a price tag for small businesses to meet. Small businesses are especially price sensitive. They need purchasing choices that provide the flexibility in coverage options that reflect their marketplace and business needs. If Congress doesn't adjust the actuarial value standards in the legislation, what may be affordable this year may be unaffordable next year. As a result, small business owners will be at risk of having to drop coverage due to cost increases that outpace their healthcare budgets.

Destructive Rating Reforms and Phase-In Timelines That Threaten Affordability for All

NFIB supports balanced federal rating reforms that protect access and affordability, regardless of an individual or group's health status. However, the excessively tight age rating (3:1) in H.R. 3590 will increase more costs than it will decrease, and make coverage unaffordable for the very populations that are most beneficial to the insurance pool—the young and the healthy. Independent actuaries have analyzed the negative impact of such tight bands and have indicated that there will be devastating effects to the long-term viability of a pool without action to correct this rating imbalance.

Additionally, to prevent volatile spikes in insurance premiums, also known as ''rate shock,'' federal rating reforms must be appropriately applied to all marketplaces and phased in over a responsible period of time. If this is not done, then certain plans, including ''grandfathered plans,'' will utilize different rating practices when underwriting risk, which can create adverse selection issues. Those selection problems will have a striking negative impact on the new exchanges—exchanges that are meant to improve, rather than decrease, affordability for small business and individuals.

National Plans That Provide Limited Promise for Success

Leveling the playing field for small business starts with allowing uniform benefit packages to be purchased across state lines. If done right, this can provide a greater security that, as people change jobs and move from state to state, they can keep the benefit plan that meets their healthcare needs. National plans would be particularly helpful for states with smaller populations and where consumers lack a robust marketplace with choice and competition for private plans. Specifically, the state ''opt-out'' language in the Patient Protection and Affordable Care Act would create more disincentives than incentives for carriers to embark on these new opportunities. If the national plan section is not significantly restructured to make national plans a viable option, then these new opportunities will never materialize for small business.

Threatens Flexibility and Choice for Employers and Employees

Small employers need more affordable health insurance options and new alternatives for employers to voluntarily contribute to individually-owned plans. Provisions also need to be structured to insure that options are widely available to both employers and employees. The simple cafeteria plan language in H.R. 3590 excludes the owners of many ''pass-through'' business entities from participating in these arrangements. If owners are unable to participate in the plan, they will be less likely to provide insurance to their workforce. Finally, small business needs the freedom and flexibility to preserve options that are already proven to work. Prohibiting the use of HSA, FSA and HRA funds to purchase over-the-counter medications, along with the $2,500 limit on FSA contributions, diminishes that flexibility and threatens to further limit the options employers have to provide meaningful healthcare to their employees.

New Paperwork Costs on Small Businesses

The cost associated with tax paperwork is the most expensive paperwork burden that the federal government imposes on small business owners. The Senate bill dramatically increases that cost with a new reporting requirement that is levied on business transactions of more than $600 annually, leaving small business buried in paperwork and increasing their paperwork compliance expenses.

An Unprecedented New Payroll Tax on Small Employers

Since its creation the payroll taxes that fund the Medicare programs have not been wage-based and are dedicated specifically to funding Medicare. The Senate bill changes the nature of the tax and creates a precedent to use payroll taxes to pay for non-Medicare programs.

The Absence of Real Medical Liability Reform

NFIB strongly supports medical liability reform as a means to both inject more fairness into the medical malpractice legal system, and to reduce unnecessary litigation and legal costs. Taking serious steps to adopt meaningful medical liability reform is a significant step toward restoring common sense to our medical liability litigation system. It also is especially critical to improving access to healthcare for those living in rural areas, where it is becoming increasingly difficult for those in need to locate specialists such as OB/GYNs and surgeons.

The Creation of a New Government-Run Healthcare Program

A government-run plan will drive the private healthcare marketplace out of business. Private insurers will be unable to compete in a climate where the rules and practices are tilted in favor of a massive government-run plan. This means millions could lose their current coverage. This will decrease choice and increase costs. On both accounts, the government-run plan will leave small business with a single option—the government-run plan, which is the exact opposite outcome small businesses want from healthcare reform.

There is near universal agreement that, if done right, small business has much to gain from healthcare reform. But if it is done wrong, then small business will have the most to lose. The Patient Protection and Affordable Care Act, which is short on savings and long on costs, is the wrong reform, at the wrong time and will increase healthcare costs and the cost of doing business. NFIB remains committed to healthcare reform, and urges the Senate to develop common sense solutions to lower healthcare costs while ensuring that policies empower small

business with the ability to make the investments necessary to move our economy forward.

Sincerely,

SUSAN ECKERLY,
Senior Vice President, Public Policy.

Mr. BOND. Mr. President, I have a couple of other comments I wish to add.

We have now learned that there is a new proposal coming out of the back rooms—the smoke-filled rooms. Every time something new is thrown up on the wall, we stand around with a great deal of interest to see whether it sticks. When you look at this one, I don't believe it sticks. I think it stinks.

If you read the Washington Post's lead editorial today, its headline is ''Medicare sausage? The emerging buy-in proposal could have costly unintended consequences.''

Mr. President, I ask unanimous consent to have printed in the RECORD, after my remarks, the Washington Post article.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BOND. At the end of the article, it says:

The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

To say that it moves toward a public takeover is confirmed by one of the most outspoken backers of the public option, the one most interested in getting public control or governmental control of all of health care, New York Representative ANTHONY WEINER. He is quoted in Politico today as having hailed the expansion of Medicare as an unvarnished triumph for Democrats like himself who have been pushing for a single-payer run health care system. In the article, he says: ''Never mind the camel's nose, we've got his head and his neck in the tent.''

I think that is clear. Trying to expand Medicare will almost assuredly drive all the private plans out of the market. Why? Medicare pays 80 percent of the cost of hospitals and less for doctors, and they have to make up the rest of their cost by charging privately covered patients more money. It will raise the cost so that private health care can no longer succeed.

EXHIBIT 1

[From the Washington Post, Dec. 10, 2009]

MEDICARE SAUSAGE?

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour ''compromise'' on health-care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus (D-Mont.) originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last-minute introduction of this idea within the broader context of health reform raises numerous questions—not least of which is whether this proposal is a far more dramatic step toward a single-payer system than lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out, but the basic notion is that uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead to purchase coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses. So would near-seniors who buy in to Medicare get Medicare-level benefits? If so, who would tend to purchase that coverage? Sicker near-seniors might be better off purchasing private insurance on the an exchange. But the educated guessing—and that's a generous description—is that sicker near-seniors might tend to place more trust in a government-run program; they might assume, with good reason, that the government will be more accommodating in approving treatments, and they might flock to Medicare. That would raise premium costs and, correspondingly, the pressure to dip into federal funds for extra help.

In addition, the insurance exchanges proposal is being increasingly sliced and diced in ways that could narrow its effectiveness. Remember, the overall concept is to group together enough people to spread the risk and obtain better rates. But so-called ''young invincibles''—the under-30 crowd—would already be allowed to opt out of the regular exchange plans and purchase high-deductible catastrophic coverage. Those with incomes under 133 percent of the poverty level would be covered by Medicaid. The exchanges risk becoming less effective the more they are Balkanized this way.

Presumably, the expanded Medicare program would pay Medicare rates to providers, raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out, and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BOND. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, over the past several months, I have come to the floor of this body many times to speak about the urgent need for comprehensive health care reform. I have said that our bill must accomplish three goals in order to be effective: It must bring competition to the insurance market—competition to the insurance market—it must provide significant cost savings to ordinary Americans, and it must restore accountability to an industry that has run roughshod over the American public for far too long. I would like to focus on this last point with my remarks today.

We need real accountability in the insurance market. After almost 100 years of debate about health care reform, this Senate stands on the verge of making history. There are many good elements in the legislation that is before us today, but without accountability, any reform measure would be toothless and inconsequential. If we don't give the American people a chance to hold their insurance providers accountable, quality care will continue to elude certain segments of our population. We can't stand for this any longer. We must prevent insurance companies from discriminating against people by charging them higher rates or denying coverage because of certain conditions.

Everyone knows it is hard for uninsured patients to get quality medical care. Under the current law, in the case of catastrophic injury or illness, anyone admitted to the emergency room should receive equal treatment to save their life. Shockingly, Harvard researchers have found that this is not the case. They examined 690,000 individual cases over 4 years and found that uninsured patients are nearly twice as likely to die in the hospital as patients with similar injuries who do have insurance. And even after these results were adjusted to account for age, race, gender, and the severity of the injuries, they found that the uninsured were still 80 percent more likely to die than those with health coverage, including Medicaid.

I just had a delegation of physicians in my office. I listened to their comments in reference to wanting us to make sure we passed a health care reform bill this session. One of those physicians began to relate to me the story of his brother, who was employed but was without health insurance. At 41 years old, he died of cancer because he waited too long to try to get treatment. And because he was uninsured and no one would treat him, that took his life at the young, tender age of 41.

So this new evidence is conclusive, and it is truly disturbing. The poor and the uninsured suffer disproportionately under our current system. In the most advanced country on Earth, there is no excuse for this stunning inequality.

Big corporations know there is a lot of money to be made out of the poor and they do not hesitate to rake in large profits and their expenses. These companies exploit minor technicalities

to deny coverage to people who are sick. They use gaping holes in the system to refuse treatment for those with certain conditions. That is because they do not see patients as real people who need help, they see them as numbers in the corporate ledger. They see risk and expenses and lower dividends for their shareholders. That is why we need to prioritize patients over profits. That is why we need to extend coverage to more people and make these companies accountable for the first time in decades.

If we pass insurance reform with a strong public option it would be illegal to deny coverage because of a preexisting condition. For the first time in many years, ordinary Americans would be able to shop around if they are paying too much, or they are not being treated fairly. Costs would come down, coverage would improve, and lives would be saved.

Let us pledge ourselves to this cause. Let us make sure every American can get the treatment they need in the emergency room regardless of their income, need, or the insurance coverage they have. We must not fall short in this regard. We must not settle for anything less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, my friends on the other side of the aisle have consistently stated that this 2074-page Reid bill, according to the Joint Committee on Taxation, is a net tax cut. I want to put emphasis throughout my remarks on the word ''net.''

Yesterday a chart was used to illustrate this point. This chart had multiple bars with dollar figures. For example, in 2019 the chart showed a $40.8 billion net tax cut. My Democratic friends said this number came from the Joint Committee on Taxation, a very responsible, intellectually honest group.

Unfortunately, the chart my friends were using was not entirely clear on how they came up with this net tax cut for Americans. So it was natural for most of the fellow Senators and the country at large to wonder how my Democratic friends got this number. They said show me the data.

To clear up any confusion, right here is the Joint Committee on Taxation table that the Democrats relied on to claim that the Reid bill results in a net tax cut. Here it is. We can see the negative $40,786, for example. That is the figure that was used. As the chart indicates, these dollar amounts are in the millions, so $40,786 million. The Joint Committee on Taxation says it this way: This means negative—the negative mark there—negative $40.8 billion.

My friends on the other side unfortunately did not explain what was going on here. It appears my friends simply made an assertion that they hoped many of us and those in the media would believe. But I cannot let my Democratic friends get off the hook this easily. Why? Because the entire story is not being told, so let me take a moment to explain.

First, in simplest terms, where you see negative numbers on this chart, the Joint Committee on Taxation is telling us there is some type of tax benefit going to the taxpayers. So this group and these groups here, wherever there is a negative here, those are tax benefits to the benefit of the taxpayers.

For example, families making $50,000 to $75,000 have a negative of $10,489 in their column. This means the Joint Committee on Taxation is telling us that this income category is receiving $10.4 billion in tax benefits.

I hope you will listen closely. When we see a negative number on this chart, the Joint Committee on Taxation tells us there is a tax benefit so, conversely, where we see a positive number the Joint Committee on Taxation is telling us that these taxpayers are seeing a tax increase. I have actually enlarged those numbers, the number of tax returns and the dollar amounts where there is a positive number for individuals and families. Again, these positive numbers indicate tax increase.

My friends have said that all tax returns in this chart are receiving a net tax cut. If that were so, why aren't there negative numbers next to all of the dollar amounts listed? Because not everyone in this chart is receiving a tax cut, despite what my friends have said. Quite to the contrary, a group of taxpayers is clearly seeing a tax increase and this group of taxpayers in middle income is seeing tax increases.

I didn't come down to the floor to say my friends on the other side of the aisle are wrong. After all, you can see here the negative $40,786 million figure they used is right there, out in the open. What I am doing is clarifying that my Democratic friends cannot spread this $40.8 billion tax cut across all the affected taxpayers on this chart, and then say that all have received a tax cut.

You want to know why. Because this chart, produced by the nonpartisan Joint Committee on Taxation, shows that taxes go up for those making more than $50,000 and families making more than $75,000. It is right here in the yellow, as you can see.

The numbers obviously do not lie. I say the nonpartisan Joint Committee on Taxation, I think everybody agrees, is very intellectually honest. So let me give you my read on what the Joint Committee on Taxation is saying here as evidenced by the figures on the chart.

First, there is a group of low- and middle-income taxpayers who clearly benefits under the 2074-page bill that is before the Senate. They benefit from the government subsidy of health insurance. This group, however, is relatively small.

There is another much larger group of middle-income taxpayers who are seeing their taxes go up due to one or a combination of the following tax increases: the high-cost plan tax increase, which actually is a brandnew tax; the medical expense deduction limitation, which used to be 7.5 percent, and now before you can deduct you have to have 10 percent of your income be medical expenses or you don't deduct anything, so that is a tax increase; and then a Medicare payroll tax increase, where everybody is going to pay—well, everybody over a certain income is going to pay an additional half a percentage point or, if you are self-employed, pay 1 percent more of payroll tax. In general, this group is not benefiting from the government subsidy. After all, how can a taxpayer see a tax cut if they are not even eligible for the subsidy?

Also, there is an additional group of taxpayers who would be affected by other tax increase provisions in the Reid bill that the Joint Committee on Taxation could not distribute in the way people are distributed on this chart. These undistributed tax increases include, among others, the cap on Federal savings—flexible savings accounts. Then there is a tax on cosmetic surgery.

My friend from Idaho, the author of the amendment before us, Mr. CRAPO, recently received a letter from the Joint Committee on Taxation stating that this additional group exists and many in this group will make less than $250,000 and, hence, have a tax increase that is not accounted for here and also a tax increase if they are under $250,000. That is a violation of the President's promise in the last campaign that nobody under that figure would get a tax increase—only people over $250,000.

So you see, my Democratic friends cannot, No. 1, say that all taxpayers receive a tax cut—I have proven that here—and, No. 2, say that middle-income Americans will not see a tax increase under the Reid bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, some of the charges from the other side of the aisle have taken us down some detours to essentially try to distract us from some of the main points of this legislation. I want to take a few moments to discuss one of the key features of the bill and that is insurance market reform.

The bill would change the way insurance companies do business in America. Sometimes I think this reform is part of the reason some on the other side are fighting this bill so hard. Our bill will end the practice, widespread today, of insurance companies denying coverage altogether, or charging someone an exorbitant amount of money if they have some preexisting condition, something in their health history which is an issue. Our bill would make those changes right away. They start going into effect in 2010. That is, the prohibition on companies denying coverage for preexisting conditions or

health care stats, and right down the list, would take effect right away, 2010.

We all have countless numbers of examples, either directly or through friends or relatives of small insurance companies that either denied insurance coverage or you have to pay much greater increase in premiums because of a preexisting condition, whatever it may be, of something. It is wrong, flat, outright, 100 percent wrong. This bill stops that, stops those practices by insurance companies.

I think it is important that we not get sidetracked by some other very important matters but keep focused on what this legislation does. It reforms the health insurance industry.

What else does our bill do with respect to reforming the health insurance industry? It would prohibit lifetime limits on payments to people who get sick. Right now, insurance companies limit how much they pay out to people when they get sick. They have lifetime limits, annual limits. No matter how sick you are, some catastrophic coverage you have, the insurance company says: Sorry, we are putting a limit on it. That is not right. Sometimes people have conditions that require a lot more attention, more hospitalization, more attention by doctors. Our legislation would prohibit lifetime limits on payments to people who get sick.

Our bill also prohibits unreasonable annual limits. These are limits that insurance companies impose on policyholders. This reform would apply in both the group market and the individual market. What does that mean, that gobbledygook. It implies that for everybody, whether you are an individual or whether you are working for a company, this would take effect 6 months after enactment. That is pretty important. A lot of people have insurance policies with limits, where the insurance company will only pay so much to an individual or during the person's lifetime or in any year. It is not right because some conditions require a significant increase in payments or coverage for the person.

Our bill would require any insurance plan that provides dependent coverage for children to continue to make that coverage available until the child turns age 26. We know that is a problem today. Often, in a State, once a child turns 21 or 22, that person can't find health insurance. In today's economic recession, with unemployment so high, it is kind of hard for kids to find jobs, and that is how they would otherwise get their health insurance. We say family coverage covers your child until the child turns age 26. This reform would take effect 6 months after enactment.

In addition, when the exchanges are up and running, our bill would prohibit insurance companies from discriminating against consumers because of health status, generally. Sometimes the insurance industry says it is not a preexisting condition, but you have not been healthy lately so we will not give you insurance. No longer can insurance companies refuse to sell or renew policies because a person gets sick. If you pay your premiums, the insurance company has to renew your coverage.

When the exchanges are up and running, the legislation before us today would limit the ability of insurance companies to charge people much more just because of their age. That is what they do today. Sometimes, depending upon the State, the insurance company is able to charge somebody much more for the same coverage because of that person's age. Right now it is not at all unusual for insurance companies to charge more than five times as much just because a person is, say, age 55. Our bill would prohibit insurance companies from charging more than three times as much because of age. In some States, there is no limit whatsoever. In my State of Montana, we have no limit. Some States have five. We are saying down to three.

When the exchanges are up and running, our bill would prohibit insurance companies from charging women more than men. Think of that. Some insurance companies charge women more than men. That is not right. This is also a widespread practice among insurance companies that is charging women more than men. It is just plain wrong. Our legislation would stop that.

Health insurance reform also means real insurance market reform. It means real change in the way insurance companies do business. No longer will insurance companies be able to build their business by cherry-picking only the healthiest and the youngest. That is what they do today, especially for individuals, to some degree, in smaller organizations. No longer will they be able to insure only those who don't need insurance. We bring real reform. It would make insurance much more fair, and that is literally a matter of life and death.

As a recent Harvard study reported, people without insurance are 40 percent more likely to die prematurely than people with private insurance. Think of that. People without insurance are 40 percent more likely to die prematurely than people with private insurance. Tens of thousands of Americans die each and every year because they do not have insurance. Is that America? That doesn't sound like the United States we are all so proud of, where we allow tens of thousands of Americans to die each and every year simply because we have not set up a system for them to have health insurance. That is something we stop in this bill.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I have said, for the last 2 days, I was going to speak on the Dorgan amendment, a bipartisan amendment to allow the importation of drugs into the United States. I haven't done it until now, so I am glad to rise in support of this bipartisan amendment to add provisions of the Pharmaceutical Market Access and Drug Safety Act to this bill. That legislation is the result of a collaborative effort by Senators DORGAN, SNOWE, MCCAIN, and this Senator to finally make drug importation legal.

I have, for a long time, been a proponent of drug reimportation. In 2000, 2002, and 2003, I supported an amendment permitting the importation of prescription drugs into the United States from one country, Canada. This amendment is much broader than only Canada.

In 2004, the late Senator Kennedy and I worked together on a bill that would authorize drug importation, but it did not survive the partisan politics of this Chamber. I then introduced my own comprehensive drug importation bill in 2004. That was S. 2307, the Reliable Entry for Medicines at Everyday Discounts Through the Importation with Effective Safeguards Act. The REMEDIES Act is what the acronym finally spells out. In 2005, I combined my bill with a proposal sponsored by Senators DORGAN and SNOWE. In 2007, we reintroduced a version of that legislation with the hope that our combined efforts would finally lower the cost of prescription drugs for all Americans. That is what we are still working together to do this very day. I thank Senator DORGAN for his leadership.

This time around, I should be confident that this effort will finally pass. Historically, Democrats claim to be champions of holding the big pharmaceutical companies accountable. Now we have a Democratic supermajority in the Congress and a Democratic President who has supported drug importation in the past. I am not as confident as maybe I should be. That is because the White House has participated in some back-room negotiations since the last time this legislation was brought before the Senate and then Senator Obama supported it. Behind closed doors, the Democratic White House found new friends in the pharmaceutical industry. Last summer, the head of the pharmaceutical lobbying group bragged that drug manufacturers had negotiated a ''rock-solid deal''—those are their words—with the present administration.

An article in the New York Times detailed the administration's deal with big drug companies. This quote comes from the New York Times:

> Foreseeing new profits from the expansion of health coverage, big drug companies are spending as much as $150 million on advertisements to support the President's plan.

But in 2008, when President Obama was campaigning for the position he now holds, he promised that:

We'll take on drug and insurance companies, hold them responsible for the prices they charge and the harm they cause.

Certainly, the President knows that a great way to hold drug companies accountable is to allow drug importation. In fact, in 2004, when he was a candidate to be a Member of this Chamber, he challenged his opponents to support drug importation. He said at that time:

I urge [my opponent] to stop siding with the drug manufacturers and put aside his opposition to the re-importation of lower-priced prescription drugs. . . .

But, unfortunately, it has been reported that during backroom negotiations at the White House, the big pharmaceutical companies have convinced the President to drop his strong support for drug importation.

The New York Times reports that:

On July 7—

Meaning this year—

Rham Emanuel, [President] Obama's chief of staff . . . assured at least five pharmaceutical companies during a White House meeting that there would be no provision in the final health care package to allow the re-importation of cheaper drugs. . . .

I thought we were going to hold drug companies accountable. I thought health care reform was supposed to drive down the cost of health care, including the cost of prescription drugs for all Americans. The Dorgan amendment is a commonsense, bipartisan approach to achieve both of these goals. Drug importation achieves these goals without imposing arbitrary fees, and without flexing the muscles of the Federal Government.

I have always considered this a free trade issue. I know most people see it as a health issue, and it is a health issue. But I come at it from the point of view that there are only a couple items Americans cannot buy in this country from anyplace else in the world they want to buy it. One class is pharmaceutical drugs, the other class is Cuban——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRASSLEY. Mr. President, I ask unanimous consent for 4 additional minutes and that it come off the next block of time from our side.

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

Mr. GRASSLEY. So I see this as a free-trade issue. Imports create competition and keep domestic industry more responsive to consumers. In the United States, we import everything consumers want. So I ask again, why not pharmaceuticals? That is why it is a trade issue for me as much as a health issue. Consumers in the United States pay far more for prescription drugs than those in other countries. If Americans could legally and safely access prescription drugs outside the United States, then drug companies would be forced to reevaluate their pricing strategies. They would no longer be able to gouge American consumers by making them pay more than their fair share for research and development.

It is true that pharmaceutical companies do not like the idea of opening up America to the global marketplace. They want to keep the United States closed to other markets in order to charge higher prices here.

Based on the reports I just read, it seems that the White House has already sided with the drug manufacturers and promised them the ability to continue to gouge American consumers, otherwise known as the status quo.

The debate is not over. With the Dorgan amendment, prescription drug companies will be forced to be competitive and establish fair prices in America. The drug companies will try to find loopholes in order to protect their bottom line.

The Dorgan amendment would make such action illegal. It would not allow manufacturers to discriminate against registered exporters or importers. It would prohibit drug companies from engaging in any actions to restrict, prohibit, or delay the importation of a qualifying drug.

The Dorgan amendment would give the Federal Trade Commission the authority to prevent this kind of abuse. It develops an effective and safe system that gives Americans access to lower prices. Our effort goes to great lengths to ensure the safety of imported drugs. The Dorgan amendment requires that all imported drugs be approved by the FDA. It puts in place a stringent set of safety requirements that must be met before Americans can import drugs from that country.

The amendment requires all exporting pharmacies and importing wholesalers to be registered with the FDA and inspected. It gives the authority for the FDA to inspect the entire distribution chain for imported drugs. It sets very stringent penalties for violations of the safety requirements in this bill, including criminal penalties and up to 10 years imprisonment.

We need to make sure Americans have even greater, more affordable access to innovative drugs by further opening the doors to competition in the global pharmaceutical industry.

If my colleagues on both sides of the aisle are serious about bending down the cost curve of health care inflation—and doing it in that direction, the right direction—then they will support the Dorgan amendment, a bipartisan amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Thank you, Mr. President.

I echo the comments of the senior Senator from Iowa. He is exactly right about the Dorgan amendment. There are a lot of reasons, as he pointed out, why the Dorgan amendment makes sense for the American people.

It makes sense for taxpayers because we pay way too much for prescription drugs as taxpayers. It makes sense for government programs—whether it is TRICARE, whether it is Medicare, whether it is Medicaid, whether it is the Federal Employees Health Benefits Program. It makes sense for small businesses and large businesses alike who are paying too much for prescription drugs. And it makes sense for seniors and all Americans who are paying too high a price for prescription drugs out of their pockets. It also makes sense in terms of, sort of, internationally as to what we do on the buying and selling of prescription drugs.

I was part of these discussions in the House where we had the same amendment. We would pass it, and then it would die in the Senate, or things would happen in the conference committees or whatever, where the drug companies really did exert their influence over the Congress and with the President during the Bush years.

But one of the arguments they always make is to question the safety of these drugs, that these drugs coming from Canada or these drugs coming from France are not safe, as if they did not have a food and drug administration as efficient and effective as ours in terms of protecting the public.

But what sort of shoots a hole in that argument is how many American drug companies—over and over and over, and in increasing numbers—how many American drug companies are importing ingredients especially from China.

Senator Kennedy, 1½ years or so ago, asked me to chair an oversight hearing with the Health, Education, Labor, and Pensions Committee on this issue of what is happening when these American drug companies are increasing their outsourcing of jobs, particularly to China. It was in response to what happened in Toledo, OH, among other places, where a number of Americans died because of contaminated heparin.

Heparin is a blood thinner drug that is a very important drug to keep people healthier and live longer and live better. But some of the ingredients for heparin were made in China, and the drug company is not able to trace back, if you will, the supply chain, where they are getting their ingredients. They know they get them from China. The American drug companies—whether it is Pfizer or another drug company—when they outsource their production to China, may know where the plant is that puts all these ingredients together, but they cannot trace back—or at least they will not tell us or cannot tell us—all their ingredients. So they may get this ingredient from Wuhan, and this ingredient from Shanghai, and that ingredient from a rural outpost in Hebei or Henan Province, but they cannot tell us exactly where they come from. So no wonder these drugs are not as safe as they should be.

So if they were interested in drug safety, it would not be that they would stop us from drug importation because we know if we buy it from France or Canada or Germany, they have a food and drug agency, an FDA equivalent,

that keeps their drugs safe. They know that. It is all about protecting their profits. There is simply no doubt about that. Their profits get to be bigger because they make some of these drugs in China.

So let's not have it both ways. Let's not say we cannot import drugs safely into this country—when they are exporting jobs, as so many other industries are doing, to China, exporting jobs to little villages where they manufacture these ingredients. They end up in America's medicine cabinets. Let's not talk out of both sides of our mouths, as the drug industry is doing.

A couple other comments about the underlying bill and how important it is we move on this legislation. There are more than 400 people every day—in Defiance, OH, in Gallipolis and Zanesville and Saint Clairsville and Cadiz and all over my State—400 people every single day who lose their insurance.

Every day my friends on the other side of the aisle delay, every day they offer amendments and then will not let us vote on them, and stand up and object to even voting on things, every day they try to filibuster, every day they put up another hurdle, 400 more people in my State lose their insurance. It is about 1,000 people in this country every week—1,000 people in this country every week—who die because they do not have health insurance. It is 45,000 people a year, so 900-some people every week in this country die because they do not have health insurance.

A woman with breast cancer without insurance is 40 percent more likely to die than a woman with breast cancer with insurance. I heard President Bush, in Ohio, maybe a couple years ago, say every American can get health care. They can go to an emergency room. Well, a woman suffering from breast cancer, who did not get a mammogram because she could not afford it, did not get the kinds of tests she should have because she did not have a doctor she could afford to pay, and because she did not have insurance—the emergency room does not do those kinds of things. Even if she got sick, the emergency room would not take care of her until she was almost dead. Then she could go into the emergency room and they will take care of her in her last few days or her last few weeks of life.

That is not the way we should do health care. This kind of delay, hearing these kinds of delaying actions, these kinds of delaying tactics, these kinds of ''we can't pass this,'' ''chicken little,'' ''the sky is following''—every day we have Republicans coming down here saying ''the sky is falling,'' and it simply is not.

I want this bill to be bipartisan. I am a member of the Health, Education, Labor, and Pensions Committee, as is my friend, Senator ROBERTS from Kansas, who is in the Chamber. During that markup in June and July, we passed 160 Republican amendments. Some of them were major, some of them were not so major. But this bill had a bipartisan flavor to it.

It is only on the big questions—the role of Medicare, the role of the public option—some of the bigger questions, where there are philosophical differences; the same reasons that back in the 1960s, when Medicare passed, it was passed almost only by Democrats because Republicans did not agree there should be a major role in government in our health care system.

So it is a philosophical difference. It is not so much partisan as that. So even though there are many good Republican ideas in this bill, on the big questions there is that difference.

So, Mr. President, I think it is so important—when I hear that many Ohioans, every day, lose their insurance, this many Americans, every week, die because they do not have insurance—to pass this legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. BROWN. I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk continued with the call of the roll.

Mr. ROBERTS. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator is advised the Senate is in a quorum call.

Mr. ROBERTS. I will try it again. I thought it was worked out.

I ask unanimous consent for the second time that the order for the quorum call be rescinded so I may be—

The PRESIDING OFFICER. Is there objection?

Mr. ROBERTS. So I may proceed for 15 minutes.

Ms. CANTWELL. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERTS. Is this a bipartisan objection, I would ask the Presiding Officer?

The bill clerk continued with the call of the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent that over the next 30 minutes, the time be equally divided with 15 minutes for the majority and 15 minutes for the minority for debate purposes only.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas is recognized.

Mr. ROBERTS. I thank the President. I rise today to talk about health care in general and the latest proposal to come out in the form of the so-called compromise, if there is no objection. I wish to talk about the latest proposal to come out from what some of us have determined is the majority leader's behind-closed-doors effort for the compromise on the government-run health insurance plan. I will admit very readily I do not know all of the details of this plan, although I hope to in the very near future. I think most of my friends across the aisle are in the same boat and we are all getting our information from the Post, the Times, and the rest of the catch-up media.

But this is the compromise, as I understand it: The majority leader will drop the government plan in exchange for two major policies: first, a national insurance plan run by nonprofit insurance companies and supervised by the Office of Personnel Management; and second, a massive expansion of Medicare to tens of millions of people age 55 and older.

Putting aside the first policy which, frankly, I don't understand how it could possibly work, I cannot believe anyone is seriously considering expanding Medicare as a compromise to the government-run or so-called public option. It doesn't take a genius to see that a huge expansion of Medicare is, as one single-payer advocate in the House dubbed it, ''the mother of all public plans,'' further quoting: ''An unvarnished and complete victory'' for advocates of single-payer health care and socialized medicine. That is a very strong quote, but that is the way it was.

In other words, this is not a compromise to the public option—it is worse. Maybe we need to remind ourselves why moving toward more government control of our health care system is such a bad idea. We need look no further than our current government-run insurance plans, Medicare and Medicaid, for examples. Government-run insurance plans currently control nearly half of the market. With the government's power, they have the ability to set payment levels for doctors and hospitals and home health care agencies and even hospices and all other health care providers, not based on the actual costs those providers incur when treating patients, but instead based on whatever arbitrary spending target the budget crunching bean counters determine the government can afford.

To paraphrase one observer: These types of global government budgets transform patients from sources of revenue over which providers compete to attract and serve, into sources of cost for the government to avoid, shunt off, and treat as cheaply as possible. That is not right. This has clearly been the result in the Medicare Program, often heralded as the best of all of the government's health care programs.

So to review: Medicare has been on an ever shrinking path toward bankruptcy for years. The latest reports

from the Medicare trustees say the hospital insurance trust fund will go broke within the next 8 years. The program has $38 trillion in unfunded liabilities. How has the government responded? By severely underpaying Medicare providers and denying Medicare patients' claims. Medicare only pays doctors around 80 percent of their costs, and hospitals even lower.

Privately insured Americans pay a hidden tax of nearly $90 billion a year to make up for these underpayments. But even that hasn't been enough to keep some providers in business and able to afford to accept Medicare patients. Medicaid is even worse. Medicare is also a huge denier of claims. I think many of my colleagues would be surprised to hear that Medicare denies claims more often than most private insurance companies. In fact, in 2008, Medicare had the highest percentage and the highest number of denied claims in the country. Think about that when you hear some Senators demonize private insurance companies for denying claims. Medicare is even worse.

This bill already exacerbates these Medicare problems by cutting almost $½ trillion from this already woefully underfunded program. Now we are considering adding even more people. This is a sinking ship with no lifeboats, and we are adding more folks to the deck.

By underpaying health care providers and denying claims, Medicare already rations health care. Expanding Medicare to tens of millions of new people as envisioned by this compromise we hear about will take government rationing to a whole new level. Because as the government takes over more of the health care system and becomes responsible for more of the increasing costs of that system, the only way it will be able to afford this commitment is to ration health care. As I have said countless times before, this bill gives the government all the tools it requires to ration care.

From Comparative Effectiveness Research, to the independent Medicare advisory board, to the new powers granted to the Centers for Medicare and Medicaid Services, CMS and the U.S. Preventive Services Task Force, this bill puts the rationing infrastructure into place. The U.S. Preventive Services Task Force's recent change to its guidelines pertaining to mammograms was a perfect illustration of how your health care will be rationed under this bill. For those who don't know, the task force recently reversed its longstanding advice that women should start getting regular mammograms to detect breast cancer at age 40.

Why is this important? Because under this bill, the recommendations of this task force will carry the weight of law for both government-run—i.e., Medicare—and private insurance. If the task force recommends a particular treatment or a particular set of patients, then Medicare and private insurers must cover it. If it doesn't, they don't.

What do you think will happen to treatments and tests that don't get the task force's recommendation? They simply will not be covered. That is how the government will hold down health care costs, by rationing access to treatments and tests such as mammograms.

Some government-controlled health care systems such as the one that exists in the United Kingdom are much more explicit about rationing. The rationing in this bill, quite frankly, is not as honest. Since Americans would never stand for the government explicitly rationing their health care, the authors of this bill had to come up with a pseudoscientific justification for rationing, and that justification is the main feature of this bill: Comparative Effectiveness Research, or CER.

Very generally, it is very simple. CER is the comparison of two or more treatment options to see which one is better. Sounds great, right? Except when you realize that CER is not being conducted for the purpose of improving patient care but for the purpose of saving the government money instead.

I read the CER section of the bill and I remember my amendment on CER and the distinguished chairman of the HELP Committee was very helpful, and said he would study it overnight. Because I had the word ''prohibit'' in the amendment we got into a great debate on what prohibit means. I thought it was pretty clear but, unfortunately, that was dropped from the bill, from the HELP Committee bill. We tried that again in Finance. It didn't work. We would like to try it again if we have time.

This bill establishes a CER institute to conduct this research for the purpose of justifying government rationing of health care. CER will be the golden ring of rationing.

So what we have here is a recipe for disaster: a bill that already significantly weakens the woefully underfunded Medicare Program and lays the foundation for a rationing infrastructure, plus a ''compromise'' that apparently will pour millions of more people into the program.

In the no-holds barred search for a proposal that can attract 60 votes, I don't understand how any Senator can support this idea.

This is just another Trojan horse, another incremental step toward the single-payer system. Again, as one House Member in the leadership observed:

> This gets not only the camel's nose under the tent, but his whole head and neck, too.

It is another step toward socialized medicine and increased government rationing of health care.

The American Hospital Association, American Medical Association, and the Federation of American Hospitals are finally taking notice of the advice they are receiving from their State and local hospitals and doctors. They, finally, have seen the light and have come out in opposition to this deal at least.

I urge my friends across the aisle to resist this latest misguided attempt at deal making. The consequences are too dangerous.

There is an awful lot of cactus in this health care world. I don't think we need to sit on each and every one of them.

Before yielding back my time, I truly thank the distinguished Senator from Connecticut for his comity and allowing me to make these debate comments. I thank the acting Presiding Officer in his effort to be bipartisan.

I think we will have a sad day in this body if one side or the other gets into a situation where we do not allow people to make remarks on not only the pending bills and specifically on the general issue of health care.

Mr. DODD. If my colleague will yield, he raises an interesting point. I am going back several months. As we get older, it is hard enough to remember what happened yesterday. The Presiding Officer is on the committee, as is my colleague from Vermont. There was a debate over the word ''construed'' to prohibit. I remember that word, talking about various practices. As I recall, the compromise that was offered either by my friend and colleague from Kansas or some other member was to strike the word ''construed,'' so nothing would be prohibited. I still, to this day, am not quite sure why we should not accept language that eliminates the word ''construed.'' That went on for about a day back and forth. I invite my colleague, again, to maybe get our staffs together and talk about that. I don't think he is wrong about this. I think it is good to have best practices. If a physician and patient decide, as a certainty, it is essential for that patient, then you should not be prohibited from doing that. As I recall, the debate was over the word ''construed.'' I don't want to take time from the Senator from Vermont.

Mr. ROBERTS. Mr. President, I agree with the Senator. I point out that in the specifics of the bill, I think it says shall not, in regard to cost containment on Medicare A and B, but the rest is encouraged. That is where we get into problems because CER is the blueprint on how we allot health care dollars in this country.

I might mention to the Senator, I had a chart on what CER recommended, and it had a figure of a humpback whale and how much money we would be devoting to different age groups. If you are 60—and, by the way, the average age of the Senate is 62—you are out of luck. If you are 70, you better get something fixed real quickly before this bill passes. That is my point. I thank the Senator for his comments.

Mr. DODD. Mr. President, I thank Senator ROBERTS for his amendment in the HELP Committee to protect patients by preventing rationing of health care. That is in the Senate bill. That was language we adopted, I say to my friend from Vermont. It was a Roberts amendment that was adopted in

our markup that prohibits any rationing of health care in our bill. I thank him for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Mr. President, when Republicans controlled the White House, the Senate, and the House, they had the opportunity to do something about the health care disaster in America. From 2000 to 2008, some 7 million Americans lost their health insurance. Where were the Republicans? During that same period, health care costs soared in America. Small businesspeople found themselves unable to provide health care to their workers.

Where were our Republican friends? I am delighted they are down on the floor every single day criticizing an effort to try to improve the situation. But it might have been a little better if they were here 8 years ago, bringing forth their ideas. But they were not.

Having said that, let me suggest that in the midst of this health care crisis, in which 46 million Americans have no health insurance and health care costs are soaring and, as the President indicates, that will double in 8 years if we do nothing, at a time when 45,000 Americans this year will die because they don't get to a doctor when they should, when close to 1 million Americans are going to go bankrupt from medically related bills, we need real health care reform.

That is something that I, and I know many other Members in Congress, have been fighting for for years. More than anything, I wish to see us pass strong health care reform. I must express a disagreement with some of my colleagues on the Democratic side, who think we are on the 2-yard line, we are almost there. I don't think so. I think there are a number of problems that remain in this legislation that have to be resolved. I wish to touch on a few of them.

One of the parts of this legislation is that, finally, we are going to add some 30 million Americans to health care insurance. That is a good thing. About half of them will be added to an expanded Medicaid—a huge expansion of Medicaid. But here is my concern. Right now, our primary health care system is extremely weak. Everybody knows we don't have enough primary health care doctors. We know that Medicaid, today, is on wobbly legs as it tries to take care of the people who access that program. I am not quite sure how you add 15 million more people to Medicaid if you don't have a primary health care infrastructure to accommodate their needs.

In this regard, I have fought very hard for authorization language in the Senate to greatly expand community health centers and the National Health Service Corps, for which we will train and make sure that we have the primary health care doctors, dentists, and nurses we need, desperately need.

In the House bill, there is language introduced by Representative CLYBURN, supported by the Democratic leadership, that would provide $14 billion over a 5-year period to expand community health centers, enable tens of millions more to access health care, and make sure we have the primary health care doctors and dentists we need.

It would be a cruel hoax to tell people they now have health insurance—Medicaid or another program—but not create a situation by which they can get into the doctor's office. I fear that may happen. I am going to fight as hard as I can to make sure we have the primary health care infrastructure we need. That means, in the Senate, adopting the language that currently exists in the House bill for $14 billion over a 5-year period—money which, according to a variety of studies, will pay for itself as we keep people out of the emergency room and keep people from getting sicker than they otherwise should be and ending up in a hospital. This makes a lot of sense. Community health centers have had wide bipartisan support. We have to support the House language.

On another issue, I found it interesting that my friend from Kansas, a moment ago, was denouncing the United Kingdom's health care system, denouncing socialized medicine, single payer. Well, I got a little confused by my Republican friends, who have been in Congress, saying: We love Medicare. My word, do we love Medicare. We are very angry that those Democrats are trying to cut back on that.

Republicans who, year after year, wanted to privatize Medicare, this week they love it. If they love it so much, why don't they join us in trying to expand Medicare and address some of the problems in Medicare? Let's work together.

Last week, we were criticized, but now, I guess, the tune has changed a little. Get your act together, my Republican friends. Either you continue the line you have had for many years about detesting Medicare because it is a single-payer health care program, a government health care program—that is what it is, a single-payer government health care program. You have been on the floor defending it all week long, until a couple days ago.

I support Medicare. In fact, what I believe and am fighting for is a Medicare-for-all, single-payer program because, at the end of the day, I disagree with many on this side of the aisle. I think, at the end of the day, the only way you are going to provide comprehensive universal health care to all Americans, in a cost-effective manner, is through a Medicare-for-all, single-payer system, which ends the hundreds of billions of dollars of bureaucracy and waste engendered by the private insurance companies.

One of my concerns, as we seem to be hurtling down the finish line, is I don't know who is going to be able to offer amendments. I have an amendment that speaks to what millions of Americans want, including the Physicians for a National Health Program—17,000 doctors, mostly primary health care doctors but not exclusively. They want to see this country have a Medicare-for-all, single-payer system. I understand I am not going to get very many Republicans supporting that amendment—or any Republicans. I also understand I will get few enough Democrats supporting that amendment. In the years to come, we are going to have a Medicare-for-all, single-payer system. I want that debate on the floor of the Senate. I have offered an amendment and I want to have that debated. I don't need 20 hours or 5 days. I would love to discuss that issue with my Republican friends.

Democrats, I think it is an amendment that has a right to be offered and it should be. I understand that will not pass. I will tell you what could pass and what could have Republican support, it is the provision I have been working on that at least says that in our Federalist system, where each State learns from other States, at least give States the option. If the Governor or the legislature wants to go forward with a single-payer model; maybe it works, maybe it doesn't work. I have the feeling if one State—whether it is Vermont, California, Pennsylvania, States that have strong single-payer movements, a lot of support for that concept—if one State does it well, then other States will be saying we want the same thing. It is a cost-effective way to provide comprehensive health care to all our people.

I want to touch on another issue, where I think my colleagues in the Senate are wrong and my former colleagues in the House are right. This is an issue the occupant of the chair has worked on with me. We held a press conference this morning. It is to understand this legislation is going to cost between $800 billion and $1 trillion.

How do you get the money? Well, the Senate bill contains a tax on health insurance benefits. I think that is wrong. I think that is regressive. It is called a tax on Cadillac plans. Given the soaring cost of health care in America today, what may be a Cadillac plan today will be a junk car plan 5 years from now. Millions of Americans are going to be forced to pay taxes on their health care benefits or else their employer will cut back on those benefits, and they are going to have to pay out of their own pockets. That is wrong. It is a regressive and unfortunate and unfair way to raise the revenue we need.

Our friends in the House did the right thing. They said that millionaires should be asked to pay a little bit more in taxes to make sure we expand health care coverage in this country. I support what our friends in the Senate and the House did, and I disagree with what is in the Senate bill. There will be a poll coming out this afternoon in which 70 percent of the American people, as I understand it, disagree with the tax on

health care benefits. They understand that is a tax on the middle class.

Let's be clear. We are in a terrible recession now. Working families are struggling. It is wrong for us to propose a tax on health care benefits, which in a few years will be impacting millions of middle-class workers. We should follow what the House has done and say to people at the top—millionaires who have received huge tax breaks under President Bush—that they have to pay a little bit more in taxes so we can provide health care to all our people.

There is a lot in the bill in the Senate that makes a lot of sense to me. I congratulate Senator DODD and Senator BAUCUS and all those people and their staffs who have worked so very hard on this bill. We have 31 million more people who will get insurance. There is insurance reform dealing with preexisting conditions. We made progress in disease prevention. There are a lot of good things in it.

I want to be very clear: I do not think we are at the 2-yard line. I think a lot of work has to be done to improve this bill. We need to, as I mentioned a moment ago, make major improvements in primary health care. We need to change how we fund many parts of the expansion of insurance and do away with the tax on health care benefits. We have to give States the option, the flexibility to go forward with a single-payer system if that is what they want to do.

Also, I hope very much that this afternoon we will vote and adopt the reimportation prescription drug legislation championed by Senator DORGAN. It is an absurdity in this country that we remain the country that pays by far the highest prices in the world for prescription drugs. When I was in the House, I was the first Member of Congress, as I understand it, to take Americans over the Canadian border. Back then—10, 15 years ago—women were able to purchase the breast cancer drug Tamoxifen for one-tenth the price they were forced to pay in the United States. I know the drug companies are very powerful. I know they have a lot of influence in this institution. But I hope we can do the right thing and provide affordable medicine to all Americans through reimportation. And I hope we can adopt that amendment.

I did want to say I have some very serious concerns about this legislation, and I hope they will be addressed in the coming days and weeks. I very much want to be able to vote for this bill, but I am not there now, not by any means.

I yield the floor.

Mr. WYDEN. Mr. President, at the end of the day, Americans don't care if a health reform proposal originated with a Democrat or a Republican, what matters to them is that it works. That is why I am proud to join forces with Senator COLLINS to offer commonsense amendments that will hold down premium costs and make health care more affordable for American families and their employers. As I have long said, the best way to hold down health care costs and make insurance companies accountable is to put Americans in the driver's seat and empower them to pick the plan that best fits their needs.

Along with Senator COLLINS, I am proposing as amendments to the Patient Protection and Affordable Care Act three amendments that will improve the Senate bill by doing more to hold down premium increases for all Americans while expanding health care choices for more Americans and their employers. Our amendments are as follows:

First, we are offering an amendment to provide more choices for employers and workers. While the current Senate legislation will eventually make it possible for employers to insure their workforce in the new health insurance exchanges, the legislation does not contain a mechanism to make it possible for employers to offer their workers the ability to choose any plan offered in the exchange. This Wyden-Collins amendment would correct that by making it possible for employers—who want to offer their employees the full range of choices in the exchange—to do just that while increasing competition in the new marketplace.

Under the amendment, any employer that sponsors a health plan would have the option to offer tax-free vouchers to its workers equal to the amount the employer contributes to its own health plan. Workers could then use that voucher to purchase the exchange plan that works best for them and their family. If a worker decides to purchase a less-expensive plan, the worker would keep the savings as added income just as workers wanting to purchase more generous plans in the exchange will be able to pay the additional cost out of pocket. Whatever employers pay for vouchers will remain tax deductible for employers and tax free for employees and while no employer will be required to offer vouchers under the new system, in order to encourage participation, employers who want to offer their employees tax-free vouchers will be given accelerated access to the new health insurance exchanges. Under the amendment, any employer offering its workers vouchers would have access to the exchange in 2015 rather than 2017, which is the schedule for employer access in the bill.

Our second amendment offers more choices to individuals and families in the insurance exchanges. This amendment will make it possible for individuals who are not eligible for a subsidy to purchase a catastrophic plan, regardless of age. Catastrophic plans will typically have much lower premiums than other plans offered through the exchange but subscribers will pay for most of their health care expenses out of pocket up until they exceed their plan's catastrophic limit.

Americans should have the choice to purchase more affordable coverage, if that is what works best for them. Under the Patient Protection and Affordable Care Act, individuals up to the age of 30 are eligible to purchase these plans. This Collins-Wyden amendment will extend that option to individuals—not receiving government subsidies—over the age of 30. This amendment would give consumers more choice and help ensure that more people can purchase coverage that fits their needs and is affordable to them.

The amendment includes aggressive disclosure requirements that will require catastrophic subscribers to certify that they understand the terms of the coverage and know that they are purchasing the lowest level of coverage available.

Finally, we are sponsoring an amendment to help hold down premium increases for consumers. Starting in 2010, the Patient Protection and Affordable Care Act will impose an annual fee on insurance companies based on the number of premiums written each year. This Wyden-Collins amendment will modify that fee to create an incentive for insurers to hold down rates. So, for example, insurance companies that hold down premium increases will pay lower fees, while insurers who jack up their premiums will pay much higher fees. Starting in 2010 the fee will be varied by as much as 50 percent based on how aggressively insurers control costs which will give them a strong incentive to hold the line on overhead, executive salaries, provider payments, and inefficiency. As under the bill, the total amount of the annual fee will be $6.7 billion per year.

I urge our colleagues on both sides of the aisle will support these bipartisan, commonsense amendments.

Mr. JOHNSON. Mr. President, as more American families struggle in the face of job loss and rising health care costs, the urgency with which the Senate health care debate must progress is clear.

Americans feel a growing insecurity about the future of their family and the future of our country. The recent economic crisis demonstrated the interconnectedness of Wall Street and Main Street. It confirmed what we already knew: that the strength and stability of our economy is intimately tied to the welfare of working families and our ability to direct spending down a more sustainable path.

In 2008, the United States spent $2.4 trillion on health care. By 2018, national health spending is expected to almost double, reaching $4.4 trillion and comprising 20 percent of our economy. If the growth of health care costs is not addressed, America's economy won't be able to keep up and more jobs will be lost, wages will drop, and health care benefits will be cut.

In addition to the unsustainable growth of health care costs, further faults in our current health care system leave millions of Americans one illness or job loss away from losing their health care benefits. Guaranteed access to affordable and meaningful health benefits would provide Americans with the security they deserve.

I recently heard from Brad and Joanne in Goodwin, SD. Brad is a cancer survivor and Joanne is a heart attack survivor. They had health insurance coverage at the time of their illnesses but still carry medical debt. After the economy forced the plant Joanne worked for to close in October 2008, she fell back on the health insurance coverage offered by Brad's employer. She relies on medication to manage her heart health and Brad requires regular checkups to make sure he stays cancer-free. In March of this year, the family hit hard times again when Brad's employer downsized and he was laid off.

Today, Brad and Joanne are still unable to find work and their unemployment benefits are set to run out at the end of the year. Even if they could find an insurance policy that approved them for coverage despite their pre-existing conditions, the price of health insurance in the individual market is far beyond their reach. So Joanne pays entirely out-of-pocket for her pricey heart medication and Brad can't afford to visit his doctor as often as he should. They do not know what they will do in the event they suffer another medical emergency or if their unemployment benefits run out before they are able to secure a new job.

Joanne and Brad's story illustrates the insecurity of many American families who are one job loss away from losing access to the health care they need. While South Dakota has been fortunate not to have as high of unemployment rate as other parts of the country, the economic crisis has put more and more South Dakotans on unsteady financial footing.

It is estimated that over 88 percent of South Dakotans have health insurance. This too is an impressive figure compared with other states, but it does not paint the whole picture. Nearly 61 percent of South Dakotans either purchase health insurance in the individual market or have coverage through their employer. These families are at risk of losing their coverage for reasons out of their control, such as those experienced by Brad and Joanne.

The Patient Protection and Affordable Care Act will guarantee these families access to affordable health insurance through life's ups and downs. Insurers will be barred from denying coverage for pre-existing conditions, discriminating based on gender or medical history, and will not be able to drop your coverage the moment you become ill and need costly treatment. New health insurance exchanges in every state will provide a menu of quality, affordable health insurance plans for the self-employed and those not offered coverage through their employer. Families who need assistance will be eligible for tax credits to make the plan of their choice affordable.

These commonsense solutions will give every American one less thing to worry about when they get sick, change or lose their job. As we continue to work out the details of health care reform, let us keep in mind the American families who are struggling to make ends meet in the face of job loss and rising health care costs. When we think of them, the urgency of health care reform is clear.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

Mr. REID. Mr. President, I move to proceed to the conference report to accompany H.R. 3288, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be allowed to proceed for a moment here prior to the vote.

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

Mr. MCCONNELL. Mr. President, I say to my good friend the majority leader, we have been anxious to have health care votes since Tuesday, and we have had the Crapo amendment pending since Tuesday. You have said repeatedly, and I agree with you, that the health care issue is extraordinarily important and that we should be dealing with it and debating it.

So it is my hope that somehow, through our discussions both on and off the floor, we can get back to a process of facilitating the offering of amendments on both sides of the aisle at the earliest possible time and we can get back to the health care bill.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I am happy to respond through the Chair to my distinguished colleague.

I think it is pretty evident to everyone here not only what has happened here on the Senate floor but the statements that have been made publicly and privately. And certainly I am not going to discuss any private conversations I have had, but based on Rush Limbaugh and Glenn Beck, which is on all the news today, they are upset at Senator MCCONNELL because he is not opposing the health care bill enough—that in a reasonable process on this, there are no efforts being made to improve this bill, only to kill this bill.

I think the debate has come to a point that I have rarely seen in the Senate. In fact, I have never seen it. To have my friends on the other side of the aisle come to the floor and in some way try to embarrass or denigrate me by virtue of the fact that—in fact, trying to embarrass me. What they should understand is that any events I had scheduled for this weekend have been canceled. Events I had last weekend had been canceled—four or five of them. To say the least, I would never, ever intentionally come to the floor and try to talk to somebody about having had a fundraiser and that is why they are trying to get out of here.

The reason I laid out to the Senate what I thought was a reasonable schedule is because, procedurally, we are where we are. The rules of the Senate are such that once cloture is invoked, that is what you stay with. I thought it would be appropriate, because we have worked pretty hard here, to have a day or two off. Anything that was reasonable, I would be happy to deal with everyone. But there was no result from this. Everything that can be done to stall and to divert attention from this bill is being done. And that is too bad, because it is important legislation.

Today, 14,000 Americans will lose their health insurance. Between now and 3:30, a number of people will die as a result of having no health insurance. So we are engaged in some important stuff; as pundits have said, some of the most important legislation that has ever been in this body.

So I am going to proceed to follow the rules of the Senate, and I am sorry we haven't been able to work with the Republicans in a constructive fashion on this health care bill, but it is obvious we haven't.

Mr. MCCONNELL. Mr. President, I ask unanimous consent to be able to respond briefly.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I reiterate to my good friend from Nevada, all I said was the Crapo amendment has been pending since Tuesday. We would like to vote on amendments. There has been some difficulty, apparently, in coming up with a side by side to the Crapo amendment. I understand that. But I am perplexed that it would take 2 days to come up with a side by side.

This, as has been stated by my good friend the majority leader, is the most important issue—some have said in history. It has been equated with a variety of different monumentally important pieces of legislation in American history. All we are asking is the opportunity to offer amendments and get votes. I said it in a most respectful way and meant it in a most respectful way. I think it is pretty hard to argue with a straight face that we are not trying to proceed to amend and have votes on this bill. That is what we desire to do.

The majority leader certainly has the right to move to the conference report. He has now done that—or we are about to vote on doing that. All I suggested was we would like to get back on the health care bill as soon as we can, resume the debate process on what has

been described on an issue of historic importance, and let Senators vote, which is what we do here in this body.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I say to my friend from Kentucky that I have an event I am going to now. I will vote and come back, and I will see if we can work something out.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant bill clerk called the roll.

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

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

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

[Rollcall Vote No. 371 Leg.]

YEAS—56

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

NAYS — 43

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

NOT VOTING—1

Byrd

The motion was agreed to.

Mrs. BOXER. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, it is my understanding we are now on the fiscal year 2010 Consolidated Appropriations Act. I will have a lot to say about this 3,000-page omnibus appropriations bill, but I would point out to my colleagues that it is loaded down with 4,752 earmarks, totaling $3.7 billion; six bills, totaling $450 billion; 1,351 pages long, with 409 pages of earmarks. Spending on domestic programs is increased by 14 percent. Veterans spending is increased by 5 percent. That shows the priorities around here. Let me repeat that. Domestic spending programs are increased by 14 percent. Military construction and veterans spending is increased by only 5 percent.

Here we go again. Just a matter of months ago, in March, the Senate passed a monstrous $410 billion, 3,000-page omnibus appropriations bill that was loaded up with over 9,000 earmarks. At that time, those of us who complained about the ridiculous amount of waste were ignored. In fact, the President's Director of the Office of Management and Budget, Peter Orszag, said in an interview that ''this is last year's business. . . . We want to just move on''—a truly remarkable statement coming from the man the President put in charge of the government's budget.

In March, the majority leader placed the blame for the omnibus spending bill at the feet of President Bush. Senator REID said:

> . . . we have a lot of issues we need to get to after we fund the Government—something we should have done last year but we could not because of the difficulty we had working with President Bush.

So what is the excuse this time? Where will the blame be placed now? Is the majority leader having difficulty working with President Obama? We have had all year to work on 12 annual spending bills, and we only enacted 5 of them through the regular order, and 1 of those 5 was passed and sent to the President before the new fiscal year began.

We should be embarrassed by this process. Here we go again—faced with a whopping 1,350-page omnibus appropriations conference report, which contains six bills, spends $450 billion, and is loaded up with 4,752 earmarks, totaling $3.7 billion. Meanwhile, people are out of jobs, they are out of their homes, unemployment in my home State is 17 percent, and we are going to spend money on things such as $2.7 million—get this; I am not making it up—$2.7 million for supporting surgical operations in outer space—supporting surgical operations in outer space—at the University of Nebraska Medical Center, Omaha, NE; $30,000 for Woodstock Film Festival Youth Initiative; $13.9 million for fisheries in Hawaii—the list goes on and on and on and on—$200,000 to renovate and construct the Laredo Little Theatre.

We should not be spending American taxpayer dollars to replace worn auditorium seating and soundproofing materials. The list goes on and on and on: $800,000 for jazz at the Lincoln Center; $3.4 million for a rural bus program in Hawaii—you will note that Hawaii pops up all the time here—$1.6 million to build a tram between the Huntsville Botanical Garden and the Marshall Flight Center in Alabama; $750,000 for the design and fabrication of exhibits to be placed in the World Food Prize Hall of Laureates in Iowa.

I am not making these up. This is the same party and President that promised to scrub each one of these appropriations bills and get rid of the unnecessary ones.

So we will be talking a lot about this bill. But I want to point out again what is before us to the American people: six bills—not one—six bills, totaling $450 billion; 409 pages of earmarks, 4,752 earmarks, totaling $3.7 billion; and spending on domestic programs is increased by 14 percent; MILCON and veterans spending is increased by 5 percent.

I have met recently with the Governor of my State. We are suffering under incredible economic difficulties. We are having the greatest financial crisis in the history of my State. Couldn't they use some of this $3.7 billion in earmarks to pay for some of the essential services that are having to be cut back, not only in my State but all over America? No. The beat goes on. It is business as usual here in Washington.

And do not be surprised at the anger of the American people over this way of doing business—bills 1,351 pages long, filled with earmarks and pork that have nothing to do with the betterment of our Nation.

So we will be talking a lot more about many of these porkbarrel amendments that are in it. But it is awful: $200,000 for ''design and construction of the Garapan Public Market'' in the Northern Mariana Islands. We will be hearing a lot more about it.

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

Mr. MCCAIN. I will be glad to yield.

Mr. THUNE. The Senator mentioned that for these seven bills, the year-over-year increase in spending is 12 percent. Does the Senator from Arizona know what the CPI this last year was?

Mr. MCCAIN. The CPI was minus 1.3 percent, not to mention 10 percent unemployment in America, not to mention people not being able to stay in their homes, not to mention the hardest economic conditions in history, certainly, since the Great Depression.

Spending on domestic programs is increased by 14 percent. What brings that down to 12 percent is they only increased veterans spending—veterans spending—by 5 percent. But opera houses, rural bus programs, music programs—$300,000 for music programs at Carnegie Hall. Do you think Carnegie Hall needs $300,000 for music programs?

Mr. THUNE. If the Senator will yield for another question, do any of these numbers the Senator is talking about—this 12-percent increase in spending in these seven appropriations bills over

the previous year, at a time when families across this country are being asked to tighten their belts, small businesses are tightening their belts; as the Senator said, we have record unemployment—do these numbers include the almost $1 trillion that was spent earlier this year in the stimulus bill?

Mr. MCCAIN. The stimulus bill has nothing to do with that, I would say to my colleague, and we all know that. This is entirely new, six appropriations bills, totaling nearly $450 billion which, by the way, the majority leader wanted to pass by unanimous consent. Remarkable.

Mr. THUNE. I say to my colleague and friend from Arizona, that is a 12-percent year-over-year increase and the five bills that have already passed had increases that were in the teens in terms of the year-over-year increases too. I do not know how, when you pass a $1 trillion stimulus bill, much of which was distributed to Federal agencies that are also going to get these year-over-year 12-percent, 14-percent, 15-percent increases in spending, we can justify that to the American taxpayer or to hard-working Americans who are struggling right now to make ends meet and have to balance their family budgets. States are struggling to balance their budgets. But here in Washington, it seems as though it is spend, spend, spend.

Mr. MCCAIN. I would also respond to my friend, it has to be in the context of a revision over 10 years, recently, by the Office of Management and Budget from a $10 trillion to a $12 trillion deficit. The deficit for this year is $1.4 trillion, and I am not sure what it is next year. But they could not have known that in the Appropriations Committee when they passed spending measures such as this.

The point is, in the face of massive, unprecedented deficits, unfunded liabilities in Social Security and Medicare, where we are asking Americans all over to tighten their belts—in my State essential services are being cut because they do not have enough money—this is the same business as usual that we have seen for years.

I saw a poll yesterday—it was in a Hotline poll or one of those—that the approval rating of Members of Congress is below that of used car salesmen. I have not met those who express their approval. So we should not be surprised at some very interesting things that may take place in the elections coming up this November. But it is unfortunate, that is all.

Mr. THUNE. I say to the Senator, one final point I would make is, of all that spending the Senator mentioned—and again the $1 trillion in stimulus money was all borrowed money; that was all added to the debt, will be added to the debt, and is going to be paid for by our children and grandchildren, but the $1.4 trillion the Senator mentioned that last year constituted the Federal deficit means that out of every dollar the Federal Government spent last year, 43 cents was borrowed.

Mr. MCCAIN. Forty-three cents. And do you know who they borrowed it against? Our kids and our grandkids. They are the ones who are going to have to pay for it. I do not think I will. It is our kids and our grandkids whom we are laying it on. This is a colossal act of generational theft that we have committed. And believe it or not, the American people have figured it out.

Mr. THUNE. There is no question. The one thing that I guess is bothersome is most generations of Americans—your generation, obviously—worked hard, sacrificed so the next generation could have a better life. What we are basically doing is borrowing from the next generation because we have not been able to live within our means. That turns on its head one of the great ethics of America that has served this country so well for generations. Washington, DC, has not learned the lesson that when you borrow money, it has to be paid back, and that you cannot spend more than you take in. Forty-three cents out of every dollar last year was borrowed—all to be put on the bills of our children and grandchildren.

Mr. MCCAIN. The Senator is correct.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

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

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

The clerk will report the conference report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288), making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of the two Houses.

(The conference report is printed in the RECORD of December 8, 2009, beginning at page H13631, Book II.)

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I know we have moved to the Omnibus appropriations bill to continue government, and the time is running out for the current authorization bill, and this brings us back to the authorization of spending, but it also takes us away from health care reform.

On this side of the aisle, we have been waiting for a long period of time to vote on some amendments that are now before the Senate, such as the Crapo motion which would send the bill back to committee to take out the tax increases that are in it. Then we also have the Dorgan amendment. I can understand why maybe the majority does not want to vote on Republican amendments, but I sure don't understand why they would object to voting on Senator DORGAN's amendment, a Democratic amendment, because there have always been more Democrats than Republicans for the Dorgan amendment, and quite frankly, I am in a position where I agree with that amendment. I am a cosponsor of it. I think we would have a great deal of bipartisan support for the Dorgan amendment. But now we are just automatically away from the health care debate and those amendments.

So I am wondering why we had to do this appropriations bill right now. I think there is growing realization that maybe public reaction, negative reaction to the legislation before us—remember that 2,074-page bill that is before us—the public is getting wise to what is in that bill and there is objection to it, and maybe now the majority party would like to have a little respite from that debate. So I thought I would come back to not the substance of the health care reform bill debate but to a lot of organizations that oppose it and why they oppose it, just to keep the public's attention that we on this side of the aisle feel the health care issue is very important.

As I travel around Iowa, I hear a lot of concern about out-of-control government spending. People are worried about all of the bailouts, the banks, and the automakers, the automakers such as General Motors being nationalized. They are worried about the rising rate of unemployment, which is 10 percent now. They don't see how we will ever dig ourselves out of the deficit hole we are in, a deficit that has been increased by $1.3 trillion since President Obama's inauguration.

As Senator MCCAIN just pointed out, the bill that has now come before the Senate to fully fund the Federal Government has 12.5-percent increases in it. From that standpoint, it seems to me we are getting away from a commonsense principle that we ought to use around here on spending, and that is that spending shouldn't eat up any more than the economic growth of the tax base that is coming into the Federal Treasury to support that spending. Quite obviously, you can't have 12.5 percent increases in appropriations this year over last year, and last year was 9 percent over the previous year. You just can't sustain that. Common sense dictates against it. But what rules here in Washington is just a lot of nonsense.

So our constituents are confused. They are confused as to why, in the face of all these fiscal problems, some in Congress are now proposing $500 billion in tax increases. Tax increases are very bad for the economy. It is more difficult to get out of the recession as

you increase expenditures. They don't understand why some are proposing the largest Medicaid expansion since the program's creation. They want to know why they are proposing $500 billion in Medicare cuts to create an entirely new entitlement program that this country can't afford.

Nowhere are these worries and this confusion more evident than among business leaders of America because business is where jobs are created. Government does not produce wealth; government consumes wealth. So if you want to expand the economy, you do it through the private sector. That is where the resources of government come from. That is where the resources that sustain our people come from.

So whether it is a small business owner on Main Street or a CEO on Wall Street, the message is clear: Stop spending, get the economy back on track, and get people back to work.

Unfortunately, the health reform bill will not address any of these goals. In fact, it may just do the opposite. Don't take my word for it. Let's take a look at what the groups that represent American businesses are saying.

Let's start with the Chamber of Commerce representing 3 million American businesses. In a press release distributed November 19, 1 day after the release of the Senate bill, the Chamber called the Senate bill a ''Missed Opportunity to Enact Meaningful Reform.'' That was their title.

Let me go to a specific quote:

> This bill still contains a government-run plan and an onerous employer mandate, it taxes working Americans, slashes Medicare, spends over a trillion dollars—and after all this—CBO tells us 24 million Americans will still not have health insurance.

That doesn't sound like the kind of reform that is going to help get the chamber members back on track hiring more workers so we can get this unemployment down. It sounds as though they will end up being forced to pay higher taxes and cut jobs. I am not an economist, but that certainly doesn't sound like a formula for getting this country out of the recession.

In fact, the chamber's press release says:

> The Chamber believes the path to a healthier economy is to cut taxes, not to raise them by $500 billion.

They go on to ask a question for which I still can't find an answer:

> Why is there still no meaningful medical liability reform? Is currying favor with the trial lawyers worth passing up $50 billion in CBO verified savings?

I think it is pretty clear that the Chamber of Commerce doesn't think this $2.5 trillion bill will cure what ails the U.S. economy.

Let's see what some other business groups have to say. The National Association of Manufacturers put out a press release the same day as the Chamber of Commerce, November 19. The National Association of Manufacturers is the Nation's largest industrial trade association. Their members build the machines that keep America running, so they should know a little bit about how to get our economy running again. Unfortunately, they see Senator REID's bill as a step in the wrong direction. Like the Chamber and like pretty much every other business group, the National Association of Manufacturers has announced that they cannot support the pending bill.

I find it hard to believe that some Senators who claim to be probusiness can support a bill that is opposed by almost the entire business community—or am I missing something? How can some Democrats who claim to want to get people back to work support a bill that economists from the far right to the far left say will reduce wages and increase unemployment? It just doesn't seem to make sense.

Like other business groups, the National Association of Manufacturers is in favor of reform. Manufacturers realize that we need health reform to lower costs, increase access, and improve quality. But according to their press release, they cannot support a bill that will—this is their quote—''add massive financial burdens to businesses that are already struggling in this recession.'' They go on to express deep concern about huge tax increases that will hurt small business manufacturers, and they are worried that both the so-called public option and the massive Medicaid expansion will just end up shifting more costs and higher premiums to private businesses.

The National Association of Manufacturers ends their press release by saying:

> Oppose the majority leader's bill and urge Senators to do the same as it raises costs and ultimately will destroy jobs.

Again, I find myself asking how someone can claim to be probusiness but support a bill that is so strongly opposed by the business community.

Let's take a look at what small businesses have to say. Maybe that is where the answer is. You have to remember that small businesses create 70 percent of the net new jobs in America. In fact, it was Christina Romer, the President's top economic adviser, who said in a recent Webcast that health care reform will ''benefit small business—not burden it.''

Unfortunately, the National Federation of Independent Businesses, the voice of small businesses, doesn't seem to agree. After the release of Senator REID's bill, the National Federation of Independent Businesses said this:

> This kind of reform is not what we need to encourage small business to thrive. We oppose the Patient Protection and Affordable Care Act due to the amount of new taxes, the creation of new mandates, and the establishment of new entitlement programs.

Like the chamber and the National Association of Manufacturers, small businesses want and need reform, probably more so than even chamber members and the National Association of Manufacturers. But it doesn't sound as though the pending bill actually addresses the problems of small business. In fact, it sounds as though the pending bill simply creates a host of new problems—problems at a time when this country is coming back from the brink of the greatest economic downturn since the Depression.

The National Federation of Independent Businesses goes on to say:

> There is no doubt all of these burdens will be paid for on the backs of small businesses.

Over the coming weeks, I am sure some Senators are going to come down here and talk about all of the benefits for small businesses that are in this bill. But in the interest of honest debate, I hope they will at least mention in their remarks that despite all of the so-called benefits, this bill is still opposed by the voices of America's small businesses. It is still opposed by the National Federation of Independent Businesses. I could go on and list about half a dozen other business groups that oppose this bill. The Associated Builders and Contractors, the Independent Electrical Contractors, the International Franchise Association, the National Association of Wholesalers, the Small Business and Entrepreneurship Council, and the International Food Service Distribution Association—all of these groups recognize the devastating impact this bill will have on our economy.

We are facing the highest unemployment rate in 26 years. We have already seen the national debt increase by $1.3 trillion since inauguration or per household $11,535. The pending bill misses the mark on business' top priority, and that is lowering costs. Don't take my word for it. The Congressional Budget Office says the Reid bill bends the Federal spending curve further upward by a net of $160 billion between 2010 and 2019.

For these reasons, the pending bill is opposed by these organizations I have quoted: the National Association of Manufacturers, the Chamber of Commerce, the National Federation of Independent Businesses, as well as almost every other business group based in Washington, DC, or maybe, for all I know, they are based in other parts of the country, but they still follow legislation here in this city, in the Congress.

The business community has spoken, and their message is loud and clear. For Senators who want to bend the growth curve down—and that is what we all set out to do, but we don't have a bill before us that does it—this bill is not the answer. For those Senators who want to get people back to work, this bill is not the answer.

For those Senators who want to get this country's economy back on track, this bill is not the answer.

If you support American businesses—and American businesses are what provide the income into the Federal Treasury, whether it is corporate tax or income tax—it seems to me that if you have pride in American businesses and the jobs they create, you cannot support this bill.

I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Washington is recognized.

Mrs. MURRAY. Madam President, I rise this afternoon to speak about the Transportation-Housing title of the bill now before the Senate. This is a bill that has broad bipartisan support because it addresses the very real housing and transportation needs of American families across the Nation.

There is a lot to be proud of in this conference report, and I am pleased with what we have been able to accomplish working with my colleague from across the aisle, Senator BOND, Chairman OLVER on the House side, and Congressman LATHAM and all their staffs.

This bill makes needed investments in our transportation infrastructure, creating critical jobs, while also supporting housing and services for our Nation's most vulnerable.

It ensures that two critical Federal agencies—departments that communities across the country depend on—have the resources they need to keep our commuters safe and our communities moving and prospering.

The bill before us touches the lives of Americans in ways they can appreciate each day. Because we are talking about transportation projects and housing assistance, we are also talking about jobs and stemming a housing crisis that has contributed to our current economic troubles.

Whether it is the parent who commutes every day and needs safe roads or new public transportation options so they can spend more time with their families or a business that depends on solid infrastructure to move goods and attract customers or the young family searching for a safe and affordable community in which to raise their children or the recently laid-off worker who needs help to keep his or her family in their home, this omnibus bill before us has a real impact on Americans who are struggling in these troubling economic times.

Our bill takes a balanced approach that addresses the most critical needs we face in both transportation and housing, while remaining financially responsible and staying within the constraints of the budget resolution.

I am especially pleased that the bill provides over $10.3 billion to support and expand public transit, which continues to see record growth in ridership.

The bill also includes $600 million for the competitive multimodal surface transportation grant program, which supports projects making a significant impact on communities and regions—in addition to the over $41.8 billion included for our Nation's roads and bridges, which will support good-paying construction jobs and lead to safer and more reliable infrastructure.

These transportation investments are critical to supporting our Nation's economy and creating good-paying jobs.

In addition to these important investments in transportation, the bill represents a firm commitment to provide critical housing and supportive services to families most impacted by the economic crisis.

This bill includes increased funding for the section 8 program, which provides housing for low-income families across the country. In addition, the bill increases housing programs for some of our Nation's most underserved populations, such as the elderly, the disabled, and Native American communities.

Senator BOND and I are particularly proud that this bill includes $75 million for vouchers for the joint HUD-Veterans Affairs Supportive Housing Program. That program will provide an additional 10,000 homeless veterans and their families housing and supportive services. We should all be very proud of the inclusion of that in the bill.

I am also pleased the bill includes more than $150 million for housing counseling programs to help families avoid scams and stay in their homes, instead of facing foreclosure.

Our bill provides assistance to those who need it most, and it directs resources in a responsible and fiscally prudent way.

It addresses the needs of families and businesses in every region of the country—families who are looking for the Federal Government to step up and provide solutions to everything from congestion solutions to transportation safety, to foreclosure assistance, to affordable housing.

This bill helps our commuters, homeowners, and the most vulnerable in society. Most important, it will create jobs and support the continued recovery of our national economy.

I hope we can get past the differences we have and move quickly to send this bill to the President's desk.

Before I close, I thank all our Senate staff who worked extremely hard over this past year to move this bill forward to our subcommittee, through full committee, to the floor of the Senate, through conference committee, and now here at its final stop before it reaches the President's desk. They have worked many weekends and evenings putting this together. These staff members are: Matt McCardle, John Kamarck, Ellen Beares, Joanne Waszczak, Travis Lumpkin, Grant Lahmann, Michael Bain, Dedra Goodman and Alex Keenan and especially Meaghan McCarathy and Rachel Milberg for their outstanding efforts to help us get this bill to the floor today. We are the ones who stand before everybody and take credit for these bills, but it is our staffs who have helped us get here. I thank the staffs on both sides of the aisle for getting us here today.

I urge our colleagues to get past our differences and move the bill quickly to the President's desk.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I wish to speak on the Omnibus appropriations bills, to which we just moved, as well as to return and make some comments on the health care legislation from which we just retreated.

First, regarding the Omnibus appropriations bill, I am very concerned about the fact that, as my motion is pending on the health care bill, dealing with one of the more important issues; namely—the President's pledge to make sure no one in America who makes less than $250,000 as a couple or $200,000 as an individual will be required to pay for the unbelievably high cost of this bill.

While we were facing that amendment, the majority has decided they will shift from the bill—I understand that is a tough vote to take because the bill contains so many hundreds of billions of dollars of new tax increases that the American people squarely in the middle class will be called upon to share. We should not have shifted from the health care debate to move to the Omnibus appropriations bill, not only because of the importance of the issues we are dealing with on the health care legislation but because of the Omnibus appropriations bill itself.

This Congress cannot control its appetite for spending. The appropriations bill we see before us now is called omnibus because it packages together seven of the original appropriations bills this Congress has been working on—and we are studying them to find out the details. But from the information I have received, the average rate of growth in spending in this bill overall—over those seven bills—is somewhere between 12 percent and 14 percent growth in

Federal spending.

This Congress has generated a $1.4 trillion deficit in less than 12 months. For next year, we want to see Federal Government grow by another 12 to 14 percent. That doesn't count the new stimulus package spending that is being talked about, and it doesn't count the spending—that almost $2.5 trillion in new spending—contemplated in the health care legislation, and any number of other pieces of legislation waiting in the queue to come before the Congress.

At some point, fiscal restraint has to return to Washington, DC. We have not seen it here for far too long. I know it is very tempting to just say we can pile the debt on our children and grandchildren and spend what we want to spend today. There are those who say the only way we can have a strong economy is to spend ourselves into prosperity. Yet it is not the government that creates jobs. It is the formation of capital, the investment by small businesses and entrepreneurs in new ideas and products, and the expansion of business in the United States that will allow us to sustain a strong, healthy growth in our economy.

If we continue to rely on borrowing money from the future in order to

spend ourselves into prosperity, we will continue to see our national debt mount to a point where it cannot be sustained. We are already at a $12 trillion national debt, a national debt that is projected to double over the next 10 years to $24 trillion. I object to moving off the health care bill, where we had such critical amendments and motions pending. I object to moving to a bill that will now increase the spending of the Federal Government by 12 to 14 percent.

Let me shift for a moment and talk more about the health care bill. The motion I had brought—the pending motion before the Senate—or it was before we shifted off the health care bill—was a simple motion that would have required the bill to be committed to the Finance Committee, with instructions to the Finance Committee to take out those parts of the bill that impose a tax increase on people in the United States who earn less than $250,000 as a couple or $200,000 as individuals.

Very straightforward, it is exactly what the President pledged he would do, on multiple occasions, to the American people. Yet we have shown there are almost $500 billion of taxes in the first 10 years of this bill. If you look at the real first 10 years after the spending has kicked in—the 2014 to 2023 time period—it is almost $1.2 trillion in new taxes, a huge portion of which falls on the middle class. The response has been that actually this bill is a net tax cut. How can that be? The only way it can be claimed to be a tax cut is if you take the subsidies in the bill—about $400 billion worth of them—which are used to provide people at lower income categories, who don't have adequate access to insurance, with a subsidy toward the purchase of insurance and if you call that a tax cut. In the bill, it is actually called a renewable tax credit—even though $300 billion of the $400 billion goes to individuals who do not pay taxes, do not have a tax liability, and it is scored by the CBO as spending, not tax relief. Even if you were willing to count that money as tax relief, then you would have a situation in which 7 percent of the Americans would be receiving these government subsidies, while the remainder would be paying the price—paying the taxes.

To put some numbers on that, out of 282 million Americans who have insurance in America today—or will have in 2019—only 19 million would receive this tax credit being talked about. Remember, the vast majority of them get what is called a tax credit, but it is a government subsidy going to those who have not generated a tax liability, and 157 million of the 282 million would be people who get health insurance through their employer and will not be eligible for that health insurance.

After you do all the numbers and take out the taxpayers who make less than $250,000 a year as a couple or $200,000 as an individual, the bottom line is, after all those who are subsidized are taken out, there are still 42 million Americans in the middle class, as defined by the President, who will pay hundreds of billions of dollars in taxes.

My amendment would simply require that those taxes be taken out of the bill, the President's pledge be honored in the bill, and the bill then be put into a posture to return to the floor for further debate.

There is one other item I would like to talk about. One of the things that is often said by the opponents of my amendment is that this bill actually drives down the spending curve.

When they say that, I wonder what curve they are talking about. Are they talking about the size of government? No. The size of government under this bill grows up by $2.5 trillion. Are they talking about the cost of health care? No. The CBO study indicated very clearly that at best Americans will not see the cost of their health care go down. For those in the most needy categories, the 17 percent of Americans who are in the individual market, their health insurance will actually go up by 10 to 13 percent.

Are they talking about the Federal deficit? Actually, CBO says the deficit will go down. That is not the size of the government, but that is the size of the debt or spending each year. But how does it go down? It goes down only if you use the budget gimmicks that I will outline in just a minute or if you include all the taxes, the hundreds of billions of dollars of taxes that are in the bill, and if you count the Medicare cuts that are in the bill.

Take out any one of those—the nearly $500 billion of Medicare cuts, the nearly $500 billion of taxes, or the budget gimmicks—and this bill does not drive the deficit curve down.

What are the budget gimmicks—and I will close with this—what are the budget gimmicks about which I am talking? There are a number of them. The biggest is that the proponents of the bill do not count the first 4 years of spending. If you look at the 10-year spending cycle of the first 10 years of the first part of this bill, the taxes go into effect on the first day the bill is law, on January 1 of next year. The spending does not start until the year 2014.

So we have 10 years of taxes, 10 years of Medicare cuts, and 6 years of spending. That is how they are able to say it balances out. If they started the spending and the taxing on the same day and did not give themselves a 4-year run of tax collection until they start the actual implementation of the spending part of the bill, it would drive the deficit down also.

All we need to do in this Senate is to slow down, refer the bill back to committee, have them fix the provisions on taxes, and then work on some of the common ground we know we have that will help bend the spending curve down and will help improve the situation for Americans across this country who are calling for us to control the skyrocketing costs of health care.

It is my hope that as the Senate goes through the next few weeks of debate on this legislation, as well as the other legislation we bring before us, we will remember our children and our grandchildren and all Americans today who are calling for the kind of true health care reform that will truly address the kind of fiscal responsibility and the kind of cost containment that we should be seeking in this Chamber.

I yield back my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, I rise to reiterate exactly what my colleague just said, that transparency with the American people on the cost of this plan is absolutely essential. If you are going to tax the American people, tell them what you are going to tax. If you are going to cut their benefits, tell them what you are going to cut. Do not use smoke and mirrors to create a panacea for the people down the road to find out they have been sold a pig in a poke.

I want to talk about not what has been introduced but what has been reported in the press as to where we may go on this bill.

As many know, the bill that is under consideration that is supposed to reform health care is a bill that was crafted in a back office in the Capitol where very few people participated, and those who did participate were only Democrats. It was not until it was rolled out on the Senate floor that many of us had an opportunity to read the 2,074 pages. If the American people are like I am, we are still working our way through section by section trying to figure out exactly what it says and, more importantly, exactly what it means and, even more important than that, how does it affect me? How does it affect my family?

You see, health care is a very personal issue for everybody in this country. It is important that we display the honesty they expect from us. If, in fact, we are going to reform health care, then let's reform it. If we are going to do what we have done over the past several weeks, which is have a debate about coverage expansion, then let's be honest with the American people. Who is going to pay for it?

We know how CBO looked at the bill and how it was designed by the majority leader. They are going to steal $464 billion from Medicare. That is a fact. Nobody disagrees with that. Madam President, $464 billion would be stolen from Medicare which the Medicare trustees say will be insolvent in 2017, a mere 8 years from now. I am not sure that is fiscal responsibility, but it is in the bill.

In the last 24 hours, the press reports the majority leader has sent a new proposal to CBO, the Congressional Budget Office, because he is seeking to find out what that new proposal will cost. If the reports are correct, he has decided to drop the public option and to craft a new coverage plan for some segment of

the American people. Again, by news accounts only, that would be an expansion of coverage for individuals in this country 55 to 64. I do not know whether that is the entirety of the group. That is 24 million to 30 million people. The likelihood is if it were opened to any segment, it would be like a magnet to those who probably had some type of health condition because if you do not have a health condition, the likelihood is, in the open marketplace through your employer, if you are employed, you can find a reasonably priced plan. Automatically, the way we have designed it is we are going to attract the sickest of that population.

In the process of doing that, we have to pause for a moment and realize that we have over 40 million seniors and disabled already in Medicare. It is a system that does not reimburse for 100 percent of the services provided. In other words, for Medicare, we reimburse a doctor and a hospital less than it costs them to deliver the service. Nationally, we have accepted that because in that system, when a senior goes in under Medicare and gets a service, what is not reimbursed is then shifted over to the private sector side. It is shifted over to people who pay out of pocket. It is shifted over to people who have private insurance.

Doctors and hospitals have been successful at managing their payer mix. A lot of doctors have X amount of Medicare, X amount of Medicaid, and X amount of private pay. When they put them all together, they find a way to stay in business.

I think it is safe to say if you change the doctors' payer mix or you change the hospitals' payer mix, you could take a provider and move them from slightly profitable, enabling them to practice, over to losing money based upon how the payer mix reimburses them.

My point is, as you take people out of private pay, which is coverage by their employer under a health care plan, payment out of pocket or purchase of health insurance, where that health insurance pays at 100-plus percent of the cost of a service provided, we are basically putting 24 million possibly new additional covered lives into Medicare under Medicare reimbursements. Through that, we automatically change the payer mix of every potential provider in America. We put in jeopardy the doctor. We put in jeopardy the hospital. We put in jeopardy anybody who provides a service under Medicare.

What is the doctor going to do? The doctor can look at it and say: I can absorb the reduction and the change in the payer mix or the doctor may look at it and say: I cannot add any more Medicare beneficiaries. I am sorry, I saw you before when you were on private insurance, but I cannot continue to see you because now I do not get reimbursed sufficiently. So you are going to have to find another doctor.

Now we have gotten into the core pledges of the President where he said: If you like your plan, you get to keep it; if you like your doctor, you can continue with him. We are putting a burden on the doctor or the hospital to make a determination as to how they monitor and control their payer mix by one simple change: by increasing the opportunity for people to participate in a program that up to this time has been sacred and, I might also add, is a program that every participant has paid in their lifetime to be enrolled in.

Medicare is a trust fund. I think we forgot that, when we arbitrarily said we can take $464 billion and steal it out of Medicare and use it to fund this new entitlement. This is not our money to steal. This is the beneficiaries' money that they have paid taxes on their entire life to fund their Medicare benefits.

I am not sure why we believe we have the right to go in and move that money from one account to another, where, in essence, we are moving it from one account and using it for somebody totally different. It is unfair to those who planned a lifetime for this.

Let me go back to the payer mix. As you increase the rolls of Medicare beneficiaries, you affect the viability of every outlet of medical services—hospitals, doctors, this could also affect pharmacists. It is important that we realize we have already increased in this bill the number of individuals who will be covered under Medicaid. The majority leader's original bill mandates that every State will now raise their limit on Medicaid participation from 100 percent of poverty to 133 percent of poverty. Medicaid reimburses at about 72 cents of every dollar of service provided. When you do that, you have now enrolled between 11 million and 15 million new covered lives under Medicaid.

So every provider in the system is already looking at what has been proposed—until the press accounts of the last 24 hours—and said: I am going to have 11 million to 15 million more people. I am being reimbursed 72 cents of every dollar provided. It is hard to stay in business when it costs you a dollar to deliver a service and you get 72 cents back as payment.

They are already trying to figure out how they are going to adjust their payer mix to meet the demands when all of a sudden we come out with a new proposal that the press accounts say we could enroll 24 million people in, that further contributes to cost shift.

Let me say to my colleagues, I was in full agreement with the President when he came out and said: Here are our goals. We have to reform health care. We have to focus on making sure every American has access and affordable options to health care. We have to make sure it is fiscally sustainable.

Why, in the 21st century, would we design a health care system that we could not be certain was financially sound for generations to come?

The truth is, by every account, in a real 10-year period, 10 years of taxes and 10 years of benefits going out, this bill before the revision yesterday is a $2.5 trillion bill. It will contribute to the debt. It will borrow money that our children will be obligated to pay interest on and pay back.

This just compounds the problem, a breakthrough. This is not about policy; this is about in a back room in Washington in the U.S. Capitol, where the majority leader was trying to get to 60 votes. It is real simple.

Listen to the American people and we would start over and we would start over with the principles of the President: Make sure what you do reforms health care, attracts 100 percent of the American people because of access and affordability, and it is fiscally sustainable for generations to come.

The truth is, we have been on the Senate floor for 2 weeks. We have debated a bill that does coverage expansion. I admit openly, it covers 31 million more Americans. But it misses the mark of doing any health care reform because, you see, the bill, before the press accounts of the last 24 hours, assured every American that if they had private insurance or they paid out of pocket, their health care costs were going up. There is no way they could not.

Now what we have done is we have shifted and said we are going to increase the amount of the cost shift. Let me explain for just a minute what a cost shift is. Cost shift is when somebody goes in and is provided a medical service, and if they do not pay for that service or they do not pay the entire cost of that service, what is left over is shifted somewhere in the system. Well, somewhere in the system is the next person who walks in with insurance or who pays out of pocket. Because of the blend they have to meet, they pick up the difference.

Why has health care had such a phenomenal increase in cost? It is because as we increased the rolls of Medicaid, as we had more seniors go into Medicare, we had more costs that were shifted. Up to this point, the President, the Congress, and others were only focused on the uninsured and the underinsured. Well, they are a contributor to the cost shift, there is no question. But let me suggest to you that if we provide insurance—and we should provide access and affordability for every American. By putting people into Medicaid, all you are doing is exacerbating the cost shift. If, in fact, you create a health care system that has an incentive for an individual not to purchase their own health care because it is cheaper to pay the fine, all you are doing is exacerbating the problem of cost shift.

Health care reform is about changing the health system so that cost shift is eliminated. Quite frankly, it starts with making sure we pay 100 percent of what the cost of the services are. But we are not having that debate. This debate on the Senate floor right now, 2 weeks before Christmas, is about coverage expansion. It is not about health

care reform. If it were about health care reform, we would be talking about how we create an incentive for private companies to create products that allow an individual to construct their health insurance so that it matches their age, their income, and their health condition. That is not what we are doing. We are sitting in Washington, creating a one-size-fits-all program and saying: You know what, if this doesn't fit, well, we are going to create a government option for you, and we will subsidize you and put you in the government option. Where is that fair to the American taxpayer?

That is why Senator CRAPO's motion is so important. Refer it back to committee. Start over. We have our priorities wrong as it relates to our ability to dip into the American people's pockets and use their money to fund something that is not going to benefit them one bit. This would be a different debate if we could look at the people who are not covered and say: We have fiscally maximized our ability to provide you health care but not necessarily abused the American people's pockets to do it.

America is the most compassionate country in the world. But when we debate things such as this, we are also the most foolish country in the world because it is irresponsible on our part to abuse the power of this government to spend money like this without the benefits that we set out to achieve.

So it is my hope that as we go through the weekend, we will have an opportunity to see what the new proposal is that is laid down on the table. Again, I have to go by what I read, and that is not always accurate in this town.

The CBO has stated that a similar proposal, which was a proposal for a buy-in at the age of 62, would result in an adverse selection in the Medicare Program and would drive up premiums. Let me quote CBO because I don't want it just to be me. This is what the CBO said:

> A potential problem with this option is that the amount of adverse selection that the program experienced could be greater than anticipated, which would put upward pressure on premiums.

CBO is the entity that is evaluating the cost of the current proposal, which nobody knows what is in it. But this was a proposal that was sent to them some time ago that had the buy-in starting at 62, not 55, and their assessment of it, with a buy-in of 62, is that the adverse selection—meaning more sick people were going to migrate to this new option—would cause upward pressure on Medicare premiums and upward pressure on premiums across the board.

So it is my hope that we will have an opportunity very soon to know what is in the proposal and to be able to debate the facts versus just trying to educate ourselves based on the leaks from the media. But there is one thing for certain: The American people have voiced their position on health care reform. They do not see it as reform. They do not see it as positively affecting themselves. They see it as too expensive, they see it as a breach of trust on a plan that seniors have become 100 percent reliant on because they paid into it.

This path has a lot of problems. It is not just the new proposals, it is the proposal that has been on the table for some time. It is my hope that we will continue this debate as long as it takes to make sure that at the end of the day we do what is right for the American people and not necessarily what is expeditious for Members who would like to be home for the holidays.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, earlier today I explained to my fellow Senators, and hopefully to my friends in the media, that the Reid bill does not provide a net tax cut for Americans. Contrary to the Democrats' claims, that seems to be the situation. They claim there is a net tax cut. I hope I proved earlier today that it does not have a net tax cut. Some Americans are cut, but don't forget that some Americans have increases in taxes. I pointed directly to this data, as prepared by the Joint Committee on Taxation, to show that a group of middle-income taxpayers will see their taxes go up under the Reid bill, and that would be this class of taxpayers right here. I don't disagree with Democrats saying there is $40,786 million of tax cuts, but there are also tax increases for a large share of Americans.

I want to now build on those earlier remarks. As I stated, there is clearly a group of individuals and families who benefit from the government subsidy for health care. However, that group is relatively small. Another much larger group would see their taxes go up. So I want to take a minute to provide some statistics that we pulled from the data of the Joint Committee on Taxation looking at both the winners and the losers under the bill.

For the benefit of the public, the Joint Committee on Taxation is an intellectually honest group of professionals who are nonpartisan, and they give Congress information on the impact of policies we make here in our various committees or as individuals or the Senate as a whole.

According to this professional group, the Joint Committee on Taxation, out of those individuals and families affected by four major tax provisions under the Reid bill, individuals earning more than $50,000 and families earning more than $75,000 would see, on average, their taxes going up. Only individuals with incomes below $50,000 and families with incomes below $75,000 would, on average, see some tax relief on account of receiving subsidies for health insurance.

The data of the Joint Committee on Taxation indicates that in 2019, individuals earning less than $50,000 would, on average, receive tax relief through this subsidy equal to $875. Families earning less than $75,000 would, on average, receive tax relief equal to $2,031 from the subsidy. This so-called tax relief, however, is in the form of an advance refundable tax credit that is delivered directly to the insurance company providing health insurance coverage, not to the individual but signed, sealed, and delivered directly to the insurance company—100 percent of it. I repeat: not to the individual but to the insurance company. Clearly, this group is a winner under the Reid bill. But the same data from the Joint Committee on Taxation indicates that in 2019, individuals earning between $50,000 and $200,000 would, on average, see a tax increase of $593. That is for individuals. Now, let's go to families earning between $75,000 and $200,000. They would, on average, see a tax increase of $670.

So what does all this mean? This means the Reid bill does not cut taxes for all Americans. To the contrary, the Reid bill breaks Obama's promise not to tax individuals making less than $200,000 and families making less than $250,000 a year. And you just can't know how many times President Obama, during his Presidential campaign—whether in debates or in individual appearances when he was a candidate—made it very clear that nobody with under $200,000 a year in income was going to see a tax increase. To the contrary, the Reid bill breaks President Obama's pledge not to tax individuals making less than $200,000, and then a higher figure for families making less than $250,000.

Does the tax relief provided to individuals earning less than $50,000 and families making less than $75,000 represent a tax cut? Generally, no, because based upon the report of the Joint Committee on Taxation, of the $395 billion the government will spend on tax credits for health insurance—or subsidies for health insurance—$288 billion will be refundable, meaning individuals and families who have no tax liability will still receive the full benefit. The Joint Committee on Taxation tells us that the remaining $106 billion will go toward reducing real tax liability.

The Congressional Budget Office classifies a benefit provided to tax filers with no tax liability as government spending, not as a tax decrease. This is compared to a tax benefit that actually will reduce a taxpayer's tax liability. This means the $288 billion of government spending through the Tax Code cannot be considered a true tax reduction.

The Democrats count the $288 billion in government spending when claiming the Reid bill provides a tax cut. And the reason is if the Democrats do not count this government spending as a tax cut, they could not hide the fact that the Reid bill increases taxes.

Bottom line: The Reid bill does not provide a net tax cut. Instead, the bill

raises taxes and it raises taxes on individuals and families earning less than $250,000, contrary to Candidate Obama's presentation during the campaign that nobody below that figure would get a tax increase.

Check the data. No one can dispute it. It is right here in these figures. Everybody in the United States is represented by these figures here highlighted. They are the ones who are going to get a tax increase. That is the rest of the story.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Madam President, we are on the floor today, as we have been for many days and weeks now, discussing health care. One thing I think is undeniably clear is that there is a basic divide in the Senate on health care. That is not news to most people. But I believe on this side of the aisle there is a great deal of consensus about what health care reform should be about.

We have been trying throughout this debate to make it very clear that we are not only concerned about the tens of millions of Americans who do not have any insurance at all—that is obviously a focus of our work and focus of the debate—but we are also concerned at the same time, as we must be, with those who have insurance—with families with insurance, families who believe they have the security of insurance but, unfortunately, under our system many of them don't.

Many families, in fact millions of families, over the last couple of years have had a member of their family denied coverage because of a preexisting condition. That should be illegal. In this legislation we deal with that directly for the first time ever.

We also provide other protections. When you say ''consumer protections,'' that is a nice sounding phrase but in some ways it does not describe what we are trying to do. We are trying to prevent people from being denied coverage because of preexisting conditions. We are trying to make sure that other families don't have a tragedy such as the family I have spoken on before on this floor, the Ritter family in Manheim, PA. They had the tragedy of finding out a number of years ago that their two 4-year-old daughters, twins, had leukemia but also the insult and the outrage of our system saying to them: Your daughters have leukemia, we can treat them, we have a lot of experts and knowledge and technology to help them, but we are going to limit their care.

That is an outrage. The first provision in this bill says we are not going to put caps on treatment for people who are very sick.

We also recognize that, as President Obama said a number of months ago, if you get sick, you shouldn't go bankrupt. But that is happening more and more in America. It is an outrage and we should not allow it to go on any longer.

We are trying also to keep premiums affordable. Fortunately, the Congressional Budget Office helped us make that argument. In their own way they weighed in on that question and talked about the fact that so many American families will have their premiums reduced if not kept level.

We are obviously trying to enhance quality and prevention. All of these strategies that we know work, the research is irrefutable, but we talk about them as a way of a good example instead of talking about them as something we ought to put in the law and make part of our system. Why should we have all of those prevention strategies and then throw up our hands and say that would be nice if insurance companies did that in their policies instead of make it part of the law. And we will, both in terms of prevention strategies as well as quality.

Finally, as a quick summary of what we are trying to do, we are trying to control costs. I think this bill does that. We still have a bill to do and amendments to make. It also cuts the deficit by $130 billion over 10 years, and much more, several hundred billion, in the years after that.

One fundamental recognition, I guess, in this debate—at least on this side of the aisle—is that our system has left people out. In some cases it has left them out in a very tragic way when they are denied coverage because of a preexisting condition. Our health care system has left out others in different ways, and I rise today to speak about an amendment I filed, along with Senator KLOBUCHAR, my cosponsor on this amendment, that seeks to address a group of Americans who have been left out of our health care system and forgotten at a very difficult time in their lives. The name of the amendment is the Pregnant and Parenting Teens and Women Amendment. It recognizes what I believe to be a fundamental reality in America. I will describe two scenarios—one that so many of us have had the opportunity to experience as parents but especially those in this Chamber and those who are listening to this debate who are women who become pregnant.

For many women that moment when they find out they are pregnant is a moment of joy. It is the miracle of pregnancy. They feel that joy and they share it with their family and their friends. It is a time of real happiness. Many of these women in that first scenario do not need help beyond what their families provide or what they might receive by way of adequate support within our existing framework of programs and services—whether that is government help or private sector or nonprofit help. That is wonderful and we hope that becomes more and more the case.

But there is a second scenario in America, a second category where a woman finds out she is pregnant and that moment of discovery is not a moment of joy. For her, it is a moment of terror or panic or even shame. She may be in a doctor's office or she may be at home—she may be in a number of places—but for her that moment begins with a crisis in which she feels overwhelmingly and perhaps unbearably alone, all alone. She could be wealthy, middle income, or poor—but most likely, if that pregnancy is a crisis, she is poor. Whatever her income, she feels very simply all alone.

A pregnant woman who is facing those horrific circumstances may be a woman who has an abusive spouse or boyfriend who is tormenting her. She is all alone in many instances.

Another pregnant woman may believe that she cannot support or care for her new baby at this point in her life. She is all alone.

Another woman might believe that her financial situation is so precarious that she cannot care for or raise a child. She may feel all alone and helpless. If she decides to bear a child, she needs our help. She needs our help to walk with her along that difficult journey—not only through the 9 months of her pregnancy but also through the early months and years of that child's life.

I believe that is an obligation we have. I know some may not agree with that, but it is important that we are honest about where we stand.

We understand that many women face that reality. So what do we do about it? Do we say: That is too bad and that is kind of their problem and let them find their own way or there is a little program down the street that might help them or there might be a little government program over here or there might be some charity that will help them. They will do fine. Don't worry about them.

This country has shown a capacity to reach out and help people who are in crisis, to try to give people a sense that they are not all alone, that there are lots of ways to help. Unfortunately, neither political party has adequately met this challenge, in my judgment. We hear a lot of discussion about it. We hear a lot of sentiment about it. But we do not do nearly enough about it.

Here is what the amendment will do. First, it will provide assistance and support for pregnant and parenting college students. Second, it will provide assistance and support for pregnant and parenting teens. Third, it will improve services for pregnant women who are victims of domestic violence, sexual violence, and stalking. And fourth, it will increase public awareness of the resources available to pregnant or parenting teens and women.

Let me give some examples of these services. First, funding for colleges to provide pregnant and parenting resources located on campus or within the local community and improve such resources, including: the inclusion of maternity coverage, which a lot of insurance companies do not provide now, unfortunately and insultingly, in my judgment; make available riders for

coverage for additional family members in student health care on a college campus; make sure that woman, if she has chosen to bear a child, gets housing and childcare and flexible or alternative academic scheduling to allow her to remain in school; education to improve her parenting skills; maternity and baby clothing, baby food, baby furniture—all of the things some of us take for granted in our families prior to or upon the birth of a child.

The other part of this is funding for programs that help pregnant and parenting teens stay in or complete high school and prepare for college or vocational education, by providing resources and assistance.

Next, assistance to States in providing intervention services, accompaniment and supportive social services for pregnant victims of domestic violence and other kinds of violence as well, to start.

Finally, making people aware, providing public awareness and outreach so that pregnant and parenting teens and women are aware of the services available to them.

We cannot stand here on the floor and say we care about these folks and we want to help them if we are not willing to make good on that promise. It is not enough to have good intentions. It is not enough to say there might be a program out there. We know for sure that at least these three categories—maybe others could add to it, maybe others may not, but these three categories of pregnant women are in many cases all alone. Neither political party nor our Government—and I would argue other parts of our society—are doing enough. It is time as we debate health care that we say one part of our health care system is going to be made much better.

In addition to the substantial changes on protecting families from the ravages of what insurance companies have done to some families, protecting them at long last, those with insurance, ensuring 30 million Americans, cutting the deficit, having prevention strategies, controlling chronic disease and making it something we can manage better, and save money—all of that is important. But I do not think in the debate here we should leave out those who are asking for a little bit of the help we are not giving them.

We should never ask a pregnant woman to walk that journey all alone. I think that is the least we can do in this Chamber, in this debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, my friends on the other side of the aisle have taken to the floor to make the argument in favor of the Reid bill that it eliminates a so-called hidden tax. What is this so-called hidden tax? The other party argues that there is a hidden health tax that families pay in increased premium costs to cover the costs of caring for the uninsured. In short, when doctors and hospitals provide treatment to the uninsured they are forced to compensate for this ''uncompensated care'' and do so by charging more to private health insurers. The cost of this care that is shifted to the insurers is then passed on to health care consumers in the form of higher health insurance premiums. Unfortunately, this so-called hidden tax is often overstated.

Families USA conducted a study attempting to quantify the cost shift associated with uncompensated care. According to this study, about $43 billion in uncompensated care is shifted to private health insurance which led Families USA to conclude that there is a hidden tax of about $1,100 that families pay in increased premiums. A Kaiser Family Foundation study dissected the Families USA numbers and estimated that the total amount of uncompensated care shifted to private insurers was closer to $11 billion, making the so-called hidden tax around $200 for a family, compared to the $1,100 that Families USA said. Let me give some ground to my friends on the other side and assume that the hidden tax does equal that higher figure, $1,100, as compared to the Kaiser Family Foundation figure of $200.

The Democrats' bill does not get rid of the hidden tax entirely. Actually, this bill makes it worse. How? First, the Democrats' health care reform bill still leaves a large number of Americans uninsured. Specifically, the Reid bill leaves 23 million out of 54 million still without health insurance at the end of this decade, remembering that this bill does not actually take effect until 2014. So between 2014 and at the end of the budget window, we still have 23 million people without health insurance. At best, the reform in this 2,074-page Democratic bill cut the hidden tax in half; in this case, to about $500 for a family.

The Reid bill adds, however, new hidden taxes. These impose $67 billion worth of so-called fees on health insurance companies and self-insured arrangements beginning in 2010. The Congressional Budget Office, the Joint Committee on Taxation, the nonpartisan experts and official congressional scorekeepers have testified that these fees will be passed on to health care consumers.

The Congressional Budget Office and the Joint Committee on Taxation have further testified that this will result in higher insurance premiums for all Americans. The actuaries at Oliver-Wyman estimate that the fees imposed on health insurers would add $488 to the cost of the average family health insurance policy. A new hidden tax is also created as a result of the Medicaid expansion and Medicare cuts. The major cost shift in health care derives from the government programs, Medicare and Medicaid, which reimburse providers at rates roughly 20 percent to 40 percent lower than what private providers pay to the same doctors and hospitals.

President Obama understands that paying doctors below market rates leads to a cost shift. After all, in a townhall on health care reform, the President said:

> If they're only collecting 80 cents on the dollar, they've got to make it up somewhere, and they end up getting it from people who have private insurance.

The Medicare and Medicaid cost shift will be increased significantly under the Democrats' health care reform bill. According to CBO's estimate, Medicaid will be increased by more than 40 percent, from 35 million to 50 million people by the end of the budget window in 2019. Additionally, the bill includes almost $½ trillion in Medicare cuts which will result in lower payments to providers.

The actuaries at Milliman Consulting studied the current cost shifting resulting from Medicare and Medicaid underpaying providers and found that this cost shift for Medicare and Medicaid totaled almost $89 billion per year, adding $1,788 to the current family health insurance policy. Increasing the current Medicare and Medicaid cost shift, as a result of this 2,074-page health reform bill before us, would add even more cost to a family health insurance policy.

The easier cost shift to address would be the $1,700 cost shift from defensive medicine. The Democrats do not address cost shift from defensive medicine which Dr. Mark McClellan, former head of CMS, and Daniel Kessler estimated adds $1,700 in additional cost per average family. Addressing this reform alone could save more than covering all of the uninsured.

So you see, the Democrats say their bill will eliminate the so-called hidden tax. My friends seem to come up short on that one. Also, my friends add new hidden taxes that will burden middle-class Americans.

I ask my friends to be transparent when they are talking about getting rid of the hidden tax. The Democratic health reform bill actually makes things worse.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Utah.

Mr. BENNETT. Last night, I held a telephone townhall meeting. As usual, because we get over 10,000 people on the telephone townhall talking to us, I said: This is a meeting that is open to any subject you can talk about.

Overwhelmingly, they all wanted to talk about health care. I had one call where the fellow said he liked this health care bill. He was a small businessman. He said: This will help me as a small businessman, and why are you opposed to it?

I said to him: I have been a small businessman, and I would like to point out to you that NFIB, the organization that helps small business, is opposed to it. And I went through some of the reasons. Then I told him of other small- or

medium-size businessmen in Utah who have said to me: If this bill passes, we are out of here. We could do our manufacturing overseas. We could send our product to South America and have it made there. We have stayed in Utah more out of patriotism than money. But if this bill passes, the impact on us in small business will be sufficiently great that we will leave Utah. We will leave America. We will take all of these jobs and go overseas.

That was that one discussion with the one caller. Every other caller talked about the health care bill and said: Don't pass it. Every other caller was opposed. There was only the one who made comments in favor of it, comments on which I think I was able to dissuade him.

Every other one came up: Do you want to talk about Afghanistan?

No, we want to talk about health care. We are opposed to this bill.

Do you want to talk about some other aspects of what is going on in Washington?

No, we want to talk about health care, and we are opposed to this bill.

Over and over, the only other subject that came up that I can recall with any regularity—there were several calls that talked about cap and trade and expressed their opposition to that. But, overwhelmingly, the entire hour was people who were saying: We are opposed to this bill.

I want to share with the Members some aspects of the reaction of Utahns to the campaigns that have been mounted by various groups in favor of this bill. Let's go to the campaign that has been mounted by the AARP. AARP is one of the strongest lobbying organizations in the country. Indeed, there are those who say it is the most powerful lobbying organization. AARP, in an effort to make sure this bill gets passed, has prepared preprinted petitions and sent them out to their members. Here is a copy of one. It is addressed directly to me and was sent to people in the State of Utah: ''Petition to Senator Robert F. Bennett. Dear Senator Robert F. Bennett, As one of your constituents . . . '' so on and so forth.

Then all the AARP member has to do is sign it and send it to me. This one was sent to me. But as we can see, he didn't just sign it, instead he wrote on it. This is what it says in handwriting:

Absolutely not! Please vote against current legislation being proposed by the current administration and endorsed by the AARP.

The ''not'' is underlined. He signed his name. I have taken it off this facsimile to protect the man's privacy, but he made it clear that he was not in favor of what the AARP was saying and doing in this situation. We have others who have said the same kind of thing.

Here is a letter I will quote from:

Senator Bennett, please do not vote to pass the health care bill that contains a public option. The present medical is broken and surely needs fixing. However, it should be done in ways that do not bankrupt the country, close hospitals and doctors offices.

Who is saying this? He says:

I will probably withdraw from AARP since they support the present health care proposals. Several of my doctor friends have withdrawn from the AMA due to its support of these proposals.

Then he signed his name, and his initials make it clear he, too, is a physician, a member of AARP who clearly wants to drop out of AARP, and a member of AMA who supports those who drop out of the AMA.

Let me quote from another physician who wrote a lengthier letter, more analytical. I will quote from parts of the letter. He starts out:

As a practicing Utah physician, I see and treat patients every day. I try to accurately diagnose what their troubles are and offer an incremental plan for their recovery. I am thorough, methodical and exacting in my plan, purposely first doing no harm, as my Hippocratic oath reads, not making the situation worse, not causing more pain or suffering. The Senate bill before you will make America more ill, with increased pain and suffering. I plead with you to first do no harm. Please do not make the situation worse as with the current bill. It is beyond repair. Please recognize that the Senate plan will add to America's ills.

Then he goes on later in the letter to make this comment:

Patients ask me why the AMA appears to support this bill. They sense that the AMA is not looking out for patients and doctors. I agree that the AMA is misdirected and explained that the AMA represents fewer than one in five U.S. doctors and has compromised its mission.

I find that interesting. I didn't realize that the AMA membership had dropped so low. When I first became interested in politics, the AMA represented virtually every doctor in the country. Not anymore.

I tell my patients about the multitude of other medical organizations of which I am a member, state medical organizations, speciality groups, and the Coalition to Protect Patients Rights, representing thousands of doctors who actively oppose the Senate bill in its entirety and are fighting for patients and the right fixes for affordable, quality care.

Well, as I found out in my telephone town meeting, which covered the entire State—and with no filtering on the part of my staff as to who could get in and who could not—this is, indeed, very clearly the majority opinion for members of the State, seniors who presumably belong to AARP, and physicians who either used to belong to the AMA or understand the AMA.

Here is an e-mail from a doctor. I cannot pronounce the specialty he is in. He says:

As a constituent and practicing—

And then he goes on to say whatever kind of ''ologist'' he is—

I strongly urge you to oppose the passage of the current Senate healthcare reform legislation. . . . Although our nation would benefit from targeted healthcare reform, the proposed legislation is not the answer and will harm, not help, healthcare delivery in our nation. . . .

As surgeons, we take pride in our work and strive to provide the best patient care possible. We will support reform efforts that truly preserve access to high qualify specialty care without jeopardizing the physician-patient relationship. As such, I oppose the ''Patient Protection and Affordable Healthcare Act'' as it has the potential to seriously compromise the delivery of healthcare in the United States by creating additional pressures on an already overburdened healthcare system.

Well, I have a number more. I will not go into all of them; I will just pick a few from the stack I brought with me.

Here is one:

I am a Surgeon who has been practicing for about 30 years. I am against the total overhaul of the health care system. All entitlement programs are not cost effective and all are in danger of bankrupting the U.S.

Here is one, who is a retiree, who says:

Please vote against these healthcare ''reforms'' that will limit options, cost us all more and reduce our freedoms. We need real change: portability, tort reform, and less government control.

Back to the doctors. He says:

Dear Mr. Bennett,

I am a pediatrician in Utah and met you at the hospital in Orem. Thank you for your opposition to the current process happening in Washington. We do not need to rush through and push the American people into government run health care and more red tape. Medicaid is already my biggest head ache in my practice.

And so on and so forth, as I say.

I want to make this other point with respect to all of these people who are so concerned that we will have an immediate bad impact if this bill passes. They do not realize—and I did my best to point this out to those who were on the telephone townhall meeting last night—that this bill will not fully take effect—indeed, most of the aspects of this bill will not take effect—until January of 2014. That is correct, January of 2014—4 years away.

Here we are meeting on weekends, coming in here on Sunday, driving to get this done by Christmas because it is so pressing that we have to do it, and, by the way, we are not going to start, really, any of these reforms for 4 years. So these people who are writing me, these doctors who are complaining about AMA's endorsement, these people who are complaining about AARP not representing them, are worried about an immediate impact.

Let me tell you what the immediate impact of this bill will be. The immediate impact of the bill will be financial. The taxes will take place immediately upon passage. The increase in premiums will begin to start on passage, as the pressure on the insurance companies, the pressure on manufacturers, the pressure on pharmaceutical companies will all begin with the passage of this bill. But all of the wonderful things we are being promised as benefits from this bill will be delayed for 4 years. Why? There is only one reason why: in order to use smoke and mirrors in the budgetary process to

make it look as if this is cheaper than it really is. If you get the money coming in for 10 years but the expenses only going out for 6 years in your calculation, it looks as if it is a whole lot cheaper than it really is.

The only honest way to score this is to say the expenses start the same day the taxes start, the expenses going out start the same day the revenue coming in starts. Then you get an accurate description of how much this costs.

I cannot imagine any businessman going before his board of directors and saying: I have a new program I want to institute in this company, and it is going to cost X, and here is how I have calculated it is going to cost X. I am calculating the revenue from the sales of the product over a 10-year period, but the actual sales will only occur in the last 6 years.

His board of directors would take one look at him and say: There is no way we can make a strategic plan based on that kind of smoke and mirrors. What in the world is wrong with you to do accounting of that kind?

He will say: That is the kind of accounting I learned from the U.S. Senate—start counting the revenues immediately, but don't count the expenses until 4 years later.

Well, let's look at the impact of that 4-year gap and tie it to the messages I am receiving from my constituents, and I think we will see something very interesting happen. Between now and the time the benefits of this bill begin to take hold, there will be three or four open seasons of people who will look at their health care plan and be allowed to make changes in it. They will see the costs go up, and they will say: Wait a minute, what is happening here? The costs are going up, but there are no changes coming from this bill the Senate passed back in 2009—or 2010, if we push it until next year. What is happening?

Well, your costs are going up in anticipation of the costs of this bill that will take hold in January of 2014.

At that point, the anger we are seeing from constituents now will get worse. The anger we are seeing in the e-mails and letters I am receiving now will get more intense, and people will start to say: You mean I am being forced to pay extra premiums in 2010 because the government needs to accumulate cash against the time when these great changes hit us in 2014? When they start writing me that kind of complaint, I will say: That is exactly what I mean. The government is going to start taxing you in 2010, but they are not going to do this program until 2014—at which point, the outcry from constituents will be: Well, let's stop the taxes and let's kill the effective date of 2014.

I am not sure I can predict that with certainty, but I can go back in history and remember the catastrophic bill that was passed with respect to Medicare, and the senior citizens suddenly discovered how much it was costing them. The outcry was so overwhelming that the Congress, within a matter of 6 months of the passage of the bill, repealed the bill. I remember the pictures that appeared in national magazines of Congressmen Rostenkowski, who was at the time the chairman of the Ways and Means Committee, being accosted physically when he went home to Chicago by seniors who would stand in front of his car and not allow him to move, who would sit on the hood of his car to block his way in every conceivable way. The outcry was enormous when they saw this increased cost for something where they did not see a corresponding benefit, and Congress responded to that outcry and repealed that bill.

In this case, there will be a 4-year period for the outcry to build before they start to see the benefits, if, indeed, the bill does confer benefits. There will be a 4-year period with that many open seasons for people to look at their programs and see their premiums go up and see their plans change and see the adjustments made in preparation for this, adjustments they will not want; 4 years in which they will see the statement of the President of the United States, that ''if you like your plan, you don't have to lose it,'' prove not to be the case.

In that 4-year period, it is entirely possible that the outcry from constituents, like the ones who are complaining now, will have tremendously more impact and more force. I hope that is, indeed, the case, if we pass this bill. I hope that in that 4-year period, before we start to see the wonderful things we are being promised from the other side of the aisle come to pass—the increased premiums, the increased taxes, and the increased costs will be with us—the people of this country will rise up and say: We want this bill repealed. They have 4 years in which to do it, 4 years in which to think about it, 4 years in which to experience it.

Why are we rushing to get this done before Christmas when we have 4 years before the thing finally kicks in? Let's take the time to do it right. Let's take the time to listen to our constituents. Let's take the time to listen to the American people who are examining this bill and, by ever-increasing margins, telling us again and again that they do not like it.

We have heard from many people the reactions of the polls. The Quinnipiac Poll made the comment: It is a good thing the Senate is not letting the American people vote on this bill because the American people are against it. We have seen the Gallup Poll show a tremendous swing, as their people are against it. The more they know about it, the less they like it. Yet we are trying to rush it through in the holiday season to get it done before Christmas even though it is 4 years away before all of the wonderful things that are being promised will surface.

Mr. President, I think my constituents have it right. I think those people who belong to AARP who are saying they are going to drop out because of AARP's endorsement are right. I think those physicians who say they are either not members of the AMA or they are going to drop out from the AMA because of the AMA's position are right. And I think if we cram this thing through in a sense of urgency, even though it is 4 years from implementation, we will see an outcry in the intervening 4 years from the American people that will cause Members of the Senate to wish they had taken more time to examine it all, to do it right, and not to panic over pressure from various special interest groups that see ways in which they can profit from this.

The American people, the American physicians, the American patients all see ways in which they will be hurt, and I speak for them, as they say: Slow this down. Do this thing right. Do not panic under pressure of an artificial time deadline.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

IN PRAISE OF WENDY TADA

Mr. KAUFMAN. Mr. President, I rise to speak today about my great Federal employee of the week who works at the Department of Education.

Whenever I enter this hallowed Chamber, I never fail to notice the inspirational words written on each wall above the doors. Above the east door is inscribed the Latin phrase ''Annuit Coeptis,'' or ''Fortune favored Us in Our Beginnings.'' This refers to our Founders' belief that Providence looked kindly upon our Republic during its earliest days.

In that time, ours was mostly an agrarian society. Town life centered on planting seeds and harvesting crops. Children worked alongside their parents in the field, and when it came to their education, homeschooling or learning to read and add in a one-room schoolhouse was the norm.

Thomas Jefferson wrote, some years after his Presidency, that ''Science is more important in a republic than in any other government.'' It was this belief in the importance of knowledge and reason—including political and historical literacy—that led education pioneers such as Horace Mann to promote universal schooling in the early part of the 19th century.

Shortly before the Civil War, access to compulsory and free public education spread across the country as States passed laws inspired by this principle. The Morrill Land-Grant Colleges Act provided for the construction of some of our Nation's greatest colleges and universities in the late 1800s. In the early years of the 20th century, States increased access by expanding free, compulsory education to include high school. The last 60 years saw dramatic advances in this area, with the legal desegregation of schools and the passage of critical legislation such as the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act.

I am proud to have been serving in the Senate earlier this year when we passed the American Recovery and Reinvestment Act. That legislation sent much needed funding to fix schools, make student loans more readily available, and to keep teachers in the classroom. The Recovery Act so far saved over 230 teaching jobs in my home State of Delaware alone.

In 1980, the U.S. Department of Education was created, and its employees have been working tirelessly to make sure students from all 50 States, including Delaware and Rhode Island, receive the same strong support. They oversee the Federal loan programs that enable tens of millions of Americans to afford college and postcollege studies. They help develop policies to ensure that Americans with physical and intellectual disabilities have education programs in their communities and can pursue a full range of opportunities.

Wendy Tada, who has worked at the Department of Education for 9 years, is one of those outstanding employees. When she arrived at the Department in 2000, Wendy already had a great deal of experience working to expand opportunities for rural special needs students in Hawaii and Alaska.

Wendy, who is a lifelong learner herself, holds a bachelor's degree in psychology from Seattle University, a master's in physical therapy from Stanford, and a master's in public health from San Diego State. She also earned a doctorate in developmental psychology from the University of California in San Diego.

Wendy's experience includes working at the State and local levels. She provided physical therapy to disabled students in Washington State, developed an education curriculum for special needs children in Hawaii and its remote Pacific Islands, and evaluated health and education services in Native Alaskan villages.

Wendy has taught college and graduate courses in education and public health at the University of Washington and the University of Hawaii.

Her first job with the Department of Education was as a research analyst in the Office of Special Education Programs. Wendy's talents and experience led to a promotion within a year, when she became Chief of Staff to the Assistant Secretary overseeing that office. She continued as his top adviser when he was appointed to serve as Assistant Secretary for the Office of Vocational and Adult Education. In 2006, Wendy became the Chief of Staff to the Deputy Secretary of Education.

This January, after a brief stint as an education analyst for the Office of Management and Budget, she was asked by the Deputy Secretary of Education to serve as senior adviser for policy and programs.

During her years in the Department, Wendy has been instrumental in developing important regulations and guidance documents relating to IDEA and title I of the ESEA. Today, her time is spent in developing and putting into practice education programs funded by the Recovery Act.

One of the central programs under the Recovery Act is the new Race to the Top Fund. This initiative represents the largest Federal competitive investment in elementary and secondary education in our history. It will offer over $4 billion—that is billion—in grants to States to develop comprehensive education reform plans. This will help all States, including Delaware, save even more teaching jobs and add new resources for schools.

Wendy's work and that of her colleagues throughout the Department of Education continue to benefit American students nationwide. They ensure that all our children are favored in their beginnings so they may pursue the opportunities they deserve. Education is, without a doubt, the most important investment our Nation can make, for its dividends are our future prosperity and global leadership.

I hope my colleagues will join me in honoring Wendy Tada and all the hardworking employees of the Department of Education for their service to this country. Our future is in their hands.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Arizona.

Mr. KYL. Mr. President, I wish to say a few words about the legislation which is pending before us, which is the Omnibus appropriations bill. It is a bill that will substantially add to our national debt and substantially increase spending and I think it is worthwhile to point out some of the features of this bill, since presumably we will be voting on it sometime this weekend.

I would start by pointing out that our national deficit for the past fiscal year now stands at $1.4 trillion. So the fiscal year which just concluded added $1.4 trillion to the national debt. That is the largest deficit we have ever had, by far. It is about three times as much as the largest deficit under the Bush administration. Our current unemployment level is at 10 percent, despite the administration's insistence earlier this year that Congress pass a $1 trillion-plus stimulus package that was supposed to reduce unemployment. The Senate is currently in the middle of a debate on a health care bill that has a 10-year implementation cost of $2.5 trillion. Sometime in the next month we will be forced to raise the Nation's debt ceiling for the second time this year to a level that exceeds the current ceiling of $12.1 trillion.

If all that were not enough, we are now presented with this Omnibus appropriations bill that costs nearly $500 billion more; to be exact, $446.8 billion. This is simply irresponsible. When is it going to end? We are piling spending bill on spending bill and debt on debt. At a time when many Americans are being forced to get by on less, the majority has crafted a bill that uses the government's credit card to increase spending on the six appropriations bills that make up this package—by how much? By 12 percent total.

For perspective, according to the Bureau of Labor Statistics, the consumer price index, the CPI, the measurement of inflation over the past 12 months, was .2 percent. So the cost of living is going up by .2 percent. Yet we are giving these government agencies 12 percent more money for next year. Let me give some examples.

The Transportation-HUD bill receives a 23-percent increase over last year. Has anybody had their income go up by 23 percent over last year? Well, if you are in the Federal Government, you can make it happen. That is not responsible.

How about the State-Foreign Operations bill, a 33-percent increase, a third over last year—a 33-percent increase. Included in that is a 24-percent increase for the State Department's salaries and operations account. That is not responsible.

The Commerce, Justice, and Science bill receives a 12-percent increase over last year. At least that is the average of the six bills in total.

How about earmarks? Well, they are in here, big time. According to Taxpayers for Common Sense, this bill is larded up with 5,224 earmarks—5,224 earmarks—that total $3.8 billion. That is not responsible.

Some examples include $600,000 for a streetscape beautification in California and $300,000 for Carnegie Hall music and education programs in New York City. In the current economic environment, that doesn't seem to be the most responsible use of Federal taxpayer dollars.

If the irresponsible levels of spending were not bad enough, the bill makes a number of significant policy changes as well. Ordinarily, we are not supposed to have policy changes in an appropriations bill, but when you lump them all together in a take-it-or-leave-it form, such as this omnibus, well, if you are the majority, you think you can get away with it. Here are 134 examples.

With respect to the fairness doctrine, this omnibus does not include the fiscal year 2008 ban on Federal funds being used to enforce or implement the so-called fairness doctrine—so nothing to implement or enforce the so-called fairness doctrine.

The bill makes some changes to several longstanding policy provisions contained in the financial services bill and specifically the District of Columbia section dealing with abortion, medical marijuana, needle exchange, domestic partners, and the DC Opportunity Scholarship Program. That program has been enormously popular and enormously successful. Yet this bill provides only enough money—$13.2 million—to allow the currently enrolled students in this popular program, the DC Opportunity Scholarship Program, ultimately leading to the termination of the program. I have met with some of these students and their parents. They are doing very well because of the

environment in which they are finally able to study and learn and be safe. This program is so popular that people have lined up in long queues to take advantage of it. Yet we are going to terminate the program as a result of language in this bill.

Well, it is a cross between irresponsible policy and spending.

The bill reduces funding for the Office of Labor Management standards at the Department of Labor by 10 percent. This is the office that investigates union activity and the use of membership dues. Since fiscal year 1998, it has secured 1,400 convictions, resulting in the return of $106 million in embezzled funds to union workers. So where are our priorities? The only place where we see cuts in this bill are in areas where, in this case, the Department of Labor has been enforcing labor law and getting convictions for embezzlement of workers' funds. This is not an area where we want to cut, unless, of course, you are trying to do the bidding of the labor unions who don't like to be called to account for embezzlement of trust fund moneys of their members.

Well, what is missing from this bill? Despite spending nearly $500 billion and covering 6 of the 10 appropriations bills, this bill is significant for what it does not include: The fiscal year 2010 Defense appropriations bill, arguably the most important bill yet to be acted upon. Just shortly after President Obama announced his surge strategy for Afghanistan, the majority has decided to play politics on the backs of our troops. The majority is holding the Defense bill back from this package so it can be used as a vehicle for other purposes; for example, to increase our Nation's debt ceiling and potentially push through a number of other bills that likely don't have the votes to pass on their own. That is wrong. While our commanders in the field and civilians at the Pentagon wait, our other less-urgent appropriations priorities will receive double-digit spending increases. That is not responsible and it is not right.

Given what I know about this bill—and I haven't had a chance to read it all yet—I would echo my friend in the House, Republican leader JOHN BOEHNER, who requested the President uphold his campaign promise to go through the budget, line by line, and eliminate irresponsible and wasteful spending.

I can assure my colleagues, we will go through this and we will identify those earmarks and we will bring them to the attention of our colleagues, and we will, undoubtedly, because of these spending increases and earmarks and bad policy, attempt to defeat this legislation.

Finally, I wish to make reference to some comments I saw delivered by Dr. Christina Romer, Chair of the White House Council of Economic Advisers, as I was drinking my coffee and watching TV a couple days ago. This was on CNN's ''American Morning'' program on December 8. I was rather startled because she said she was getting rid of the jobs deficit and dealing with the budget deficit, two big problems we inherited and absolutely have to deal with.

Well, it is true, on January 20 of this year when President Obama took office, we had a deficit and we also had a problem with unemployment. The problem is in inferring they are doing something about it, whereas the Bush administration created the problem, I think they create a misimpression. So I asked my staff to get just two numbers. What was the national debt the last day of President Bush's second term and what is it today—or actually December 7 is the date we got the number for, the 322nd day of President Obama's term. In other words, Dr. Christina Romer was saying these are big problems we inherited and we have to deal with them. So how have they dealt with them? Well, it turns out the national debt the last day of President Bush's second term was $10.6 trillion. What is it today, 322 days later? It is $12 trillion. That is some way to fix that problem.

If they are going to complain about the national debt, then get it reduced instead of increased in less than a year—it has gone from $10.6 trillion to $12 trillion; that is $4.5 billion in new debt every single day. These are not my numbers, these are the official statistics of the Bureau of the Public Debt.

The other statistic was unemployment. ''We inherited unemployment.'' That is true. I don't know the average, but I think it is somewhere around 4 or 5 percent in our country. On the last day President Bush was in office, unemployment stood at 7.6 percent. I thought, given the stimulus package, surely we have reduced unemployment. What is the unemployment number today? It is 10 percent—after nearly a year of President Obama's failed $1 trillion stimulus experience.

When Dr. Romer said ''we inherited this problem,'' my immediate reaction is that the President has been in office for a year. What has he done about it? Answer: It has gotten worse. We have added well over $1 trillion to the national debt, and unemployment is now up to 10 percent from 7.6 percent under President Bush.

Some fixing of the problem. I suggest that President Obama and his White House officials and staff stop trying to blame President Bush for everything. If the President has been in office long enough to get the Nobel Peace Prize, presumably he has been in office long enough to do something about the public debt or unemployment.

He has done something about it all right: Unemployment is up from 7.6 percent to 10 percent, and the national debt is up from $10.6 trillion to $12 trillion.

In view of these facts, it doesn't make sense to me to pass a nearly $500 billion omnibus appropriations bill, with departments of this government receiving 26, 30, and 33 percent increases in their budget, when the CPI has only gone up .2 percent this year, and when Americans are scrimping and saving and trying to get by with less. It makes no sense at all.

I hope my colleagues, as we consider this omnibus appropriations bill before us right now, will take these things into consideration before we vote to pile yet more debt on the backs of our taxpaying constituents.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I want to speak for a few minutes on the Labor, Health and Human Services, Education, and Related Agencies appropriations bill. The Senator from Michigan was kind enough to let me do this now, even though she had been on the floor.

I ask unanimous consent that at the end of my comments, the Senator from Michigan be recognized.

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

Mr. HARKIN. Mr. President, as chairman of the subcommittee on Labor, Health and Human Services, Education and Related Agencies, I want to take a few minutes to go over the bill we have before us, the so-called ''minibus.''

I wish in the beginning the Senate could have debated and voted on the Labor-HHS bill individually, rather than having it as part of the so-called minibus. Unfortunately, it is now December. We still have to complete the health care bill and, frankly, we have run out of time.

However, I want to assure my colleagues that the Labor-HHS appropriations bill is a bipartisan bill. We worked closely with Senator COCHRAN and his staff to reflect Democratic and Republican priorities alike. That is the tradition in our subcommittee—one we take very seriously.

In fact, the full Appropriations Committee approved our bill by a vote of 29 to 1. You cannot do much better than that to accommodate the concerns of both parties.

I also want to assure Senators that this is a fiscally responsible bill. Overall, our bill increases discretionary spending by just 2 percent over the fiscal year 2009 Labor-HHS appropriations bill.

With money so tight, we had to be selective about which programs received increases. One high priority is worker protections. Agencies that enforce rules protecting the health, safety, and rights of workers have been seriously shortchanged in recent years. This bill adds $121 million over last year's level and brings staffing levels at the Occupational Safety and Health Administration, the Employee Benefits Administration, and the Employment Standards Administration back to where they were in 2001. This means the agencies will have the resources they need to prevent wage theft and ensure safe workplaces for our Nation's workers.

The bill also includes a 50-percent increase—a total $1.1 billion—to reduce improper payments, fraud, and abuse from mandatory benefit programs, such as unemployment insurance, Medicare, and Social Security. These antifraud, anti-abuse measures could result in over $48 billion in savings and increased revenues over the next 10 years.

Another priority we had was getting people back to work. This bill provides an increase of $72 million, or 43 percent, for nurse training programs, including a new program to train nursing home aides and home health aides.

This bill also provides a major increase—$260 million—for the national service programs. This will boost the number of AmeriCorps members significantly and create a new social innovation fund that will help small nonprofits tackle a host of social programs.

In the area of education, increases are targeted to programs that are designed to reform schools, such as performance-based pay for teachers and principals, charter schools, and a comprehensive new literacy program.

Providing increases, such as the ones I have described, meant making some tough choices. Our bill eliminated 11 duplicative and ineffective programs, and we cut several others. Not everybody will be happy with all of those decisions. I may not be happy with all of them, but we did the best we could, struck compromises, and I stand by the outcome.

I also support the other five bills in this minibus, if I might say that. I worked closely with our colleagues on the Appropriations Committee. I want to particularly thank Senator MURRAY regarding her work to allow fiscal year 2009 Community Development Block Grant funds to be used as a match for other Federal programs. The reason this is important is because many States and local governments were hard hit by both disasters—such as the floods in Iowa—and the poor economy. They would have great difficulty providing Federal match requirements without this modification. I thank Senator MURRAY for putting that in her bill.

I also thank Senator DURBIN for the inclusion of a provision regarding auto dealers. In my State, there are a number of decisions that were made by General Motors to close down certain dealerships that met the criteria set down by General Motors for staying in business. I hope this provision that Senator DURBIN put in will allow for needed fairness for a number of these family businesses.

Again, I believe the package of bills we have before us is fiscally responsible. They move our country in the right direction, and I hope the Senate will approve them as soon as possible so we can send them to the President.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, before my good friend from Iowa leaves the floor, I thank him for his wonderful leadership on the health care reform bill, on the appropriations that he chaired—formerly on Agriculture. It has been a pleasure to partner with him on so many things.

Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for up to 20 minutes.

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

Ms. STABENOW. Mr. President, I want to talk about health care. I have to say that if 20 percent of what was being said by our Republicans friends was true about this bill, I could not vote for it either.

I keep hearing things described that have no relationship to the reality of the bill that I helped to write in the Finance Committee, or my friends helped to write in the HELP Committee or the bill that is on the floor now. I see all kinds of comments that, frankly, concern me because I don't see them reflected in the reality of the legislation in front of us.

I encourage people to take the opportunity to read the bill or the summaries. For the people in Michigan, we have had it up on our Web site, and we have had every bill, as it is introduced and passed, on the Web site, so people will have an opportunity to look at the information available.

I do know this: What we have been hearing from our colleagues is not good enough, when we think about the fact that we had a Congress and a White House for 6 out of the last 8 years that was controlled the by Republican Party and yet nothing was done. Proposals have come forward now about all these things that should be done. But they weren't done when they were in charge. What we saw was a lot of tax cuts for the wealthy people and a lot of no-bid contracts for friends of people in the administration. We saw a lot of things that didn't affect people in my State very positively and didn't help the working people in my great State of Michigan.

But now, as we are trying to move forward and do something for people, for small businesses and large businesses, and bring down costs and provide health care for people, there are all kinds of suggestions about why we should wait and do it over. What I heard in committee and what I am hearing now on the floor, as a proposal—because we don't have a Republican bill in front of us or one that has been offered—is this: Wait, wait, wait. We don't need to do this. That doesn't have to be done right now. There is no sense of urgency. We should wait, wait, wait.

That is what we hear. We hear that business as usual for the insurance companies is OK. Let them decide what is covered—if you can find insurance—and how much it should cost, whether or not they are going to be able to provide a test for you or an operation for you. That is OK. Let the insurance companies continue to be the ones between you and your doctor. That is what we have seen over and over. We saw it in committee. Every time we were trying to lower costs for families and small businesses, they were on the side of helping the insurance companies. They were willing to take tax cuts we put in the bill, and they offered amendment after amendment that would have had higher costs for middle-class families and small businesses, in order to help the insurance industry.

I will share a few stories from people who have become part of our health care people's lobby through my Web site, who have been willing to share stories.

David is from Sutton's Bay, which is a beautiful part of Michigan. We would love to have you come visit. It is a gorgeous part right on the water. David says:

> I'm a 61-year-old cancer survivor with diabetes and high blood pressure. I am self-employed, and lately, uninsured. I worked all my life to build a stake here in farm country and almost lost it last fall to foreclosure because of a medical emergency. This farm is all I have . . . the savings and cash are gone. I continue to work with no retirement in sight. I have put everything I had for retirement into my farm. Please, help me keep it.

I know that David is not saying wait, wait, wait. He wants us to act, and to act now, on something that will be meaningful and makes sense to bring down costs, to give him a chance to find affordable insurance that doesn't bankrupt him and his family.

I want to share also another story from Jeff from Rockford, MI:

> It has been over five years since death stared me down. I was diagnosed with testicular cancer. Losing my job to a layoff, mortgage to pay, among other things—and my options were minuscule. I had no insurance then because there was none that I could afford.
>
> I thank God and the staff at Grand Rapids Spectrum Health for my life today. Unfortunately, I am still $25,000 in debt because of lack of coverage.
>
> I served in the Marines from 1984–1988. One of their mottos is, ''We take care of our own.'' Imagine what this country would be like if we all thought like that.

Jeff is right. We are in this together and, just as we have dramatically increased our support for our veterans and their health care, we need to make sure we are taking care of our own American families and American businesses.

Wait, wait, wait? I don't think so. I don't think that is what Jeff is asking us to do.

Jennifer from Hollow, MI:

> I am married and have one beautiful little girl. But about 6 months ago, my husband's work informed us they would no longer be able to carry health insurance for their workers.

A very common story, having to choose between keeping people employed and paying for health care.

> We could have gone on COBRA but it would have cost double what we were paying and we couldn't meet that cost.

Mr. President, as you know, we have worked to lower the cost of COBRA, and we hope to be able to continue that lower cost in legislation that will be coming up shortly. But it is still very expensive.

We are lucky because Michigan has a program for children, so we didn't have to worry about our daughter's coverage. When we went to look for insurance for my husband and me, the prices were steep or we were denied because of my preexisting condition.

That is one of the things we are going to change.

Right now going to the doctor is next to impossible, but to see a specialist is like asking for the Moon. We know that we are highly blessed. My husband has a job. That is more than a lot of people have. We just want affordable health insurance, and we don't mind paying for it. It just doesn't seem like too much to ask, does it?

No, Jennifer, it is not too much to ask, and that is what we are all about. We are all about putting together a plan—and that is what is in front of us—that will lower costs, that will save lives, save Medicare, that will focus on making sure each American has a health care bill of rights, has protections they know will allow them to make sure their health insurance will be available if they pay for it; that they cannot get dropped because of a technicality; that if they have a preexisting condition, they can still find affordable insurance; that there will no longer be lifetime caps on insurance policies; that we will allow our young people to stay on mom's or dad's insurance until age 26.

We have a number of changes we are making for people in the insurance exchange, for policies that take effect after the effective date of this act, and it is about making sure people have affordable insurance and they are getting what they are paying for. That is what this is about.

What happens if we do nothing—if we do nothing; if we wait, wait, wait, like the Republicans are saying? Every single day 14,000 Americans lose their health insurance; 14,000 people got up today with health insurance and they will go to bed without it. That happens every single day.

Insurance rates are going to double in the next few years, by 2016. Business costs are going to double. Increased premiums are going to cost us, it is expected, 3.5 million more jobs. I don't know about any of my colleagues, but we cannot afford to lose any more jobs in Michigan. Health care is directly related to jobs and our international competitiveness.

We know incomes of families will be reduced. We know every 5,000 homes will be foreclosed as a result of a health crisis, and 62 percent of the bankruptcies are as a result of a health care crisis.

Wait, like our Republican colleagues say? No, we cannot wait. The families, the people I talked about and read their stories, they cannot wait. Families cannot wait. Businesses cannot wait. Small businesses that cannot find insurance cannot wait. Large businesses that are finding themselves in difficult situations, considering pulling up shop and going to another country because of lower health care costs cannot wait.

People expect us to solve this problem. They expect us to come together and work together, without all the stalling and the objections and the partisan politics. They expect us to come together and solve what is a huge American problem by bringing down costs and creating access to affordable health care where people know that the insurance company will not be the one that is standing between them and their doctor.

This is about saving lives, saving money, saving Medicare. Mr. President, 45,000 people will lose their lives in the coming year. And 45,000 families will have one less chair or an empty chair at the holiday dinners that are coming up because 45,000 people could not find affordable insurance in this country—Americans, in America.

Saving money—this is about making sure small businesses get the tax cuts they need to help them buy insurance, to make sure that families who are buying through the new insurance pool get the tax cuts they need to afford to buy insurance.

This is about making sure large businesses begin to see costs come down over time because when they are providing insurance already, they are not going to pay the extra costs of folks walking into an emergency room uninsured who are treated and then the costs get rolled over on to everybody with insurance.

We as a country are going to save dollars, save money over time for taxpayers and strengthen Medicare to bring down costs.

And, yes, we are going to save Medicare. We are going to lengthen the Medicare trust fund solvency. We are going to make sure overpayments to for-profit insurance companies are reined in so that the majority of seniors do not see their premiums go up under Medicare to pay for those excess profits.

We are going to make sure we are closing that gap in coverage for prescription drugs that has now been called the doughnut hole, where too many seniors or people with disabilities fall into that hole, cannot afford their medicine, and are not able to get the care they need.

We are going to make sure preventive care does not have an extra cost of a copay or deduction because we know it saves money and saves lives. Under Medicare, we are going to make sure that is there as well.

That is what this is about. It is not about waiting. It is not about all the other stuff we have heard that are scare tactics. This is about tackling and solving a problem for the American people that we cannot afford to wait to do any longer.

Coming from Michigan, I have to say everything I do, everything I care about is about saving jobs. We know in addition, we truly are saving jobs. We are saving jobs for our large employers right now that provide insurance, have been doing the right thing for years but have seen their costs go up 10 percent, 20 percent, 30 percent every year and cannot sustain it anymore. They are cutting health care benefits, raising premiums, or laying people off because they cannot afford it.

We know our small employers under our package will save 25 percent. I believe we are going to be doing even more for small businesses.

We have tax credits to help companies, and, as I indicated before, our plan is going to save 3.5 million jobs that would otherwise be lost because of the increased health care costs that cause employees to be let go or companies to move overseas.

We are talking about saving lives, saving money, saving Medicare. We are talking about saving jobs.

What we are not talking about is waiting. We are not talking about stall tactics or politics. We are way beyond that. I understand there is a big strategy to make sure the President of the United States is not successful. There is a big strategy to make sure we are not successful in the Senate. We have seen more filibusters and more objections than ever before. The vast majority of the days we have been in session—I believe it is 39 weeks now—all but 4 of those we have seen filibusters. It has never been done before—filibusters and objections over and over again.

We are committed to getting beyond that and focusing on the reality of what is happening in people's lives. People are waiting for us to step up and to solve this problem and to give them the ability to have access to affordable health insurance for themselves and their families.

We are not proposing something radical. We are proposing that we fill in the gaps for the folks who do not have insurance today, most of whom are in a small business, most of whom are working maybe one, two, three part-time jobs but they are working and they don't have access to health insurance, or they are self-employed, as the gentleman I talked about, David, in Suttons Bay, maybe a farmer, maybe a realtor, maybe the next Bill Gates in their garage coming up with the next great invention. They don't have access to the same big insurance pool that a big business has to bring down costs.

What we are talking about for those folks who are working or have recently been laid off and cannot find insurance is giving them a way, a competitive way to buy insurance from an insurance pool.

I cannot imagine a more important Christmas present to give to American families than the ability to know going forward that when they lose their job, they are not going to lose their health

insurance; that they have an opportunity, a way to get affordable insurance, and that we have come together as a Senate to focus on saving lives, saving money, and saving Medicare.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I would love to interject a question to the distinguished Senator from Michigan.

We are in a situation in which the other side is repeatedly coming to the Senate floor to ask us to delay, to stop, to slow down, to start over. I am curious, as somebody who has watched this debate very closely, what the Senator from Michigan thinks about where we would be if we acceded to that wish? Bearing in mind that one of the sort of ideological firebrands who seems to be leading a measure of the debate on the other side has indicated this is not about health care and people; this is about giving President Obama a Waterloo; this is about creating a political defeat for the President of the United States on their side; it has nothing to do with health care; it is entirely about creating a defeat for this new President; when, in the face of all the obstruction the distinguished Senator from Michigan described so eloquently, this recordbreaking, ''unprecedented in the history of the Senate'' obstruction we are seeing, the person whom I think right now seems to characterize the leadership of the radicalized rightwing and is running the Republican Party, Rush Limbaugh, is telling the other side they have not been obstructive enough.

So if we were to go back, start all over, and reach out our hands again to our friends on the Republican side, is there any reason to believe that we would not be just as rebuffed going forward as we have been in the long arduous process of negotiation and hearing and public meeting and all of the work that has taken us to this point right now?

Ms. STABENOW. Mr. President, I thank my friend from Rhode Island for the question and for his advocacy and understanding of how we bring down costs and what we should be doing in so many areas for families and for businesses in the country.

I will just say that we have, first of all, attempted to get something done for years. In the last couple of years, reaching out to Republicans in an unprecedented way, our distinguished chairman of the Finance Committee, as everyone knows, went to unparalleled lengths in reaching out and spending months and months putting together a work group of three Democrats and three Republicans to work in good faith to get something done.

We have accepted Republican ideas. I know on the HELP Committee there were many amendments accepted from Republican colleagues. We have continued to reach out and look for ways to work together.

But what we are seeing is a lack of desire to work together and more than just a lack of desire, as the Senator indicated, but simply to attempt to embarrass the President of the United States, to stop him from being successful, and to stop us politically, when the reality is very serious. This is not about a President. We have had 100 years of Presidents trying to do this. This is not a particular Senate. We have had Senates for years that have been trying to do this. This is about when are we going to get beyond all this? When are we going to actually get beyond this and focus on the reality of what is going on in people's lives, what is going on in every small business that is trying to figure out how to pay the bills and hold it together or every manufacturer in my great State that is trying to figure out how they are going to hold it together. At one point, the American people will have every right to say to us: When are you guys going to get beyond this stuff?

The good news is, we have a President who has said now is when we are going to put it behind us and the Senate has said now is the time and we will work in good faith with anyone who wants to work with us. But we will not wait, which is what we are being asked to do—wait until another time, when 45,000 more people will have died next year, when another 5,000 people a day will have lost their homes to foreclosure.

Mr. WHITEHOUSE. If we were to wait, does the Senator think there is any likelihood people on the other side would suddenly want to cooperate with President Obama and not hand him a defeat? If Rush Limbaugh would say: OK, Republicans in the Senate, go ahead, work with the Democrats now; don't just be the party of obstruction and delay but try to work cooperatively for the American people, does the Senator think there is any likelihood of that happening?

Ms. STABENOW. I would like to think there would be a likelihood of that happening, but I can't imagine it. Frankly, and I think unfortunately, they view it in their self-interest, whether it is a business decision, as a radio host, or whether it is a decision of the other party. I appreciate the fact that it is hard to lose elections. We have all been in those situations. I appreciate the fact that folks don't want to be in the minority. Most of us have been in that situation. So I appreciate that. But I think all of us were hoping this year, with two wars, with the deficit we have, with the challenge on health care, with the need to create jobs, and with the financial crisis we are in, that somehow it would be different for a while.

I would ask my colleague if he had the same sense of hope coming in; that this year maybe there would be a moratorium on the partisanship; that we could actually come together in the interest of the country and solve problems before going back to the elections. I would ask my friend if he was as surprised as I was that there was not only no stopping after the election but that the same folks who led things during the election are leading them right here on the floor.

Mr. WHITEHOUSE. I share the disappointment of the Senator from Michigan; that the promise and the outreached hands have been rejected and rebuffed; that this place has become so bitterly partisan. This is my first time in the Senate with a Democratic President, and I have been surprised at the tone of the debate, at the lack of truth of a great many of the arguments, of the very apparent motivation.

I have spoken to members of our caucus who I think are probably viewed as some of the most moderate when it comes to seeking bipartisanship, who are calm and respected Members of the Senate and who have been here a long time, and I have asked them how this compares to their long years of experience in the Senate. One of them said he has literally never seen anything like it in all the years he has been in the Senate. He has never seen anything like it. They are always on message, he said, but I have never seen them so off truth.

I think it is regrettable, but if your mission is to destroy a strong and important piece of legislation, not because it is bad legislation but because you can't stand having this new President win a political victory, are you going to go out and disclose that is your motivation? No, you are going to come up with a bunch of other cockamamie arguments to paper that over. You will talk about death panels and you will go through all the nonsense we have seen and it is regrettable.

Ms. STABENOW. If I might interject with my friend, I have been handed a note that says, in fact, there have been over 150 amendments offered by Republicans, and so our attempts have been ongoing to reach out.

Mr. WHITEHOUSE. I think those were the Republican amendments that were accepted into the HELP Committee bill. In fact, I think there were 161, if I remember correctly from my time sitting on the committee. We took Republican amendment after Republican amendment after Republican amendment trying to reach out to them.

Ms. STABENOW. So we have over 300 pages of the bill which contain Republican amendments, and that is fine. There is no ownership in the sense of who has the better ideas. In fact, what I find interesting is the insurance exchange we have in the bill for small businesses—which is at the heart of coverage of small businesses and individuals—has been offered by Republicans and Democrats. I believe distinguished former Senator Bob Dole offered some form of an exchange back during the debate when President Clinton was in office.

So we are not trying to claim a corner on ideas. There are many ideas that have been available and talked about for years. It is a matter of having the will, the commitment to actually do the hard work people expect us to do in order to get this done. I think that is what is so important about this time, when the average family is finding themselves unraveling, with not knowing if their job is going to continue to be available or if there will be a cut in wages. They are paying more out of pocket for everything under the Sun and then worrying if the employer is thinking: Well, you can have your job or your health insurance because the employer can't keep both going.

The fact is, we have lost so many middle-class jobs—and I will spend another time talking about the loss of manufacturing jobs in this country. We have lost a lot of our middle class in terms of good-paying jobs. So people are now saying: Wait a minute, just being the party of no, that is not going to be enough. That is not good enough—just saying no for political reasons. That is not enough. We want to know what you are going to say yes to. We want to know how you are going to work together. We want to know how are you going to actually solve a problem.

When someone such as Joe, from Rockford, MI, says he served in the Marines for 4 years and their motto is: ''We take care of our own,'' my question is: When are we going to come together and take care of our own Americans? I don't mean literally taking care of every person but creating opportunity for people, creating the climate for people to have a job, to have health insurance, to send the kids to college, to be able to afford to keep their lights on, and to be able to know that their country is on their side. That is what this is about. They do not want us to wait more, they want us to move quickly—move quickly on health care and jobs and all the other issues that are so important to their families.

So I thank my friend from Rhode Island for joining me, because there is a sense of urgency that people have, and we need to have that sense of urgency to get things done—to work together and to get things done. Frankly, one of the things our colleagues on the other side of the aisle have successfully done is united our caucus in its determination to not let this kind of stalling and objections and tactics, which are slowing things down, stop us from actually solving a huge problem that has gone too long unsolved for the American people.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are considering the omnibus bill. Once again, I have to say that we are heading recklessly, at a high rate of speed, toward the most reckless spending this Nation has ever seen. We saw some big spending during World War II but nothing like this, in the kind of environment we are in today. Plus, then we had the whole Nation working to win that life-and-death struggle.

I will just say a few things about this omnibus bill. First, I don't think any of us should support it. Why? It is unacceptable. Why? It is the kind of spending that has caused the American people to be outraged and to go out in the streets. People told me they had never been to a rally before in their lives, but they went out because they are afraid for their country.

Look at the package of spending that is in this legislation—the Commerce, Justice, and Science bill has been cobbled together with the others. There are 6 of the 13 appropriations bills all packaged together into 1 to see if they can't ram it through during the last days before Christmas so nobody will have the gumption to cause a fuss about it and so we can just get this done. What is it that is contained in the legislation that causes such angst on my part and on the part of others? I will explain it for you.

Here are the numbers. The Commerce, Justice, Science appropriations bill contains $64 billion in spending. The percent of growth over last year's spending is 12 percent. Just to recall for my colleagues, if you know the rule of seven, which you learn in accounting: at a 7-percent growth rate—or if you have an interest rate of 7 percent—your money will double in value in 10 years. Here we have a 12-percent increase. That means the expenditure line of Commerce, Justice, and Science increases at 12 percent, which would double that whole amount in about 7 years. Do you think that is what the American people want? This does not count the stimulus package we passed earlier this year. My wife says: Quit saying we passed, when you voted against it. I didn't vote for it. It was $800 billion, and $15 billion went into Commerce, Justice, and Science appropriations. So we go from $64 billion in this bill and add $15 billion on top of that amount, which is already being spent.

What about a second one—financial services. It has a 7-percent increase. The rate of inflation is what, 1 percent? On top of this bill, we add about a $7 billion infusion in financial services from the stimulus package. Last year, the spending was $22 billion; this year, it is $24 billion. Add $6.9 billion on top of that and you have about $31 billion, which is a massive increase.

Labor, HHS, and Education also increased at 7 percent, and it received $72 billion extra from the stimulus package. I am not counting the stimulus when I say it is a 7-percent increase. I am talking about the baseline budget. Military Construction and Veterans Affairs is oddly the lowest. It only received a 5-percent raise. Well, 5 percent is still a big increase when the inflation rate is below 2, and it received $4 billion from the stimulus, which is not much. The stimulus gave very little to military matters.

What about the State Department and Foreign Operations? How much did that budget line increase over last year? Thirty-three percent. We don't have to increase State and Foreign Operations 33 percent. This is beyond a reasonable amount by any stretch of the imagination, and it also received an increase in the stimulus package.

What about Transportation and Housing and Urban Development? What kind of increase did they get in this year's budget, in a time when the American people are having to cut their budgets, when they try to save more than they ever saved before, trying to find work if they or family members are losing jobs, when they are not getting overtime like they did before, when other things are tightening them up and the fear of unemployment is out there; what does Transportation and HUD get in the baseline budget? Not counting the stimulus money: 23 percent increase. With a 23-percent increase you double the whole Transportation-HUD budget in 4 years. This is not responsible.

By the way, the baseline Transportation-HUD budget in 2009 was $54 billion. It was $54 billion, and the stimulus package added $61.8 billion on top of that.

The omnibus bill in all of the spending lines amounts to an increase of 12 percent. This is unsustainable, and the 12 percent does not include the huge amount of money that was funded through the stimulus package.

I see my colleague here, one of our stalwart Members of this Senate. I will yield to him, but I just want to be on record saying I would love to vote for these bills. I voted for many of these funding bills in years past, but I am not going to vote for a package that increases spending of the Federal Government at 12 percent when the average American is lucky to have a job and inflation in this country is 1 or 2 percent. This makes no sense to me.

Remember, this spending is in addition to the amount of money approved in the stimulus package—$800 billion.

If you would like to know how much money $800 billion amounts to, the general fund budget in my State of Alabama—we are an average size State—is less than $2 billion. The entire total spending of these six bills in this omnibus package is $445 billion, and we spent in February—this Congress approved without my support $800 billion extra to try to stimulate the economy. Unfortunately, it has been frittered away without the kind of impact we need.

I am worried what we are doing. I appreciate having this opportunity to share those comments, and I will speak more about it in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I appreciate my colleague's great remarks. I rise today to discuss an important aspect of this multifaceted health care

reform bill that is now pending on the Senate floor. It is tax increases and who will bear the burden of those tax increases. I have actually heard some stand on the Senate floor and say there are tax reductions. Who are they kidding? The gargantuan piece of legislation laying before us provides plenty of fodder for debate and discussion. This debate and discussion is taking place all over the country among Americans everywhere: over the family breakfast table, during breaks at work around the water cooler, in corporate boardrooms, and bowling alleys, and during Christmas shopping trips.

Of course, right here in the Senate we have already had many hours of debate about the health care bill, with many more likely to come. As one peruses the 2,074 pages that comprise the Patient Protection and Affordable Care Act—this bill—it quickly becomes obvious that this bill encompasses many topics and touches on a comprehensive array of issues dealing with our health care system.

However, it is not until near the very end of the bill, starting on page 1,979, that we find title IX, which deals with revenue offset provisions. Perhaps it is because this title is near the end of this seemingly endless bill that we have heard relatively little discussion about the new taxes it creates or perhaps it is because the tax title is relatively short, a mere 67 pages.

No matter the reason, I believe it is vital that the American people understand something about these new taxes before we are asked to vote on this legislation, this gargantuan legislation.

Before I get into the specifics of the new taxes and tax increases in this bill, I need to inform my Utahns and Americans everywhere that they are being sold a bill of goods when it comes to these taxes.

Based on what President Obama promised during his campaign last year, every individual American taxpayer earning less than $200,000 per year, and every family making less than $250,000 per year is justified in believing that this health care bill, which has been endorsed by the President, would not raise their taxes. Here is the direct quote from candidate Barack Obama in New Hampshire on September 12, 2008:

> I can make a firm pledge. Under my plan no family making less than $250,000 a year will see any form of tax increase.

Unfortunately, this bill places the cost of health care reform squarely on the backs of the taxpayers and mostly on the 98 percent of Americans the President promised to protect from new taxes. That is what it said. President Obama's exact words were:

> I can make a firm pledge. Under my plan, no family making less than $250,000 a year will see any form of tax increase.

The President went on to promise:

> Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes.

However, when one looks at the list of revenue offsets beginning on page 1,979, we see all but 5 of the 14 revenue raisers included there would hit families making less than $250,000.

There is a cornucopia of new taxes on middle-income Americans in this legislation: a limitation on itemized medical expense deductions for medical expenses; an excise tax on the high-cost health insurance plans; a new tax on medical devices such as wheelchairs, breast pumps, and syringes used by diabetics for insulin injections; a limit on contributions to flexible spending accounts; an increase on the penalty for unqualified distributions from a health savings account; an increase in the payroll tax, and on and on.

Look at all these taxes: itemized medical expense deduction, fees on drug manufacturers, high-cost plan tax—by the way those are passed on to you and me and every other consumer, most of whom are less than $250,000-a-year earners—fees on health insurers, nonqualified HSA distribution from 10 percent to 20 percent, fees on medical device manufacturers, fees on FSAs—a $2,500 cap on FSAs—people who have suffered from disabilities and other problems, they can't live with that kind of cap—and an individual mandate penalty excise tax, all of those. That is just mentioning a few of them. It goes on and on.

Some of these would directly hit many taxpayers who make less than $200,000, such as this 5 percent excise tax on cosmetic surgery, while others would in the form of higher fees and penalties that would ultimately be passed on to the consumer.

This is certainly the indication with the new ''industry fees'' that would be assessed on several sectors of the health care industry.

Who do they think is going to pay for those? It is you and me and everybody else. Look at this chart, the biggest single tax increase in this health care bill is also one of the most insidious. This is the 40-percent excise tax on high-cost insurance.

By 2019, 88 percent, or $30.5 billion will be borne by individual taxpayers. Eighty-four percent of those will be individuals who make less than $200,000 or families who make less than $250,000. That is according to the Joint Committee on Taxation, upon which I sit. It is a nonpartisan committee.

This is the 40-percent excise tax on health insurance coverage that exceeds $8,500 for single families or $23,500 for families.

The unions in this country are going crazy over that, and with good reason.

The proponents of this idea tell us it is necessary in order to ''bend the cost curve'' downward and get the cost of health care under control. However, in reality, this is simply a bastardized version of the concept that might have been effective in discouraging employees from bargaining for too much insurance because it is a tax-free benefit; that is, for corporations that provide it, a cap on the value of tax-free, employer-provided health insurance.

The original concept, which was discussed at length in the finance committee earlier in the process of developing health care reform legislation this year, has merit if done correctly. By providing a direct disincentive to the very individuals who would suffer the tax increase, this original idea would have discouraged purchasing or bargaining for higher cost insurance simply because of the tax benefit.

However, this bill and the one approved by the Finance Committee does not take this route. Instead, it takes the cowardly approach and applies the tax increase at the insurer level.

Why is this a bad idea? For one thing, the tax increase occurs at a level two steps removed from the individual employee, which is where the decision to buy a less costly plan is made. Rather, the tax is assessed on the insurance company which has no choice but to pass the cost of the tax on to the employer and the employee who, together, pay the cost of the policy.

Instead of providing a disincentive for purchasing more health insurance than is necessary, applying the tax at the insurer level simply increases the cost of insurance without the employer and employee necessarily even knowing why the cost has gone up.

You wonder why insurance costs go up?

So for the sake of avoiding what appears to be a direct tax increase on workers, this approach loses the benefit of the original idea of bending down the cost curve by providing a disincentive. But make no mistake, this increased cost of these insurance plans will be passed on to the employees.

''Forty percent excise tax on high-cost insurance''—which most people will have. This is not even—

> . . . by 2019, 88 percent or $30.5 billion will be borne by individual taxpayers; 84 percent of those will be individuals who make less than $200,000 or families who make less than $250,000. The Joint Tax Committee.

My gosh, when does it end?

Moreover this tax burden would not be just on those whom the President says he wants to target for tax increases, those making over $200,000 per year as individuals or $250,000 per year for families. Far from it.

Data from the staff of the Joint Committee on Taxation showed that only 16 percent of the $30.5 billion borne by individual taxpayers in 2019 would be paid by those making over $200,000 per year. This means that 84 percent or almost $26 billion for this 1 year only would be paid by those whom the President promised to protect against tax increases.

Unfortunately, the excise tax on high-cost insurance policies is not the only way the health care bill would increase the cost of health insurance. To add insult to injury, the bill also includes a $6 billion annual fee assessed on providers of health insurance.

I have heard the other side just condemn health insurers, day in and day out. Yet they are adding all these costs

to the health insurers that have to pass them on to the individual citizens, or insurees.

As I understand it, the rationale behind this misguided idea is that health insurance companies will be enjoying a windfall from this bill in that millions of new customers will become insured for the first time. Therefore, the reasoning goes, the health insurance industry will be earning billions of dollars that they would not have otherwise made, all because of the beneficial aspects of this health reform bill.

Therefore, since these companies will be reaping all of this extra profit, why should we not tax them on this windfall in the form of this annual fee as though those costs are not going to be passed on? This is a bad idea on so many levels. First, it assumes that the insurance companies will actually be gaining all of these new customers. Secondly, it assumes that the insurance companies will be making money from these new customers if they indeed gain them. Keep in mind, they are talking now in the back rooms. Nobody knows what they have concluded. They are talking about putting people into Medicare from 55 years old on, where today you have to be 65 years of age to be able to qualify for Medicare. Now they want to do that at 55. What does that mean? That means the sickest of the sick will go into Medicare. People are going to push them out of regular policies and others will go into Medicare, so these insurance companies aren't going to make all the money the Democrats say they are.

The third assumption is the most troubling. That is that it would be the insurance companies themselves that would bear the burden of these fees. These are all dangerous assumptions. The third one is downright fallacious. It assumes that corporations suffer the incidence of taxation. As anyone with a modicum of economic training knows, corporations do not bear the burden of taxes, people do. Specifically, it is the people who work for the corporation, who own the corporation, and who are the customers of the corporation who ultimately pay the tax. They are passed right on to the people. This is not the only dangerous new excise tax in this bill. We have a whole passel of them. A new excise tax on health insurance providers. Look at this, excise taxes in the health care bill, excise tax on health insurance providers, new tax on pharmaceuticals, a new tax on medical devices, a new tax on high-cost insurance plans, and a new tax on cosmetic surgery. In the case of competitive markets, an excise tax is generally borne by consumers in the form of higher prices in the long term. At least this is what the staff of the Joint Committee on Taxation said to me in a letter on these insurance industry fees, dated October 28, 2009. Why in the world would we want to add a fee to the health insurance industry when we know it will be passed right on to consumers of the health insurance in the form of higher insurance costs? That means you and me. That means the employee. That means the person who bears the burden. I thought the purpose of this health reform bill was to rein in health care costs.

How much does this so-called health care reform bill harm taxpayers and violate President Obama's promise not to raise taxes on the middle class? Let me tell you about one of the most egregious tax increases in this bill. I have always believed that one of the major purposes of health care reform is to lower the cost of medical expenses to American families and especially to vulnerable American families. Therefore, it makes no sense to me that this bill should include this next tax increase which would largely hit the sickest Americans. This proposal would increase the threshold for deducting medical expenses from today's level of 7.5 percent to 10 percent of adjusted gross income. This seemingly small change is projected by the Joint Committee on Taxation to cost taxpayers over $15 billion over 10 years. Which taxpayers would suffer this tax increase? The ones earning more than $250,000 per year that President Obama pledged would be the only Americans to be saddled with a tax hike under his administration? Hardly. Of the many millions of families affected by this change, only a few thousand have incomes over $200,000. Think about that. The vast majority of the victims of this tax hit would be below that figure, with many of them being far from wealthy. In fact, a high percentage of the taxpayers affected by this change make less than $75,000 per year.

Look at this. If your income equals $100,000, then you need to incur $10,000 worth of medical expenses before you become eligible for the deduction. Millions of taxpayers making less than $200,000 will be affected. The deduction for medical expenses has been in the Tax Code for decades. Its purpose is to provide relief to Americans who face catastrophic medical expenses in relation to the size of their income. It is designed so that an average or usual amount of health care costs will not trigger the relief. Like I say, a family earning $100,000 this year would have to have medical expenses exceeding $7,500 before the deduction kicks in. This does not count what insurance pays but only what the family would fork over in out-of-pocket costs.

Even for those with the most basic health insurance, 7.5 percent of family income spent for medical expenses is a large amount. In many cases, this much medical cost relative to income is caused by chronic health conditions or serious accidents or injuries, and this is exactly the point. The current tax law rightly says that if a family has to pay catastrophic or near catastrophic amounts for health care during the year, relief is available. By design this deduction is there only for those who need it. So the big question is: Why we would want to increase taxes on those with already high medical expenses by making it tougher for them to get relief from catastrophic medical expenses. But the real conundrum is why would we do this as part of a bill that is supposed to rein in health care costs.

It is no wonder my fellow Utahns and Americans everywhere are questioning the wisdom of this bill. As with so many other features of this so-called health reform plan, this doesn't make sense.

There is much more I want to say about the tax increases in this bill. American taxpayers need to know the truth about what is about to hit them, if the majority has its way. I have not yet mentioned the new industry fee on medical device companies. Because my home State of Utah has many such companies, I plan to address this new fee in a separate floor statement as this debate progresses.

Let me summarize by reminding my colleagues that the tax increases in this bill fly in the face of the promises made by the President, the leader of the majority party in Congress who has explicitly endorsed this legislation. The staff of the Joint Committee on Taxation recently conducted a distributional analysis of how four of these tax increase provisions affect American taxpayers. Under that analysis, in 2019, individuals making over $75,000 and families making over $75,000 will see their taxes increase under this bill. That is equal to 42 million middle-income taxpayers. Think about that: 42 million middle-income taxpayers all making less than $200,000 per year and all of them, told by the President that they would be protected from tax increases, will be hit and hit hard by this bill. This is after taking into account the tax effects of the advanced refundable tax credit for health insurance.

Think about this: Millions more middle-income taxpayers will be hit by indirect tax increases from the health industry segment fees included in this bill. There is no question that these fees and other excise taxes will be passed through to the individuals who are consumers of the health care products that are being passed. As we debate this health care bill, it is imperative that the American people know what is in the legislation and how it will affect them. It would be a travesty for us to vote on this before these things are fully understood and debated. This is one of those few bills that come along only once in a generation or so. It is one of those bills that has the potential to change our country forever, for good or bad. In this case, it is not for good.

The tax increases in this bill are unprecedented in many ways and not well thought out. They will have a devastating effect on the people the President has promised to protect. The tax increase aspect alone of this leviathan is enough to demand its defeat here in the Senate. But there are so many more ill-advised provisions in the other 2,007 pages as well.

I urge my colleagues to take a good and honest look at these tax increases and make sure they are ready to face the vast majority of their unsuspecting constituents once they discover what has been done to them with this bill, should it pass.

I am very concerned about this bill. The American people are very concerned about this bill. Polls show they don't support this bill. I can't believe my colleagues on the other side are trying to present it as though it is a tax deduction bill when, in fact, it raises taxes in billions and billions of dollars, most of which go to the middle class or lower in transferred payments, and causes other problems added to their woes in health care and their very lives, as we go through all of our lives here in the United States. I am very concerned about it. I think everybody ought to be concerned about it. This is one-sixth of the American economy. If we can't get 75 to 80 votes in a bipartisan way, you know it is a lousy bill. This is a lousy bill. From what I have heard of the one that even Democrats don't know what form it will be in, it is going to be even more lousy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, pending before us now is an omnibus bill which contains six different appropriations bills. It was not our intention to call this omnibus bill but to call each one of the appropriation bills. Unfortunately, it has been impossible to reach that goal because of a strategy that has been employed by the Republican side of the aisle to slow down any debate on any topic as much as possible, to challenge us with filibusters and force cloture votes and make the Senate go into interminable quorum calls. So many times we have called bills that came out of the Appropriations Committee with overwhelmingly positive votes only to run into roadblocks on the floor. And then after weeks and weeks and weeks of procedural problems tossed our way by the Republican side of the aisle, the bill is finally called and passes by an overwhelming margin. The strategy is clear.

It is as clear on the health care bill as it is on the appropriations bills that the Republican side of the aisle doesn't want us to complete. So we are attempting to do our best by consolidating into one appropriations bill six different appropriations bills that passed with overwhelmingly positive margins out of the Senate Appropriations Committee. There were three bills that received 30 to nothing votes in the Appropriations Committee and three others that were reported out 29 to 1, to give an idea of the kind of support they had. We brought up the Commerce-Justice-Science appropriations bill on October 6. It took us a month to finish that bill because of the delay tactics of the other side. That is the reality of what we face. We have run ourselves into the ground day after day, week after week with amendments relating to things of little or no consequence. I cannot count how many ACORN amendments we voted on. It would be a forest of oak trees if those acorns were planted. But we voted on them regularly, religiously. We made sure we took care of ACORN, but we didn't take care of the people's business because those amendments wasted our time.

These appropriations bills have taken longer and longer because the minority will not agree to reasonable time agreements to consider amendments and finish debate.

Instead, we found ourselves consistently sidetracked by the minority, spending hours on the floor taking the same votes on keeping ACORN from receiving money from different Federal agencies like the Interior Department.

So, here we are. We have 21 days before the end of the calendar year and we need to finish the business of the Congress.

To do so, we engaged Republican members of the Appropriations Committee and worked on reasonable compromises to the differing bills in the House and Senate.

This package of appropriations bills is the result of a truly bicameral and bipartisan effort.

This package represents the priorities of the American people. The conference report invests in students, veterans and law enforcement.

The bill before us makes college education more affordable for students by increasing Pell grants to $5,500.

This will help all students, whether they are going to college for the first time or going back to acquire new skills, get the college education necessary to compete in the global economy.

The conference report also helps local governments fight crime and puts more police on our streets.

We have increased grants for State and local law enforcement by $480 million over last year.

These grant programs were cut by almost $2 billion during the last administration.

This conference report sets the right priorities by increasing funding essential to helping our States and local police departments fight crime.

We also help local law enforcement with hiring and training by including $298 million for the Community Oriented Policing Services or COPS program to put more cops on the beat.

This funding will help hire or retain approximately 1,400 police officers.

The COPS program has helped train nearly 500,000 law enforcement personnel and put over 121,500 additional officers on the beat nationwide.

This conference report also helps keep our promise to our Nation's veterans by increasing funding for the Veterans Affairs Department by $5.3 billion above last year's level.

This funding will increase access to quality health care for our veterans. In particular, the conference report increases discretionary spending at the VA by more than $5 billion to help the VA care for the more than 6.1 million veterans they expect to see in 2010.

As chairman of the subcommittee responsible for Division C of this consolidated appropriations bill, I would like to take the next few minutes to describe the key components of that portion of this bill.

Before doing so, I want to recognize and commend my ranking member, Senator COLLINS, for her helpful counsel, input, and support in crafting the bill. It has been a privilege and pleasure to collaborate with her in addressing the needs of the agencies and programs dependent on funding under our division of this conference agreement. I am proud that we have produced a truly bipartisan product.

This conference agreement allocates budgetary resources totaling $46.3 billion. This consists of $24.2 billion in discretionary spending and $22.1 billion in mandatory spending for financial services and general government accounts. The discretionary funds are $1.6 billion above the fiscal year 2009 enacted level and $40 million less than the President's request.

Our work has provided a valuable opportunity to evaluate the responsibilities, functions, and budgetary needs of the diverse agencies and programs under our jurisdiction. Our challenge has been deliberating carefully to make tough decisions within our conference funding allocation to address many worthy requests.

The bill provides resources for the Department of the Treasury, the Executive Office of the President and White House operations, the Federal judiciary, and the District of Columbia.

In addition, the bill funds over two dozen independent and vital, but often obscure, Federal agencies responsible for a wide array of critical functions in the delivery of public services.

I would like to share some of the highlights of the bill:

My top priority this year was to continue to address the resource needs of two of our Nation's premier regulatory agencies: the Securities and Exchange Commission and the Commodity Futures Trading Commission. These two agencies occupy pivotal positions at the forefront of stimulating and sustaining economic growth and prosperity in our country.

The CFTC received its fiscal 2010 funding as part of the Agriculture appropriations bill, signed into law in September. I am pleased to have played a role in providing that agency with $168.8 million, a 16-percent boost above last year.

For the Securities and Exchange Commission, this bill includes $1,111,000,000, an increase of $85 million above the President's budget request and $151 million more than the fiscal year 2009 enacted level.

The SEC is the investor's advocate. I want to make certain that the SEC has

the necessary resources to effectively fulfill its singular obligation: protecting shareholders.

SEC Chairman Mary Schapiro has charted an aggressive new course to strengthen SEC vigilance by recruiting professional expertise and investing in enhanced technology. The $85 million increase in this bill will support 420 additional investigators, attorneys, and analysts to expand significantly the SEC's enforcement, examination, risk assessment, and market oversight functions.

In addition, the SEC will be able to accelerate investments in several key information technology projects, including installing and launching a new system to track tips and complaints.

The conference bill supports community and small business development at a time when these investments are more crucial than ever. With the economy struggling, economic development must be a top priority.

Treasury's Community Development Financial Institutions Fund program—CDFI—helps finance community development projects throughout the country and supports basic financial services for underserved communities. The bill provides $166.8 million for CDFIs to provide financing for projects such as day care centers, community centers, and affordable housing projects in America's underserved neighborhoods.

Through the Small Business Administration, the bill provides over $824 million to promote the development of America's small businesses. The bill supports $28 billion in new lending to small businesses, providing financing opportunities for small businesses at a time when private sector credit is difficult, if not impossible, to access. The bill also provides $22 million for microloan technical assistance grants and supports $25 million in microlending.

Funding also supports SBA's partners, including Small Business Development Centers, Women's Business Centers, and Veterans Business Outreach Centers. These partners form a foundation of support to help America's small businesses weather the economic downturn and assist newly unemployed Americans seeking advice on starting a small business as a new career path.

As we have done in the past few years, this bill provides a significant funding increase for the Consumer Product Safety Commission. To help keep CPSC on track to meet its new responsibilities under the Consumer Product Safety Improvement Act, the bill provides $118.2 million, an increase of $13 million above last year's level and $11 million above the budget request.

These funds will help expand the import safety initiative, which puts CPSC inspectors at key U.S. ports, and to further investigate suspected problems with imported drywall from China. With these resources, the CPSC can provide the nation with a robust safety program and protect the public against unreasonable risk of injury associated with consumer products.

For the Internal Revenue Service, the bill provides $12.2 billion. Of this, $7 billion is for tax law enforcement, $387 million more than last year, to help advance the administration's initiative to target wealthy individuals and businesses who avoid U.S. taxes by sheltering money in overseas tax havens.

The bill provides nearly $6.4 billion to enable the Federal judiciary to carry out constitutional responsibilities to administer justice and resolve disputes impartially under the rule of law.

Of the $752 million in Federal funding for the District in this bill, the largest portion, $563 million, is designated for the local courts and criminal justice system including public defender services and pretrial and postconviction offender supervision.

In addition, the bill provides a total of $186 million in Federal funds for local District of Columbia activities under the control of the mayor. Of this amount, $110 million is for education-related functions, specifically support for local school improvement and postsecondary tuition assistance.

This $110 million continues our commitment to improving the quality of education for children in the District of Columbia. I convened two hearings this fall to assess the Federal investment in school improvement over the past 5 years. To date, including this bill, Congress has provided $348 million since fiscal year 2004 as special payments to help the District address long-standing deficiencies in its education system.

This conference agreement provides $75.4 million for school improvement in the District in three sectors: $42.2 million for public schools, $20 million for charter schools, and $13.2 million for opportunity scholarships. The bill also includes $35.1 million to continue the District of Columbia resident tuition assistance grant program which permits eligible District residents to attend out-of-state colleges and universities at in-state tuition rates.

Finally, just a few words about earmarks. This is a very transparent appropriations bill shining a light on requests from Senators, House Members, and the Obama administration. Quite frankly, that is the way it should be.

Nothing is buried or disguised. The name of every Member who has asked for anything in the House or Senate bill that has been included in this conference agreement is disclosed in the explanatory statement. Every Member has to stand by every request he or she makes, and it is printed right there for the world to see.

After the document went to print, Senator SCHUMER submitted a letter to the committee conveying his support for several items included in the bill at the request of House members.

I ask unanimous consent to have the text of Senator SCHUMER's letter printed in the RECORD.

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

U.S. SENATE,
Washington, DC, December 7, 2009.

Hon. RICHARD DURBIN,
Chairman, Subcommittee on Financial Services and General Government, Senate Committee on Appropriations, Dirksen Senate Office Building, Washington, DC.

Hon. SUSAN COLLINS,
Ranking Member, Subcommittee on Financial Services and General Government, Senate Committee on Appropriations, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN DURBIN AND RANKING MEMBER COLLINS: As your Subcommittee works toward a conference with the House of Representatives on the Fiscal Year 2010 Financial Services and General Government Appropriations bill, I respectfully request your support for several projects that are important to the state of New York, as well as to our nation.

I urge the Senate Conferees to fully fund my priority project included in the FY10 Senate version of the Financial Services Appropriations bill:

Support the Senate Appropriations Committee (SAC) addition of $117,500 for the City of Buffalo for the Buffalo Clean Energy Incubator, in the Small Business Administration account;

Support the SAC addition of $117,500 for the Community Service Society of New York for a financial education project, in the Small Business Administration account;

Support the SAC addition of $117,500 for the Greater Syracuse Chamber of Commerce for the Space Alliance Technology Outreach Program, in the Small Business Administration account.

In addition to my Senate priorities, I also offer my support for the following projects included in the House version of the bill:

Support the House Appropriations Committee (HAC) addition of $17,500,000 for National Archives and Records Administration, Washington, D.C., for FDR Presidential Library, New York, in the National Archives and Records Administration account;

Support the HAC addition of $150,000 for Agudath Israel of America, New York, NY, for Mentoring and training services, in the Salaries and Expense account;

Support the HAC addition of $250,000 for the Buffalo Niagara International Trade Foundation, Buffalo, NY, to support small businesses, in the Salaries and Expenses account;

Support the HAC addition of $150,000 for the Center for Economic Growth, Albany, for Watervliet Innovation Center, in the Salaries and Expenses account;

Support the HAC addition of $150,000 for the Consortium for Worker Education, New York, NY, for Financial training and guidance programs, in the Salaries and Expenses account;

Support the HAC addition of $151,000 for Girl Scouts of the USA, New York, NY, for a national program to improve financial literacy, in the Salaries and Expenses account;

Support the HAC addition of $200,000 for Greater Syracuse Chamber of Commerce, Syracuse, NY, for Clean Tech Startup Camp, in the Salaries and Expenses account;

Support the HAC addition of $350,000 for Hudson Valley Agribusiness Development Corporation, Hudson, NY, for Hudson Valley Food Processing Incubator Facility, in the Salaries and Expenses account;

Support the HAC addition of $75,000 for Hunter College, New York, NY, for the Roosevelt House Institute Public Policy Institute, Financial Literacy Project, in the Salaries and Expenses account;

Support the HAC addition of $150,000 for Metropolitan Council on Jewish Poverty, New York, NY, for Employment and training programs, in the Salaries and Expenses account;

Support the HAC addition of $100,000 for New York College of Environmental Science & Forestry, Syracuse, NY, for the New York Forest Community Economic Assistance Program, in the Salaries and Expenses account;

Support the HAC addition of $125,000 for Pace University Lienhard School of Nursing, White Plains, NY, for nursing workforce education and training initiative, in the Salaries and Expenses account;

Support the HAC addition of $85,000 for Pratt Institute, Brooklyn, NY, for Green Community Career & Business Training Center, in the Salaries and Expenses account;

Support the HAC addition of $150,000 for SUNY Fredonia, Fredonia, NY, for Small business incubator, in the Salaries and Expenses account;

Support the HAC addition of $100,000 for YMCA of Long Island, Inc., Holtsville, NY, for Diversity Training Program at the Brookhaven-Roe YMCA, in the Salaries and Expenses account.

I certify that to the extent of my knowledge neither I nor my immediate family has a pecuniary interest, consistent with the requirements of Paragraph 9 of Rule XLIV of the Standing Rules of the Senate, in any congressional directed spending item that I requested as reported by the Committee on Appropriations.

I thank you for your consideration of these important requests.

Sincerely,

SENATOR CHARLES E. SCHUMER.

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. REID. Mr. President, we are here at 7 o'clock. My friend—I want to make sure the RECORD reflects that he is my friend—the Republican leader, we scuffle and argue out here, but we have done a lot of things together over the years. But I do have a direct quote from my friend just this afternoon:

We have been anxious to have health care votes since Tuesday and we have had the Crapo amendment pending since Tuesday. We would like to vote on amendments. All we are asking is an opportunity to offer amendments and get votes.

That is what we have been trying to do now for the last several hours. First of all, I have a cloture motion at the desk with respect to the conference report to accompany H.R. 3288.

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 3288, the Transportation, HUD, Related Agencies Appropriations Act for Fiscal Year 2010.

Daniel K. Inouye, Al Franken, Jon Tester, Paul G. Kirk, Jr., Roland W. Burris, Edward E. Kaufman, Jack Reed, Daniel K. Akaka, Mark Begich, Patty Murray, Jeff Bingaman, Robert P. Casey, Jr., Sherrod Brown, Thomas R. Carper, Byron L. Dorgan, Richard J. Durbin, Harry Reid.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

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

UNANIMOUS CONSENT REQUEST—H.R. 3590

Mr. REID. Mr. President, I now ask unanimous consent that the Senate resume consideration of H.R. 3590, the health care bill, for the purposes of considering the pending Crapo motion to commit and the Dorgan amendment No. 2739, as modified; that Senator BAUCUS be recognized to call up his side-by-side amendment to the Crapo motion; that once that amendment has been reported by number, Senator LAUTENBERG be recognized to call up his side-by-side amendment to the Dorgan amendment, as modified; that prior to each of the votes specified in this agreement, there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use or yielding back of the time, the Senate proceed to vote in relation to the Lautenberg amendment; that upon disposition of the Lautenberg amendment, the Senate then proceed to vote in relation to the Dorgan amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Baucus amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Crapo motion to commit; that no other amendments be in order during the pendency of this agreement; that the above-referenced amendments and motion to commit be subject to an affirmative 60-vote threshold and that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, then they be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. As I stated earlier today, and as the majority leader has indicated, we have waited since Tuesday to vote on additional health care amendments, including the pending Crapo motion to commit on taxes. Finally, tonight the other side gave us language on their alternative to Senator CRAPO's motion.

Senator CRAPO's motion would ensure that the bill does not raise taxes on the middle class. I understand that their alternative is sense-of-the-Senate language on that subject. This consent request now has us voting on two drug reimportation amendments from the other side—not one but two on the Democratic side—one of which we just received less than an hour ago and is 100 pages long.

We are prepared to return to the health care bill and proceed to the two tax-related votes tonight. After those votes, I would suggest we continue to work on the bill and other amendments. I assume there could be votes on the drug reimportation issue and a whole host of other amendments we have all been anxious to offer at a later time. But at this stage, regretfully, I object and propound the following alternative.

Is my objection registered?

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. I would say to my friend, the majority leader, could we just get in the queue the Crapo amendment and the, I believe, Baucus side by side to the Crapo amendment? I ask unanimous consent that we do that, which would give us a way to go forward on two measures that both sides seem to want to vote on.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Just this afternoon, my friend, the Republican leader, said—and I quote—''I think it is pretty hard to argue with a straight face that we're''—''we'' meaning Republicans—''not trying to proceed to amend and have votes on this bill. That's what we desire to do.''

Mr. President, it is obvious the Republicans have said privately to their friends and publicly here and in the media that this is a bill they want to kill. To think they are interested in doing something that is positive about this stretches the imagination.

Also, let me just say this. I did not come to this body yesterday. I am not the expert with procedures in the Senate, but I am pretty good. I want everyone to understand this is a ploy procedurally to stop us from completing this bill. We are not going to have a bunch of amendments stacked up. Amendments have been offered. We are agreeing to vote on the amendments. We know the drug importation is a difficult vote for the Republicans; it is a difficult vote for the Democrats. But that is what we do around here.

Every amendment we have had so far has been 60-vote margins. This should not be any different. So I want the RECORD to reflect that we are ready to vote. He keeps talking about ''since Tuesday.'' There have been quite a few things going on around here since Tuesday. It is not as if we have been sitting around staring in space. There has been good debate on the Senate floor. It is just that we have amendments that would—if we move off the motion they have filed, it creates a procedural issue that we would have difficulty getting out of. That is why they are wanting to do that. We have to clear the deck, continue offering amendments, as we have. I think that is the right way to do it.

So, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. MCCONNELL. Mr. President, could I just say, at the risk of being redundant—and I do not want to get into

a spirited debate with my friend and colleague over this—the facts are we were just handed a 100-page Lautenberg amendment about an hour ago. I have 39 Members here, all interested in that issue. It is simply impossible for me to clear voting on an amendment of 100 pages in duration that I just got an hour ago.

The reason I had suggested—and I was hopeful that maybe it would be a good way forward—we vote on the Crapo amendment, which everybody understands has been out there since Tuesday, and a sense-of-the-Senate resolution that is fairly brief, I assume—a very brief sense of the Senate that Senator BAUCUS was going to offer—is because both sides fully understand those two measures. They are not 100 pages long and enormously complicated. We did not just receive them.

So I do not want to get into an extensive back and forth with the majority leader, but I would say to him through the Chair, sincerely, it strikes me a good way to just get started would be to vote on these two issues, the Crapo motion and the Baucus amendment that both sides fully understand.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, this is no sucker punch the Democrats have just leveled to the Republicans. This amendment was previously offered by Senator COCHRAN, a Republican, that Senator LAUTENBERG is offering. This is something people have known about for a long time. So I understand people may have forgotten what was in that. They can have the evening to look it over. But I will renew my request tomorrow. We are ready to legislate.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, I guess I will have to prolong it just a little bit further.

I just learned something from the majority leader, that in fact this is an amendment that has been around before. We just learned that from his comments, having just received it a short time ago. Nevertheless, we will continue to talk and see if we cannot move forward and make progress and give both sides votes they are clearly interested in having.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I appreciate the attitude of the Republican leader. I think it is fair to have a chance to look at that amendment. We will be here in the morning and try to work through this.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The omnibus conference report.

Mr. MENENDEZ. Thank you, Mr. President.

Mr. President, I rise to speak about the omnibus conference bill before the Senate and specifically about provisions on Cuba that have not passed the Senate and have not been subjected to debate by this body. These provisions would undo current law where the Castro regime would have to pay in advance of shipment for goods being sold to them because of their terrible credit history.

Yes, Cuba's credit history is horrible. The Paris Club of creditor nations recently announced that Cuba has failed to pay almost $30 billion in debt. Among poor nations that is the worst credit record in the world.

So I ask: If the Cuban Government has put off paying those to whom it already owes $30 billion, why does anyone think it would meet new financial obligations to American farmers?

Considering the serious economic crisis we are facing right now, we need to focus on solutions for hard-working Americans, not subsidies for a brutal dictatorship. We should evaluate how to encourage the regime to allow a legitimate opening—not in terms of cell phones and hotel rooms that Cubans cannot afford but in terms of the right to organize, the right to think and speak what they believe.

However, what we are doing with this omnibus bill is far from that evaluation, and the process by which these changes have been forced upon this body is so deeply offensive to me and so deeply undemocratic that I have no intention—no intention—of continuing to vote for Omnibus appropriations bills if they are going to jam foreign policy changes down throats of Members in what some consider ''must-pass'' bills.

I am putting my colleagues on notice: You may have the wherewithal to do that because you have a committee perch or an opportunity to stick something in that has not been debated on the floor of the Senate in what you think is a must-pass bill, but do not expect me to cast critical votes to pass that bill.

An example of the danger of what we are doing by changing the definition that is now being changed in this omnibus bill of what we call ''cash in advance'' is exhibited by a Europapress report. I want to quote from that press report: ''During a trade fair this month in Havana, Germany's Ambassador to Cuba, Claude Robert Ellner, told German businessmen that Cuba's debt to the German government had been forgiven''—forgiven—''in the hopes that Cuba will meet its debt obligations to them''—meaning to the businessmen.

In other words, German taxpayers will now be responsible for bailing out its private sector and, by implication, the Castro regime.

Thanks to the U.S. policy we have had up to now, of requiring the Castro regime to pay ''cash in advance'' for its purchases of agricultural products, U.S. taxpayers could rest assured that the same would not happen to them—that we would not have to forgive any debt or obligations in order to make sure private businesspeople got paid by the regime because, otherwise, they would be left defaulted.

The Castro regime has mastered the art of making some European Governments acquiesce to its every whim, even if it means a free pass for its daunting repression.

So how do they do it? It is rather simple. They give European countries a choice: either you do what we say or we will freeze your nationals' bank accounts and default on any debts. To me, that is also known as blackmail.

Let's take Spain, for example. Recently, European news services reported that Spain has begun a diplomatic offensive to convince the Castro regime to unblock nearly 266 million euros—or the equivalent of about 400 million United States dollars—in funds that have been frozen by the Castro regime of over 300 Spanish companies in Cuba. These are Spanish companies doing business in Cuba and now cannot get access to their money.

So what does the Spanish Government do? Not coincidentally, the Spanish Government announced that upon assuming the Presidency of the European Union in 2010, it would enter into a new bilateral agreement with the Castro regime that would replace the current European Union policy which contains diplomatic sanctions for human rights violations.

The Castro regime had made it clear to Spain that the current European Union policy was an ''insurmountable obstacle'' to normal relations and, I might add, for Spanish nationals and companies to get their money back. Therefore, the Spanish Government immediately responded to what I consider to be blackmail.

On a recent visit to Cuba, Spain's Foreign Minister, Miguel Angle Moratinos, met for 3 hours with Raul Castro. He did not get one concession—not one—on human rights. But he did get $300 million that Cuba owed to Spanish companies that do business inside of Cuba.

Is that what the United States of America intends to do?

So the lesson for dictators is, go ahead and freeze the bank accounts of other countries' companies and create debt you do not intend to pay for and you get a free pass for repression.

Look at another article. A recent Reuters article highlights that Cuba continues to block access to foreign business bank accounts. Let me quote from that article:

> Many foreign suppliers and investors in Cuba are still unable to repatriate hundreds of millions of dollars from local accounts almost a year after Cuban authorities blocked them because of the financial crisis, foreign diplomats and businessmen said.

It goes on to say in the article:

> The businessmen, who asked not to be identified—

Because they are fearful if they are—

> said they were increasingly frustrated because the Communist authorities refused to offer explanations or solutions for the situation, which stems from a cash crunch in the

Cuban economy triggered by the global downturn and heavy hurricane damage last year.

This is a quote from one of those people. He says:

I have repeatedly e-mailed, visited the offices and sent my representative to the offices of a company I did business with for years and which owes me money, and they simply refuse to talk to me.

That is what a Canadian businessman told Reuters.

The article goes on:

Delegations from foreign banks and investor funds holding commercial paper from Cuba's State banks have repeatedly traveled to Cuba this year seeking answers from the Central Bank or other authorities—without success.

Representatives of some companies with investment or joint ventures on the island say they were bracing for the possibility of not being able to repatriate year-end dividends paid to their accounts in Cuba.

Now, let's remember that some 90 percent of the country's economic activity is in the regime's hands, in the state's hands.

Foreign economic attachés and commercial representatives in Cuba said most of their nationals doing business with the Caribbean island still face payment problems.

That is all from that article. These are all those who are doing business with Cuba now finding themselves and their money trapped.

Last week, the Russian Federation's Audit Chamber revealed that the Cuban regime failed on three occasions to pay installments on the equivalent of $355 million in a credit deal it signed with Russia in September of 2006. That is just the latest episode in a saga that in 2009 alone includes, first, reports by Mexico's La Jornada and Spain's El Pais newspapers that hundreds of foreign companies that transact business with the Cuban regime's authorities have had their accounts frozen—frozen—since January of 2009 by the regime-owned bank that is solely empowered to conduct commercial banking operations in that country.

Second, a June 9, 2009, Reuters article said:

Cuba has rolled over 200 million Euros in bond issues that were due in May, as the country's central bank asked for another year to repay foreign holders of the debt, financial sources in London and Havana said this week.

Those are direct quotes from those articles.

As a reminder, in Castro's Cuba, you can only do business with the regime because private business activity is strictly restricted.

So the real reason so many whose work is often subsidized by business interests advocate Cuba policy changes is about money and commerce, not about freedom and democracy. It makes me wonder why those who spend hours and hours in Havana listening to Castro's soliloquies cannot find minutes—minutes—for human rights and democracy activists. It makes me wonder why those who go and enjoy the Sun of Cuba will not shine the light of freedom on its jails full of political prisoners. They advocate for labor rights in the United States, but they are willing to accept forced labor inside of Cuba. They talk about democracy in Burma, but they are willing to sip the rum with Cuba's dictators.

Which takes me to a place in Cuba called Placetas. Placetas is a city in the Villa Clara Province in the center of Cuba, in the heart of the island, in the center of Cuba. In other words, it is not a beachside resort frequented by Canadian and European tourists.

Placetas is also the home of this couple. It is the home of Cuban political prisoner and prodemocracy leader Jorge Luis Garcia Perez Antunez, generally known as Antunez. On March 15 of 1990, a then-25-year-old Antunez stood at the center square of Placetas listening to the government's official radio transmission calling for the Fourth Congress of the Communist Party. He spontaneously began to shout: ''What we want and what we need are reforms like the ones performed in Eastern Europe.'' Immediately, he was beaten by state security agents, charged with ''oral enemy propaganda,'' and imprisoned. That would begin a 17-year prison term, which is about half of his current life that he spent in prison. His crime? Saying: We need the types of changes that took place in Eastern Europe. For that, 17 years in prison. He was not released until 2007. He is now 45 years old, hopefully with an entire life ahead of him.

The Castro regime would love for Mr. Antunez and his wife, who is also a prodemocracy activist—this says in Spanish, ''we are all the resistance'' and ''long live human rights.'' They would love for him to leave the island permanently, but he refuses to do so. He has decided to stay in Cuba and demand that the human and civil rights of the Cuban people be respected. For this, he has been rearrested over 30 times since 2007.

Last week, at that same center in that small town of Placetas where he had been originally arrested simply for saying that: What we need is a change as we saw in Eastern Europe, Antunez and other local prodemocracy leaders gathered to honor Cuba's current political prisoners, people who simply, through peaceful means, try to create changes for democracy and human rights inside of their country and get arrested and languish in jail.

Antunez and his colleagues were not ''educated'' on the importance of human rights and civil disobedience by foreign tourists, as some of my colleagues suggest would happen—that we need to send foreign tourists to educate the Cubans about human rights and civil disobedience. He and all of those who are languishing in Castro's jails understand about human rights and civil disobedience in a way to try to capture your rights. Unwittingly, though, foreign tourists have financed their repression. They give money to the regime that ultimately gives them the state security forces that throw people such as Antunez in jail.

Let me read an open letter that just came out by Mr. Antunez that was sent to Cuba's dictator Raul Castro. I am going to quote from an English translation.

It says:

Mr. Raul Castro—

This is Mr. Antunez speaking now—

My name is Jorge Luis Garcia Perez Antunez—a former political prisoner—and I am writing to you again not because I pretend to make you aware of something that, far from alien, is commonplace in Cuba due to the nature and politics of your government. For several months now my spouse Yris Tamara Perez Aguilera and I find ourselves under forced house arrest by your political police. The week before the Juanes concert—

That is the concert of the famous Colombian singer Juanes—

a high ranking State security official upon arresting me informed me that there had been an order for my arrest throughout the island of Cuba, wherever I might be found. He emphasized that they were going to be watching every step I take. Since that date I have lost count of how many times I have been arrested, the majority of times with violence.

Mr. Dictator—allow me a few questions that may help you clarify some doubts amongst those compatriots of mine who are hopeful that your government would diminish repression or that even Democratic openings could be made.

He poses this question:

With what right do the authorities, without a prior crime being committed, detain and impede the free movement of their citizens in violation of a universally recognized right? What feelings could move a man like Captain Idel Gonzalez Morfi to beat my wife, a defenseless woman, so brutally, causing lasting effects to her bones for the sole act of arriving at a radio station to denounce with evidence the torture that her brother received in a Cuban prison. Or is it that for you there are only five families that exist in our country that have the right to protest and demand justice for their jailed relatives? Should you not be ashamed that your corpulent police officers remain stationed for days at the corner of my home to impede us from leaving our house and monitoring our movements in our own city?

Where is the professionalism and ethics of your subordinates that with their ridiculous operations provoke the mockery of the populace towards these persons on almost a daily basis? How do you feel when you encourage or allow these persons who call themselves men to beat and drag women through the streets such as: Damaris Moya Portieles, Marta Diaz, Ana Alfonso Arteaga, Sara Marta Fonseca, Yris Perez, and most recently—

The well-known blogger, Yoani Sanchez. I am adding for the record ''the well-known blogger.'' He doesn't say that, but she is a well-known blogger, internationally known, recently beaten simply as she was trying to go to a place of civil disobedience.

How can you and your subordinates sleep calmly after deliberately and maliciously physically knocking down on more than one occasion Idania Yanez Contreras who is several months pregnant? How can you and your government speak about the battle of ideas

when you are constantly repressing ideas through beatings, arrests, and years of incarceration?

Maybe your followers cannot find or even attempt to find a response. However, I find myself in the long list of persons that are not afraid to respond.

You act this way because you are a cruel man, and insensible to the pain and suffering of others. You act this way because you are faithful to your anti Democratic and dictatorial vocation, because you are convinced that dictatorships like the one you preside over can only be maintained through terror and torture, and because the most minimal opening can lead to the loss of the one thing that you are interested in—which is maintaining yourself in power.

Lastly, returning to my case in particular, I will respond without even asking you beforehand the concrete motives of your continued repression against my person. Your government and your servants in the repressive corps cannot forgive my two biggest and only ''crimes.'' First, that despite almost two decades of torture and cruel and inhuman punishment during my unjust and severe sanction, you could not break my dignity and my position as a political prisoner. And second, because even though I am accosted and brutalized and above all risk returning to prison, I have taken the decision not to leave my country in which I will continue struggling for a change that I believe is both necessary and inevitable.

The letter is signed: From Placetas, Jorge Luis Garcia Perez Antunez, December 2009.

This is the voice of those who languish under Castro's brutal dictatorship. As you can see, Mr. Antunez is an Afro-Cuban, not part of the White elite of the regime's dictatorship; not what the regime tells the world, that Cubans who are all White seek to oppose the dictatorship. Most of the movement for democracy inside of Cuba are Afro-Cubans. Inside of Cuba, they are subjected to a citizenship status that is less than any human being should be subjected to.

Antunez's voice rings in my head. It tugs at my conscience.

His words:

Despite almost two decades of torture and cruel and inhuman punishment during my unjust and severe sanction, you could not break my dignity and my position as a political prisoner, because even though I am accosted and brutalized and above all risk returning to prison, I have taken the decision not to leave my country in which I will continue struggling for a change I believe is both necessary and inevitable.

Antunez is right. Change in Cuba is inevitable, but the United States needs to be a catalyst of that change. It does not need to be a sustainer of that dictatorship. It does not need to create an infusion of money that only goes to a regime that ultimately uses it not to put more food on the plates of Cuban families but to arrest and brutalize people such as Mr. Antunez.

These are the human rights activists on whom some would turn their backs for the sake of doing business. I guess the only thing they can see is the color of money. Well, not me, not now, and not ever.

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

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I don't rise to add to what the Senator from New Jersey said. I just wish to take this opportunity to tell him I agree with him, and I appreciate his leadership on this issue over several years—even the years before he came to the Senate.

Often, I am asked in my State, because we can export so much agricultural stuff, if I would vote to open trade with Cuba. I said I am willing to open trade for Cuba when they give political freedom and economic freedom to the people of that country because this dictator has run Cuba into the most impoverished country in the world. Before he took over, they had a very viable middle class and they were a prosperous country.

I stand ready to help the Senator on what he is trying to do in that area.

Mr. MENENDEZ. If the Senator will yield, I thank the distinguished Senator from Iowa for his comments and for the position he has taken over a long period of time. It may not be the easiest, but I believe it is the one that is morally correct. Most important, on that day—which I believe is sooner rather than later—in which Cubans are free, they will remember who stood with them in the midst of this. That will make all the difference in the world. I thank the Senator.

Mr. GRASSLEY. Mr. President, I come to the floor at this point to give some breadth to a statement that was made on the floor earlier today. It was made by my friend, Senator BAUCUS. I don't take offense to what he said because I sensed a great deal of frustration in his statement. I will read what he said so you know what I am reacting to. The reason I don't take offense to what he said is because he and I have worked so closely together over 10 years, with one or the other of us being chairman of the Finance Committee, that we have such an understanding of each other.

Just prior to the remarks I am going to read, he had spoken positively about Senator ENZI and me. So I want my colleagues to know this statement is not made out of anger that I am going to give a rebuttal to.

Well, we kept working bipartisan—working together, for days and days, hours and hours, and then, fortunately, Mr. President, it got to the point where I'm just calling it as I see it. I can't—I—one of my feelings is I'm too honest about things. And it's—the Republicans started to walk away. They pulled away from the table. They had to leave.

I ask you why? Why did that happen? And the answer is, to be totally fair and above board, is—and above board, is because their leadership asked them to. Their leadership asked them to become disengaged from the process. I know that to be a fact. Why did their leadership ask Republicans to leave and become disengaged from the process? To be totally candid, they wanted to score political points by just attacking this bill. They were not here to help—help be constructive, to find bipartisan solutions. They were for a while, then when the rubber started to meet the road and it came time to try to make some decisions, they left and began to attack—and began to attack.

I wish to take a few minutes to respond to these remarks that I read. It was asserted, through these remarks on the floor, that some Republicans in the so-called Gang of 6 were directed by the Senate Republican leadership to cease participating in bipartisan talks. The Gang of 6 referred to the six bipartisan members of the Senate Finance Committee. On the Democratic side, the members were my friends, three chairmen, including Senator BAUCUS, Budget Committee chairman; Senator CONRAD; and Energy Committee chairman, Senator BINGAMAN. All are senior members of the Democratic Caucus. On the Republican side, the three members included Senator SNOWE, ranking member of the Small Business Committee; Senator ENZI, ranking member of the Health, Education, Labor, and Pensions Committee; and this Senator. Senators SNOWE and ENZI are senior Members of the Republican caucus.

Chairman BAUCUS convened this working group with a singular goal of a bipartisan health care reform bill. We met for several weeks up in the Montana Room of Chairman BAUCUS's office. I would agree with the way participating Members have described these discussions. They were well informed, thoughtful, provocative, challenging, and frustrating all at the same time. But I would say that in the months we negotiated, there was never once that anyone walked away from the table. There was never once that there were any harsh words.

While we were engaged in those discussions, there was constant pressure from folks outside the room for us to reach a quick deal. That pressure came from the White House, it came from the Democratic leadership, it came from advocacy groups outside, and it came from many media folks covering the day-by-day meetings. To be fair, the Senate Republican leadership was very concerned about some of the directions the policy discussions were taking in the Gang of 6. That concern grew, particularly after the very partisan HELP Committee markup occurred. Senator HATCH left the original Gang of 7 because of the character and result of the HELP Committee markup.

Most important, the Senate Republican leadership was concerned that a bipartisan Finance Committee bill would be co-opted into a partisan floor bill, when the Democratic leadership merged the bills. Senators SNOWE, ENZI, and I anticipated that concern.

To be fair to Senator BAUCUS, as he was negotiating with us, he tried to convince us that we would be very much a part of those merging of the bills. He offered that in good faith. I believe him. I even believe him today saying that. But seeing how neither the HELP Committee nor the Finance Committee was as involved as they should have been in what Senator REID

put together in this 2,074-page bill, I wonder whether Senator BAUCUS could have, if we had a bipartisan agreement, actually carried out that guarantee.

From the get-go, we Republican members of the Gang of 6, to make sure we were a part of the process that I described, as Senator BAUCUS told us we would be, asked for assurances from the White House and from the Senate Democratic leadership on the next step in the legislative process, if we, in fact, did arrive at a bipartisan agreement.

I also found that many in the broader group of Republicans, who provided the bipartisan glue for the CHIP bill of 2008, had similar concerns. All Republicans had process concerns, such as where would it go once it left the Senate Finance Committee.

We wanted assurances, and here is what we wanted. The assurances requested boiled down to a good-faith promise that the bipartisan Finance Committee health care bill would not morph into a partisan health care reform bill when Majority Leader REID merged the two committee bills. We wanted to make sure the bipartisan character of a bipartisan Finance Committee bill was going to be retained through these next steps. To do otherwise would be akin to getting on a bus and not knowing where the bus was going or how much the bus ticket would cost. Assurances were also requested with respect to a conference between the House and Senate. The assurances were similar to assurances requested by Senator REID and made by the then-majority Republican leadership during the period of 2005 and 2006. The Democratic minority leader, at that time, made these assurances a condition to letting major regular order Finance Committee bills even go to conference.

As an example, take a look at the CONGRESSIONAL RECORD, and you will see the assurances made by then-Majority Leader Frist to then-Minority Leader REID. These requests were made repeatedly to the Democratic leadership, publicly and privately, about how the postcommittee action of the bipartisan group would be handled in the merger with the HELP Committee bill. It was a focus of a July 8 lunchtime, face-to-face meeting at the majority leader's office, with Senators REID, BAUCUS, CONRAD, BINGAMAN, SNOWE, ENZI, and myself. The bottom-line response from Senator REID at that meeting was he needed 60 votes.

I guess, the implication was, despite the fact that the Democratic caucus contained 60 members then and now, Senator REID didn't think it was possible to secure the votes of all members of his caucus. A restatement of the reality of the Senate rules was not the assurances the three Republican Senators—this one included—sought from Senator REID.

Senator REID, himself, recognized the validity of this request in an August 8 Washington Post article. I ask unanimous consent to have that article printed in the RECORD.

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

[From the Washington Post, Aug. 3, 2009]

DEMOCRATS FIND RALLYING POINTS ON HEALTH REFORM, BUT SPLINTERS REMAIN

(By Shailagh Murray and Paul Kane)

Democrats leave town for the August recess with frayed nerves and fragile agreements on health-care reform, and a new bogeyman to fire up their constituents: the insurance industry.

With the House already gone and the Senate set to clear out by Friday, the terms of the recess battle are becoming clear. Republicans will assail the government coverage plan that Democrats and President Obama are advocating as a recklessly expensive federal takeover of health care. And Democrats will counter that GOP opposition represents a de facto endorsement of insurance industry abuses.

''We know what we're up against,'' House Speaker Nancy Pelosi (Calif.) told reporters on Friday. ''Carpet-bombing, slash and burn, shock and awe—anything you want to say to describe what the insurance companies will do to hold on to their special advantage.''

Although Pelosi won a significant victory last week when the Energy and Commerce Committee approved the House bill, setting up a floor debate after Labor Day, conservative Democrats were able to demand that negotiators weaken the government-plan provision. The uprising, which lasted for several days, suggested that the public option is growing increasingly vulnerable even as a consensus forms around other reform policies.

Republican leaders have pledged to use town halls, ads and other forums to intensify their assault on the Democratic-led reform effort. ''I think it's safe to say that, over the August recess, as more Americans learn more about [Democrats'] plan, they're likely to have a very, very hot summer,'' House Minority Leader John A. Boehner (R–Ohio) said.

In the Senate, a bipartisan coalition of Finance Committee lawmakers is backing a member-run cooperative model as an alternative to the public option. But Republicans are beginning to push back against that cooperative approach, too.

The latest critic is Sen. John McCain (R–Ariz.), who on Sunday compared insurance co-ops to Fannie Mae and Freddie Mac, the government-backed mortgage giants that played prominent roles in the housing crisis. ''I have not seen a public option that, in my view, meets the test of what would really not eventually lead to a government takeover,'' McCain said on CNN's ''State of the Union.''

Pelosi and other Democrats have countered that Republicans are seeking to protect a health insurance industry that is their business ally, not so much from a government insurance option, but from the broad industry reforms that enjoy public support, including the elimination of coverage caps and the practice of denying coverage to those with pre-existing conditions. The White House also wants to steer the debate toward insurance reform, as it is easier to digest than long-term cost control, which is another chief objective.

''How you regulate the insurance industry is as important to health-care reform as controlling costs,'' said White House Chief of Staff Rahm Emanuel. The public plan, he said, is one of an array of measures intended to change industry behavior.

As the rhetoric against the industry heated up, the leading insurance trade group issued a statement Thursday calling for lawmakers to cool down their criticisms and redouble efforts toward ''bipartisan health-care reform.'' Robert Zirkelbach, spokesman for America's Health Insurance Plans, defended his industry, saying it had already proposed many of the changes that Congress is seeking, including those involving pre-existing conditions and ratings based on health status and gender.

Despite the sparring, House and Senate Democrats and three GOP Senate negotiators have reached broad consensus on the outlines of reform. Lawmakers generally agree that individuals must be required to buy health insurance, that Medicaid should be significantly expanded, and that tax increases, in some form, will be required. The final bill also could bring about some of the most significant changes to Medicare since the program was created in 1965.

But the rebellion from fiscal conservatives on the Energy and Commerce Committee last week served as a political wake-up call for Democratic leaders. With enough votes on the panel and on the floor to sink reform legislation, the Blue Dog Coalition forced Pelosi and Emanuel into concessions that made the government plan similar to private health insurance, sparking a new fight with House liberals.

Sensing that the Blue Dogs had dug in for a prolonged fight, Pelosi and Emanuel gave in to most demands in order to get the legislation moving again. They essentially decided that it was better to pick a fight with their liberal flank, where Pelosi remains popular and where loyalty to Obama is strongest, particularly in the Congressional Black Caucus.

Despite threats from almost 60 progressive House Democrats—who outnumber the Blue Dogs—Pelosi defended the compromise, saying it was similar to one backed by Sen. Edward M. Kennedy (D–Mass.). Pelosi predicted that the liberal wing would fall in line because the legislation is so important to them.

''Are you asking me, 'Are the progressives going to take down universal, quality, affordable health care for all Americans?' I don't think so,'' Pelosi told reporters Friday, breaking into laughter at the question.

Just as troublesome as the internal House divisions is the burgeoning distrust among House Democrats, their Senate counterparts and the White House.

Pelosi acknowledged that ''there are concerns'' in her caucus that the White House, namely their former colleague Emanuel, takes House Democrats for granted. House lawmakers are being encouraged to pass the most liberal bill possible, she said, while the White House works on a bipartisan compromise with a select group of senators.

''It's no secret,'' Pelosi said, ''that members sometimes think: 'Why do I always read in the paper that they're checking with the Finance Committee all the time? What does that mean, that they just want to know what's happened with the Finance Committee? What about the [Senate health] committee? What about our committees over here?' ''

The six Senate Finance Committee negotiators have burrowed in for another six weeks of talks, having set a Sept. 15 deadline for producing a bill. The group includes an array of small-state senators with little national prominence who have proven surprisingly resistant to pressure from their party leaders and the White House.

Although the House bill and the Senate Health Committee version have attracted no Republican support, the Senate Finance Committee coalition includes Sens. Mike Enzi (Wyo.) and Charles Grassley (Iowa), both Republicans, along with moderate GOP Sen. Olympia Snowe (Maine). And the lead Democratic negotiator, Finance Committee

Chairman Max Baucus (Mont.), is a moderate who has broken with his party on numerous bills co-authored with Grassley.

The closer these negotiators move to striking a deal, the more fraught the discussions become by issues of trust and political will. Among Republicans, the pressure is especially acute. All three GOP senators fear they will be sidelined once the bill is approved at the committee level, with their names invoked to demonstrate bipartisanship even as they're left with no say over the final product as it is meshed with the Senate health panel's version and then ultimately with the House bill.

For Republicans, a prime concern is that Senate Majority Leader Harry Reid (Nev.) will abandon the Finance Committee bill and force legislation to the Senate floor using budget rules that would protect against a Republican filibuster. Even advocates concede that the option is highly risky and that it would vastly limit the policy scope of the bill. For instance, Senate budget experts say most insurance reforms would have to be sidelined.

Treasury Secretary Timothy F. Geithner said Sunday that the administration would consider all options. ''Ideally, you want to do this with as broad a base of consensus as possible,'' he said in an interview on ABC's ''This Week.'' ''But people on the Hill are going to have to make that choice: Do they want to help shape this and be part of it, or do they want this country, the United States of America, to go another several decades [without reform]?''

Reid said he already provided the Republicans with some assurances, and added, ''I'll do more if necessary.'' He said of GOP concerns, ''I don't blame them.'' And he added that, considering the political realities of the Senate, with its large number of moderate Democrats, health-care reform would have to gain significant bipartisan support to cross the finish line.

''I sure hope we can get a bipartisan bill; it makes it easier for me to go home,'' moderate Sen. Mary Landrieu (D–La.) told the Democratic caucus last week, according to Reid.

''We all feel that way,'' Reid added.

Mr. GRASSLEY. Mr. President, I will quote, in part, from the article:

The closer these negotiators move to striking a deal, the more fraught the discussions become by issues of trust and political will. Among Republicans, the pressure is especially acute. All three GOP senators fear they will be sidelined once the bill is approved at the committee level, with their names invoked to demonstrate bipartisanship even as they're left with no say over the final product as it is meshed with the Senate health panel's version and then ultimately with the House bill.

Republicans were also worried that the bipartisan product could be lifted into a partisan reconciliation bill. I quote further from that same Post article:

Reid said he already provided the Republicans with some assurances, and added, ''I'll do more if necessary.''

Continuing to quote from the Post article:

He said of GOP concerns, ''I don't blame them.'' And he added that, considering the political realities of the Senate, with its large number of moderate Democrats, health-care reform would have to gain significant bipartisan support to cross the finish line.

President Obama and the Senate Democratic leadership set a deadline of September 15 for the bipartisan Gang of 6 to produce a proposal. If the proposal were not available by then, the President and Senate Democratic leadership made it clear the plug would be pulled on further bipartisan talks.

I point that out because that is very significant. A powerful member of the Senate Democratic leadership, the senior Senator from New York, made it crystal clear the Senate Democratic leadership would pull the plug. That member, who is very smart and articulate, made it as transparent as possible that the September 15 deadline was more important than a bipartisan deal.

I ask you to go back and look at the media reports. The Gang of 6 was unable to reach a deal on contentious issues such as abortion, the individual mandate, and financing issues by White House/Democratic leadership's deadline.

Chairman BAUCUS had to move forward. I respect the pressure my friend from Montana was under. I have been there myself. But the record needs to be correctly made that the September 15 deadline was not a Republican deadline. It was a deadline imposed by the White House and the Senate Democratic leadership. I might say that wasn't just the GOP deadline—it wasn't a deadline for the Gang of 6 either. I didn't sense, from the three Democratic members, that they agreed with that.

So the Senate Democratic leadership pulled the plug on the talks. Again, go check the public comments and press reports. They pulled the plug. Senator ENZI and I could not agree to the product at that point because of substantive issues that were resolved against us and the failure of the White House or Senate Democratic leadership to deliver on those process assurances that we asked for.

Senator SNOWE did have substantive issues resolved sufficiently at the Finance Committee markup so that she could support the bill.

I might note today that I heard Senator SNOWE caution the Democrats as she gave them the boost from her vote in the Finance Committee—that was right after the bill passed—she made it clear that her vote for later stages would depend in part on data on the key question of whether the product makes health care more affordable. Her letter to CBO dated December 3 lays out the issues in precision.

At the next stage of the process, the merged-bill stage, all of the Senate Republicans' worst fears were confirmed, but it was especially telling to Senator ENZI and me. My sense is Senator SNOWE appreciated it more than any other member of our conference. The bottom line was that the majority leader's merged bill was constructed in such a partisan way that Senator SNOWE's input was cast aside.

Let's be clear. Senate Republicans did not set deadlines. Senate Republicans did not threaten to go their own way if the deadlines were not met. Even today, the pending motion from this side of the aisle puts the question to the Senate this way: Take the bill back to the Finance Committee.

As the old saying goes, hindsight is 20/20. As I look back on the process, I make these observations: There was an uncanny disconnect between those inside and outside the room. Many on the outside, mainly from the left side of the political spectrum, seemed to want a reform deal just to have a deal. They did not seem to be that curious about the contents. Perhaps for some of those folks, it was a bit of an imperative to draw on the good will that any President has in the first few months of office.

For those of us in the room—meaning the room where the negotiations were going on—there was a realization that we were tackling, as Chairman BAUCUS has described it, an extremely complex set of issues. We learned very quickly that closing the loop on the policy issues, let alone finding political consensus, was not easy.

The pressure to close a deal by the July 4 recess was overwhelming. My friend, the chairman, wisely pushed back and said we would get a deal when we reached a bipartisan deal. The Group of 6 was unable to reach a deal on contentious issues such as abortion, individual mandate, and financing issues faced by the White House-Democratic leadership deadline. Chairman BAUCUS had to move. In my heart, I feel he would rather not have had that sort of pressure or make that decision. But that was not our deadline. It was a deadline imposed by the White House and the Senate Democratic leadership. They pulled the plug on the talks. Go check the public comments and the press reports. They pulled the plug. Senator ENZI and I could not agree to a product at that point because of the substantive issues that were very much involved.

I want to make it very clear, for this Senator, of the three Republicans who were negotiating, kind of in summary, that the Republican leadership, I think, had questions about a lot of things that were going on in those negotiations. But never once did Senator MCCONNELL, my leader, say to me: Get out of there.

That is the impression that was left this morning.

I can only say that I think I have established a reputation in the Senate, particularly while I was chairman of the Senate Finance Committee, that I did not listen to either the White House or people in leadership necessarily when I thought a bipartisan compromise was the only way to get things done. I suppose there is a whole long list of things that I ought to write down before I make this statement, but I can only think of two or three right now that I can be sure of that I can say in an intellectually honest way that I stood up to the Bush White House when I was chairman of the committee.

They came out immediately for a $1.7 trillion tax cut in 2001. I made a decision early on that it was not good for the economy and it was not politically possible. So we passed a much smaller, in a bipartisan way, tax bill for that year. And yet it was the biggest tax cut in the history of the country.

In 2003, when the White House and House Republicans in the majority at that time said we had to have a $700 billion tax cut in addition to the tax cut that was passed in 2001, there were not votes in the Senate among just Republicans to get it done. To secure the votes to get it done, we had to limit it to half that amount of money, or just a little bit more than half that amount of money. And in order to get those votes, contrary to the $700 billion tax cut that the Bush White House wanted and the House Republicans wanted that we could not get through here, I said I will not come out of conference with a tax cut more than that amount of roughly $300 billion.

We got that done by just the bare majority to get it done. But I stood up to the White House, I stood up to the House Republican leadership who thought we should not be doing anything that was short of that full $700 billion.

There have been other health care bills very recently where I stood up against the White House and against our Republican leadership.

I think I have developed a reputation where I am going to do what is right for the State of Iowa and for our country. And I am going to try to represent a Republican point of view as best I can, considering first the country and my own constituency.

Then when it comes to whether people in this body or outside of this body might think that for the whole months of May, June, and July, and through August, with a couple meetings we had during the month of August, that we were dragging our feet to kill a health care reform bill, I want to ask people if they would think I wouldn't have better things to do with my time than to have 24 different meetings, one on one with Chairman BAUCUS, or that I wouldn't have more than something else to do than have 31 meetings with the Group of 6. These were not just short meetings. These were meetings that lasted hours. There was another group of people—GRASSLEY, BAUCUS, and others, sometimes that included people from the HELP Committee and the Budget Committee. But we had 25 meetings like that. I wonder if people think we would just be meeting and spending all those hours to make sure that nothing happened around here. No. Every one of the 100 Senators in this body, if you were to ask them, would suggest changes in health care that need to be made. Even in that 2,074-page bill, there are some things that most conservative people in this country would think ought to be done.

We all know to some extent something has to be done about this system. We worked for a long period of time, thinking we could have something bipartisan. But it did not work out that way, and now we are at a point where we have a partisan bill.

That is not the way you should handle an issue such as health care reform. Just think of the word ''health,'' ''health care.'' It deals with the life and death of 306 million Americans. Just think, you are restructuring one-sixth of the economy.

Senator BAUCUS and I started out in January and February saying to everybody we met, every group we talked to, that something this momentous ought to be passing with 75 or 80 votes, not just 60 votes. Maybe one of the times the White House decided to pull the plug on September 15 may have come on August 5 when the Group of 6 had our last meeting with President Obama. He was the only one from the White House there and the six of us. It was a very casual discussion.

I said this before so I am not saying something that has not been said. But President Obama made one request of me and I asked him a question. For my part, I said: You know, it would make it a heck of a lot easier to get a bipartisan agreement if you would just say you could sign a bill without a public option. That is no different than what I said to him on March 5 when I was down at the White House, that the public option was a major impediment to getting a bipartisan agreement. Then he asked me would I be willing to be one of three Republicans, along with the rest of the Democrats, to provide 60 votes. My answer was upfront: No. As I told him, you can clarify with Senator BAUCUS sitting right here beside you, that 4 or 5 months before that, I told Senator BAUCUS: Don't plan on three Republicans providing the margin, that we were here to help get a broad-based consensus, as Senator BAUCUS and I said early on this year, that something this massive ought to pass with a wide bipartisan majority.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I need to correct the RECORD. In the part of my statement where I refer to the July 8 meeting with Senator REID, it was only SNOWE, GRASSLEY, and ENZI, not the other Senators I named. So I wish to correct that for the RECORD.

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

The Senator from Illinois.

MORNING BUSINESS

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

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

DNA SAMPLING

Mr. KYL. Mr. President, I ask unanimous consent that the following letter, which consists of my May 19, 2008, comments on proposed Federal regulations governing the collection of DNA samples from Federal arrestees and illegal-immigrant deportees, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, May 19, 2008.

Re OAG Docket Number 119

Mr. DAVID J. KARP,
Senior Counsel, Office of Legal Policy, Main Justice Building, Pennsylvania Avenue, NW., Washington, DC.

DEAR MR. KARP: I am writing to comment on the Justice Department's April 18, 2008, proposed regulation for implementing the DNA sample collection authority created by section 1004 of the DNA Fingerprint Act, Public Law 109–162, and by section 155 of the Adam Walsh Act, Public Law 109–248. I am the legislative author of both of these provisions.

Allow me to note at the outset that I have reviewed the proposed regulations and have concluded that they properly implement the authority created by the laws noted above. I do not recommend that you make any changes to the proposed regulations, as I believe that they are consistent with the clear meaning and spirit of their underlying statutory authorization.

The remainder of this letter first comments on the general privacy objections that have been raised by other commenters with regard to the proposed regulations, and then addresses several other criticisms and recommendations that are made in some of those comments.

PRIVACY CONCERNS

The most common criticism leveled against the proposed regulations by other commenters is that the proposed rules pose a threat to individual privacy. The general argument made is that although fingerprints are routinely taken at arrest, DNA fingerprinting is not like ordinary fingerprinting because DNA has the potential to reveal medically sensitive or other private information. This concern usually also is the basis for arguments that the proposed regulations are unconstitutional.

I think that the privacy concern is best addressed by explaining the legal framework governing the operation of the National DNA Index System (NDIS) and the practical realities of DNA analysis.

A number of statutes prescribe privacy restrictions for use of DNA samples. See 42 U.S.C. 14132(b)(3), (c), 14133(b)–(c), 14135(b)(2), 14135e. In general, DNA information is treated like other law-enforcement case file information—its dissemination is prohibited and subject to serious professional and even criminal sanctions. In particular, section 14133(c) of title 42 provides that any person who has access to individually identifiable DNA information in NDIS and knowingly discloses such information in an unauthorized manner may be fined up to $100,000, and any person who accesses DNA information without authorization may be fined up to $250,000 and imprisoned up to one year.

Lab employees are professionals. The notion that they will violate the laws and regulations governing DNA analysis not only requires one to assume that these employees will jeopardize their careers, but also that they will risk criminal fines and even imprisonment. Such fears are not realistic. Indeed, when arguments were made that such violations might occur during the Senate Judiciary Committee's consideration of the Justice for All Act in 2004, I proposed an amendment, which was subsequently enacted into law, to increase the penalties in section 14133(c) for misuse of DNA samples. When I consulted with the Justice Department about my proposal, I was told that the FBI had no objection to the amendment because there was no chance that any lab employee would ever run afoul of the provision.

Let us assume, however, that a rogue lab employee were not deterred by professional and criminal sanctions and were determined to use a DNA sample to discover private information. That lab employee would find that it is virtually impossible for him to use the NDIS system to do so.

Developing a DNA profile from a saliva or blood sample involves three broad steps: (1) the DNA is extracted from the sample; (2) the DNA is copied or amplified at one of the sites on the DNA strand from which the profile will be drawn; and (3) the amplified DNA is processed in a genetic analyzer to produce a DNA profile.

Each law enforcement DNA laboratory has a defined number of staff who have access to DNA samples, the identity of the person who submitted the sample, and DNA analysis equipment. This is currently the universe of people who could hypothetically use collected samples to try to violate someone's privacy. If one of these employees sought to analyze an individual's DNA to find medically sensitive or other private information, he would run into a series of virtually insurmountable practical problems.

First, the 13 sites at which a DNA strand is analyzed for purposes of entry of a profile into the national database are sites that do not reveal any medically sensitive information. The 13 sites were chosen because the sites do not reveal sensitive information, the sites are relatively stable and do not degrade easily, and the sites tend to demonstrate great variation between different individuals (with the exception of identical twins). Even the American Civil Liberties Union's (ACLU) May 19, 2008, comment on the proposed regulations, while speculating that the 13 sites may be found to reveal sensitive information in the future, concedes ''none of the CODIS loci have been found to date to be predictive for any physical or disease traits.''

So our hypothetical rogue lab employee would need to draw a profile of different sites on the DNA strand in order to discover medically sensitive information. This would be extremely difficult to do. The second step of the analysis—amplifying the relevant DNA sites for analysis—requires the use of specialized reagents and equipment to copy the DNA fragments in question.

Once the DNA is amplified, the DNA is pushed through a column that separates out the DNA fragments. The columns used in the lab serve to duplicate DNA for the specific 13 CODIS sites. So our rogue employee would need to purchase a specialized column for duplicating a different type of DNA. Next the employee would need to obtain different reagents for reproducing the DNA that he seeks. Reagents consist of polymerase, certain chemicals, and DNA primers. A primer is a piece of DNA that recognizes its complimentary DNA on a molecule and attaches itself, allowing that part to be reproduced when the remaining reagents are added. Access to primers is extremely limited—our rogue employee couldn't just buy them on the internet or from a medical supply store. Primers usually are only available from the DNA researcher who discovered the DNA gene or site in question. These researchers generally have a proprietary interest in their discovery; they do not publish all of the information necessary to analyze that gene and do not give the necessary primers to others. A lab employee is very unlikely to be able to obtain the necessary information and primers to amplify the DNA that he seeks.

Moreover, even if our hypothetical lab employee were able to copy the DNA in question, he would next need to retrofit the DNA analyzer to draw a profile from that DNA. This would require breaking down, reassembling, and recalibrating the lab equipment, and reprogramming the equipment and software to analyze different DNA sites. This is an extremely complex process and requires specialized software that, again, is generally only available from the researchers who identified the gene in question. The lab employees are not trained to analyze any DNA other than at the 13 sites used in CODIS; to analyze DNA used for medical purposes is a completely different specialization that requires the use of equipment that lab employees have no experience using.

Finally, our hypothetical rogue employee would need to figure out how to do this analysis by himself and would need to account for his use of the equipment. DNA analysis of database samples is an assembly-line process that involves different persons carrying out different steps of the analysis. An employee acting alone would need to come in at night and perform all of the steps by himself. Although usually no employees are in the lab at night, the equipment runs through the night. To use the equipment for a different purpose, the rogue employee would need to shut it down, which itself would lead to an inquiry into why the equipment did not perform a programmed analysis at night. Moreover, the robotics and most of the instruments used in DNA analysis have programmed activity logs that record what process was run on the equipment, and employees must log in it to operate the equipment. Any inquiry into why the equipment was not running at night would immediately reveal that a different process was run on the equipment and would reveal who ran that process.

Although it is not completely impossible, it is extremely unlikely that a lab employee would be able to perform all of these steps on his own, and it is virtually impossible that he would be able to do so without getting caught. Suffice to say that although the NDIS database has existed for 10 years and nearly 6 million offender profiles have been added to that database, and although the lab has been conducting analysis of DNA from criminal suspects and victims for 20 years, there has never been one noted case in which a lab employee has ever made an unauthorized disclosure of DNA information. The risk that lab employees will undertake such acts is not substantial enough to merit consideration in a reasoned analysis of the privacy risks posed by the operation of NDIS.

Finally, it bears weighing the virtually nonexistent risk to privacy posed by NDIS against other potential risks to DNA privacy. Many of the arguments about the privacy threats created by law-enforcement DNA sampling and analysis appear to assume that DNA samples and the information within them could not be accessed in any other way. A quick internet search of the words ''DNA testing,'' however, reveals that there are many private laboratories that offer to the public at large a wide variety of DNA tests for sensitive information. Nor are DNA samples particularly difficult to obtain. Every time an individual spits on the sidewalk, or even drinks from a paper cup and discards it, he leaves a DNA sample behind. Particularly in light of the criminal penalties attached to misuse of the NDIS system, a person determined to analyze another person's DNA for an improper purposes would find much easier sources of DNA than the samples collected by law enforcement, and would have much readier access to DNA analysis than that made possible by law-enforcement laboratories. The incremental threat to DNA privacy posed by the NDIS system is extremely small.

RESPONSE TO OTHER COMMENTERS

A number of other commenters have offered various criticisms of the proposed regulations beyond generalized privacy arguments. Many of these comments are very similar and appear to have been generated by news stories and notices placed by various organizations and publications. Other criticisms and recommendations are unique to particular commenters. The remainder of this letter responds to those criticisms, first addressing the mass comments and then the arguments of particular organizations and individuals.

Constitutionality

The argument that arrestee and illegal-immigrant DNA sampling violates the Fourth Amendment mostly rests on the privacy arguments that are addressed above. It is beyond argument that the Constitution permits arrestees and immigration detainees to be fingerprinted and searched. If the privacy risks posed by law-enforcement DNA sampling are properly understood, there is no constitutionally significant difference between ordinary fingerprinting and DNA fingerprinting. Both are used for the legitimate purpose of biometric identification and neither poses a significant risk to individual privacy.

The physical intrusion necessary to collect a DNA sample is minor and is commensurate with the other types of privacy intrusions endured by arrestees, who are generally subject to search following arrest. Some commenters cite the 1966 Schmerber decision as a benchmark, and note that the court upheld the drawing of a blood sample in that case because the blood was drawn by a medical professional rather than by a police officer. These commenters neglect to mention, however, that the disposable and sterile pinprick kits used to draw blood samples for purposes of DNA analysis are much different from and much less medically invasive than the needle-drawn blood samples of 1966. And cheek swabs present even less of an intrusion. Modern DNA sample-collection techniques present less of a privacy intrusion than do the physical searches that regularly accompany arrest.

Presumption of Innocence

Many commenters argue that DNA profiling of arrestees violates the presumption of innocence that attaches to an arrestee before he is convicted of a crime. Arrestees are presumed innocent, but DNA sampling and analysis does not constitute a finding or judgment of guilt. If biometric identification did constitute such a judgment, then the photographs and fingerprints taken at and kept after arrest also would violate the presumption of innocence. They do not, and neither does DNA sampling.

Disparate Impact

A number of commenters condemn the proposed regulations on the basis that a disproportionate number of members of racial minorities may be subjected to DNA sampling. A disparate effect, however, is not the same thing as discrimination and is not unconstitutional or otherwise proscribed. Nor

could it be. Most laws have some type of disparate effect; it is a rare (if nonexistent) law that affects each racial or ethnic group in the United States in proportion to its percentage of the U.S. population. The proposed regulations are tied an individual's arrest or his detention on account of his illegal presence in this country; they do not discriminate between individuals on account of their race.

Analysis Backlog

Several commenters complain that adding DNA samples of arrestees and detained illegal immigrants to NDIS will increase the number of DNA samples that the FBI lab or private labs used by the FBI must analyze, and that a backlog of samples may result. The FBI lab and other law enforcement authorities, however, have ample discretion to decide which samples should be analyzed first. These commenters suggest that a backlog of samples may hinder investigations, but a murder or rape for which no suspect has been identified would be hindered more by never collecting a DNA sample from the perpetrator than by collecting that sample and analyzing it after a delay. To the extent that these commenters are concerned about the cost of analyzing DNA samples, they should bear in mind the massive costs of the labor-intensive police manhunts for serial murderers and rapists that would be avoided if the perpetrator could be identified through DNA sample collection, and the enormous costs of crime to its victims and to society as a whole.

Outsourcing

Many commenters suggest that the proposed regulations pose a privacy risk by allowing private contractors to aid in DNA sample processing. These private laboratories are subject to a comprehensive system of regulation, however. They also have a powerful incentive to handle samples properly: a lab that fails to do so will lose its contract and will go out of business.

ACLU Letter

In addition to raising arguments addressed above, the ACLU's May 19 comment argues that biological samples should be destroyed after analysis. This recommendation is outside the scope of the proposed regulations, and in any event should be rejected. Biological samples need to be retained in case the technology used for analysis is changed and all existing samples must be reanalyzed, something that has happened once already. Moreover, such samples are used for quality control, and for rechecking a purported match to crime scene evidence without taking a new sample from the suspect identified by the match.

The ACLU argues that collection of DNA from immigration detainees will deepen resentment and hostility among ethnic communities living in or visiting the United States. Few things exacerbate tensions between Americans and foreign visitors to this country more severely, however, than the serious crimes committed in the United States by illegal immigrants. Angel Resendiz, the so-called Railway Killer, was in this country illegal and is believed to have murdered 15 people here (and an untold number in Mexico). Santana Aceves, the so-called Chandler rapist and also an illegal immigrant, sexually assaulted half a dozen young girls in their homes in the Chandler suburb of Phoenix in 2007 and 2008. Both cases ''deepened resentment and hostility'' toward illegal immigrants in this country. And both Resendiz and Aceves would have been identified and their crime sprees likely stopped early had their DNA been taken during one of their earlier deportations. Relations between different groups in this country surely would be bettered rather than worsened has these two men's names not been permitted to become household words in the communities that they targeted.

The ACLU recommends that the proposed regulations ''prohibit comparison of an individual's DNA profile with anything other than the DNA profiles generated from the crime scene evidence for which she [sic] is suspected unless or until that person is convicted.'' This is a proposal to bar the use of arrestee and detainee DNA to make cold-case matches to crime-scene evidence. It is effectively a recommendation to gut the proposed regulations and to abdicate the Justice Department's responsibility to use the authority created by the DNA Fingerprint Act and the Adam Walsh Act. My floor statement commenting on final Senate action on the DNA Fingerprint Act describes the dozens of rapes and murders that could have been prevented in just one American city had arrestee sampling been in place; I offer it as rebuttal to the ACLU's argument that the proposed regulations should not permit arrestee DNA to be used to solve cold-case crimes.

The ACLU suggests that the Justice Department reassess the costs and benefits of broad sampling and consider narrower alternatives. ''Narrower alternatives'' would mean fewer rapes and murders prevented, a cost which alone justifies the proposed regulations.

The ACLU argues that the proposed regulations, by allowing some exceptions to their sampling rules, fail to give individuals adequate notice whether they will be subject to sampling. The proposed rule clearly requires that all federal arrestees and illegal immigrants being deported be sampled. Allowing a few exceptions to this rule for practical and other reasons does not significantly detract from the notice given by the proposed regulations.

The ACLU complains that the proposed rule does not address how to avoid duplicative sampling of the same individual. This is an administrative matter that does not merit attention in the text of the proposed regulation.

The ACLU questions the Justice Department's estimate of the cost of analyzing and storing DNA samples. The Justice Department's estimate is comparable to other estimates of the costs of DNA storage and analysis.

The ACLU concludes that Congress ''doubtless intended that the regulations would address [legal, privacy, and policy] concerns and would limit the DNA sampling to instances where . . . the benefits outweigh the costs.'' I believe that the proposed rule adequately considers these concerns and appropriately exercises the authority given to the Justice Department by Congress.

McLain and Mercer Letter

William McClain and Stephen Mercer, both law professors at the University of the District of Columbia, contend in a May 19, 2008 comment that the proposed regulations should be modified to allow an individual to retain counsel and file a lawsuit before a sample is collected. I urge the Justice Department to reject this recommendation. Any individual wishing to contest the legality of arrestee sampling may challenge such sampling after the fact; the interests at stake are not substantial enough to justify a pre-litigation injunction in the regulations themselves. Such a delay in sampling would also undermine the administration of the proposed system, as it is far easier to collect a sample at booking, when fingerprints and pictures are also taken.

The professors also suggest that the ''reasonable means'' authorized to collect samples be defined more specifically and be defined in the same way for all agencies collecting samples. The different agencies collecting samples have different means at their disposal and deal with different populations of offenders and detainees; it is appropriate that reasonableness should be defined in the context of each agency and by that agency.

The professors also recommend that all DNA processing agreements with private entities specify that all constitutional, statutory, and regulatory federal law requirements that would apply to government processing also apply to private processing. Such a requirement is superfluous, and in any event is unnecessary in light of the comprehensive regulation of private entities processing DNA on behalf of the Federal government.

Center for Constitutional Rights Letter

Aside from arguments addressed above, CCR argues in a May 19, 2008 comment that the proposed regulations would give Homeland Security staff discretion to ''take DNA samples of everyone pulled out of line for questioning at an airport immigration station.'' This is an unreasonable reading of the regulations, which exclude from sampling ''aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings.'' The regulation's ''further detention or proceedings'' clearly contemplates more than just minor additional questioning at a port of entry.

Alliance for Democracy and United for Peace and Justice et al.

These two groups submitted comments on May 19, 2008 suggesting that the proposed regulations would inhibit speech because DNA samples would be taken from persons arrested for civil disobedience. A person wishing to criticize the government or communicate other messages has many ways of doing so without committing a crime, and if he chooses to commit a crime, he should be prepared to face the consequences of doing so, including booking, fingerprinting, DNA sample collection, and a fine or imprisonment.

National Lawyers Guild—Columbia Law School

NLG suggests in an April 21, 2008 comment that the proposed regulations be amended to expressly bar DNA sample collection from LPRs until they are ordered removed and their appeals are exhausted. LPRs very rarely find themselves in immigration detention, and when they do so, it is overwhelmingly because they have committed a crime—and therefore would be subject to sampling on that basis. The remaining class of LPRs not subject to sampling is de minimis; their situation does not rise to the level of a matter that needs to be addressed on the face of the proposed regulations.

NLG also suggests that, because of the risk that a citizen may be mistakenly detained in immigration proceedings, no illegal immigrant should be sampled unless his nationality is conceded or proved, or in the alternative that no sampling ought to take place until a final order of removal has been entered. This proposal would substantially defeat administration of illegal-immigrant sampling by precluding sampling as part of the booking process. Moreover, cases in which citizens are mistakenly detained for deportation are extremely rare and are almost always corrected very quickly. The few cases that might occur should be dealt with on a case-by-case basis and do not merit attention in the text of the proposed rule.

NLG also suggests that subsection (b)(1) of the proposed rule suggests that ''the Secretary of Homeland Security could authorize that which is not authorized by Congress''—

apparently LPR sampling, though NLG is unclear on this point. NLG's concern is misplaced. The bar on LPR sampling is implicit in the proposed regulation, which earlier in the same subsection clearly excludes LPRs.

Administrative Office of the United States Courts

The AOC suggests in a May 16, 2008 comment that the word ''agency'' as used in the proposed rule be defined to exempt judicial agencies from the obligation to collect DNA samples from persons facing charges. A person facing Federal charges may have been arrested by state authorities or turned himself in, and therefore may not have had a DNA sample collected by an executive agency during a Federal arrest. I do not recommend that judicial agencies be exempted from the proposed rule, as they may be the only—or at least the first—Federal agency that is in a position to collect a DNA sample from an offender. I see no reason to exempt judicial pre-trial services agencies from the obligation of all parts of the Federal government to carry out those ministerial tasks necessary to the prevention of violent crime.

AOC also notes that the proposed regulation does not identify a system for determining whether an offender's sample is already in NDIS. This is an administrative matter that need not be addressed in the text of the proposed regulation.

Canadian Embassy and MP

The Canadian Embassy and a Canadian Member of Parliament submitted comments on May 19, 2008 posing several questions about the scope of the proposed rules, most of which appear to be based on a misunderstanding that the rule would require sampling of routine Canadian visitors to the United States. The rule exempts persons processed for lawful entry to the United States or held at a port of entry for consideration for admission to the United States, exceptions that address the concerns raised in these comments.

Sincerely,

JON KYL,
U.S. Senator.

FUNDING FOR PEACEKEEPER TRAINING

Mr. LEVIN. Mr. President, I want to speak today in favor of the administration's funding request for the Global Peace Operations Initiative and one of its important components, the Africa Contingency Operations Training and Assistance Program, for which the bill before the Senate, the fiscal year 2010 State-Foreign Operations appropriations bill, includes $96.8 million in funding. These programs, which I have supported in their various forms for more than a decade, are vital tools in helping the United States and nations around the world, but especially in Africa, to contain crises, violence and instability that threaten not only other nations, but also our own.

The Global Peace Operations Initiative, or GPOI, began in fiscal year 2005 as an effort to address worrisome gaps in the world community's ability to support, equip, and sustain a growing number of peacekeeping operations. This initiative comprised, in part, the fulfillment of a U.S. pledge at the June 2004 G–8 summit meeting at Sea Island, Georgia, to train 75,000 new peacekeepers. The GPOI built on and incorporated the Africa Contingency Operations Training and Assistance Program, or ACOTA, which has trained African peacekeepers since 1997. The objective of these programs is to train and equip military units to deploy to peacekeeping operations, many of them in Africa. In addition, GPOI supports efforts to train special ''gendarme'' police units to participate in peacekeeping operations.

Why are these programs so important? I think we all recognize that the world has become a more challenging and less stable place, but we may not recognize just how pronounced regional security problems have become. We do not need to look further than the two largest United Nations peacekeeping operations, in Darfur, Sudan, and in the Democratic Republic of the Congo. Both of these missions were authorized in response to complex regional conflicts. The United Nations, which oversees the majority of peacekeeping operations worldwide, reports that more than 100,000 peacekeepers and police personnel are deployed on peacekeeping operations—a sevenfold increase since 1999. Those troops are deployed in 17 separate operations, nearly half of which are on the African continent.

Through ACOTA and GPOI, the United States has helped to meet the growing demand for peacekeeping personnel. Since its start in 2005 through the end of fiscal year 2009, GPOI has provided training for nearly 87,000 personnel representing more than 50 nations. Appropriately, given the security challenges in Africa, ACOTA is GPOI's biggest initiative. Since 2005, more than 77,000 personnel from about two dozen African nations have received training through the initiative, and almost 14,000 more have received training under ACOTA through other funding sources. To make these numbers more significant, on average, 90 percent of units trained under ACOTA have deployed between 2005 and 2009.

GPOI provides partner nations with the training and equipment they need to perform peacekeeping missions through the UN or regional groups such as the African Union. This training is broad, and appropriately focuses on peacekeeping-specific tasks such as how to operate checkpoints and convoys, maintaining peace by safely disarming potential combatants, protecting refugees and internally displaced persons, developing and following appropriate rules of engagement, and, in some cases, peacemaking operations.

According to a report by the Department of State Inspector General, GPOI training through ACOTA ''is a win-win situation in which minimal numbers of U.S. military troops are involved, African professionalism and capacity are built up, and the participating African troops are rewarded well when deployed.'' Significantly, the IG report states ''that there have been minimal disciplinary problems and no ACOTA trained troops have been cited for atrocities or notable human rights abuses,'' an important sign that the emphasis on adherence to human rights standards and following the UN's rules of engagement has paid off.

The bill before the Senate, the State-Foreign Operations appropriations bill, includes funding for the administration's request of $96.8 million in funding for GPOI in fiscal year 2010. All of this funding is contained in the peacekeeping operations, or PKO, account of the bill. Based on past practice and the demand for peacekeeping in Africa, the Department of State will likely allocate more than half of this funding to ACOTA. Nearly $100 million is a substantial commitment of taxpayer dollars. But the price of failing to fund these important efforts would be far higher.

Our military leaders are particularly supportive of such efforts, with good reason. Admiral Mike Mullen, the Chairman of the Joint Chiefs of Staff, believes the U.S. commitment to aid the peacekeeping efforts of other nations is ''extremely important and cost effective in comparison to unilateral operations these peacekeepers help promote stability and help reduce the risks that major U.S. military interventions may be required to restore stability in a country or region. Therefore, the success of these operations is very much in our national interest.''

I agree with Admiral Mullen. Programs such as GPOI are important not only because they help alleviate suffering around the globe—which they surely do—but also because they are a cost-effective way of managing U.S. security interests.

I am especially pleased that the administration intends to concentrate going forward on strengthening the capability of partner nations to train their own peacekeeping forces. This ''train the trainers'' approach multiplies the impact of U.S. efforts by giving partner nations the ability to sustain their own peacekeeping efforts. Using this model, the State Department plans to assist in the training and equipping of more than 240,000 peacekeepers over the next 5 years. The other focus will be on growing the planning and operational capability of the regional security organizations on the African continent.

There are other steps we should take to make these vital programs more effective, particularly in Africa. Outside that continent, the U.S. military's Geographic Combatant Commands are responsible for much of the day-to-day management of GPOI programs, including contract management. In Africa, however, those tasks have been performed by contractors working for the State Department's Bureau of African Affairs. With the stand-up of U.S. Africa Command, AFRICOM, in 2008, there is now a Combatant Command in place that could take over the same types of management duties performed elsewhere by its sister commands. I believe

the Departments of State and Defense should explore whether such arrangements are advisable. Given the State Department's deep reliance on contractor personnel to manage the ACOTA program and AFRICOM's unique interagency command structure, I believe AFRICOM ought to be given a more significant role in the day-to-day execution of this critical program. Meanwhile, both departments should make efforts to ensure close cooperation between the State Department and AFRICOM personnel so that the taxpayers and partner nations see the maximum bang for the buck because they are a cost-effective way of managing U.S. security interests and supporting U.N. peacekeeping while reserving U.S. troops for other operations.

Having successfully completed the first 5-year phase, GPOI is entering a new phase. I urge my colleagues to support fully the administration's funding request for GPOI. With this money, we can help contain violence and chaos in many of the world's most troubled places. We can reduce the chance for such instability to create direct and immediate threats to our own security. We can enhance the ability of partner nations to maintain the peace in their own sectors of the globe. And we can accomplish all these things with a relatively modest amount of money—an investment with a substantial return, in both human and financial terms.

MESSAGE FROM THE HOUSE

At 11:35 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 86. An act to eliminate an unused lighthouse reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County's rocks and small islands, and for other purposes.

H.R. 3603. An act to rename the Ocmulgee National Monument.

H.R. 3951. An act to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the ''Roy Rondeno, Sr. Post Office Building''.

H.R. 4213. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

The message also announced that pursuant to section 125(c)(1) of Public Law 110–343, the minority leader appointed from private life Mr. J. Mark McWatters of Texas as a member of the Congressional Oversight Panel on the part of the House.

At 2:32 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 86. An act to eliminate an unused lighthouse reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County's rocks and small islands, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3603. An act to rename the Ocmulgee National Monument; to the Committee on Energy and Natural Resources.

H.R. 3951. An act to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the ''Roy Rondeno, Sr. Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4213. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Finance.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3966. A communication from the Chairman and President of the Export—Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Hong Kong; to the Committee on Banking, Housing, and Urban Affairs.

EC–3967. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (FRL No. 9091–7) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC–3968. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Ban on Sale or Distribution of Pre-Charged Appliances'' (FRL No. 9091–9) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC–3969. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clothianidin: Pesticide Tolerances'' (FRL No. 8793–6) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC–3970. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act'' (FRL No. 9091–8) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC–3971. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Changes to the Medicare Claims Appeal Procedures'' (RIN0938–AM73) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Finance.

EC–3972. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Application of Certain Appeals Provisions to the Medicare Prescription Drug Appeals Process'' (RIN0938–AO87) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Finance.

EC–3973. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2009–0213—2009–0223); to the Committee on Foreign Relations.

EC–3974. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Chile relative to the design and manufacture of the Sig 556 Rifle in the amount of $1,000,000 or more; to the Committee on Foreign Relations.

EC–3975. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–238, ''Omnibus Election Reform Amendment Act of 2009''; to the Committee on Homeland Security and Governmental Affairs.

EC–3976. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–239, ''Hospital and Medical Services Corporation Regulatory Amendment Act of 2009''; to the Committee on Homeland Security and Governmental Affairs.

EC–3977. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–3978. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–3979. A communication from the Secretary of Education, transmitting, pursuant to law, a report entitled ''Fiscal Year 2009 Agency Financial Report''; to the Committee on Homeland Security and Governmental Affairs.

EC–3980. A communication from the Acting Chief Executive Officer, Millennium Challenge Corporation, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 1755. A bill to direct the Department of Homeland Security to undertake a study on emergency communications (Rept. No. 111–105).

By Mr. INOUYE, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution, Fiscal Year 2010'' (Rept. No. 111–106).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. HARKIN for the Committee on Health, Education, Labor, and Pensions.

*Jacqueline A. Berrien, of New York, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2014.

*Chai Rachel Feldblum, of Maryland, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2013.

*P. David Lopez, of Arizona, to be General Counsel of the Equal Employment Opportunity Commission for a term of four years.

*Victoria A. Lipnic, of Virginia, to be a Member of the Equal Employment Opportunity Commission for the remainder of the term expiring July 1, 2010.

*Victoria A. Lipnic, of Virginia, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2015.

*Adele Logan Alexander, of the District of Columbia, to be a Member of the National Council on the Humanities for a term expiring January 26, 2014.

*Sara Manzano-Diaz, of Pennsylvania, to be Director of the Women's Bureau, Department of Labor.

*Patrick Alfred Corvington, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service.

*Lynnae M. Ruttledge, of Washington, to be Commissioner of the Rehabilitation Services Administration, Department of Education.

By Mr. LEAHY for the Committee on the Judiciary.

Denny Chin, of New York, to be United States Circuit Judge for the Second Circuit.

Rosanna Malouf Peterson, of Washington, to be United States District Judge for the Eastern District of Washington.

William M. Conley, of Wisconsin, to be United States District Judge for the Western District of Wisconsin.

Paul R. Verkuil, of Florida, to be Chairman of the Administrative Conference of the United States for the term of five years.

Richard G. Callahan, of Missouri, to be United States Attorney for the Eastern District of Missouri for the term of four years.

John Gibbons, of Massachusetts, to be United States Marshal for the District of Massachusetts for the term of four years.

John Leroy Kammerzell, of Colorado, to be United States Marshal for the District of Colorado for the term of four years.

By Mrs. FEINSTEIN for the Select Committee on Intelligence.

*Philip S. Goldberg, of the District of Columbia, to be an Assistant Secretary of State (Intelligence and Research).

*Caryn A. Wagner, of Virginia, to be Under Secretary for Intelligence and Analysis, Department of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PRYOR:

S. 2863. A bill to provide that an outbreak of infectious disease or act of terrorism may be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. PRYOR:

S. 2864. A bill to provide for the enhancement of United States preparedness for outbreaks of infectious disease to protect homeland security; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LIEBERMAN (for himself and Ms. COLLINS):

S. 2865. A bill to reauthorize the Congressional Award Act (2 U.S.C. 801 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BURRIS:

S. 2866. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize the juvenile accountability block grants program through fiscal year 2014; to the Committee on the Judiciary.

By Mrs. MURRAY:

S. 2867. A bill to require the Secretary of the Treasury to provide assistance to community depository institutions under the Public-Private Investment Program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN:

S. 2868. A bill to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU (for herself and Ms. SNOWE):

S. 2869. A bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

By Mr. INOUYE (for himself, Ms. SNOWE, Mr. BEGICH, and Ms. MURKOWSKI):

S. 2870. A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE:

S. 2871. A bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 583

At the request of Mr. PRYOR, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

At the request of Mr. JOHANNS, his name was added as a cosponsor of S. 583, supra.

S. 812

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 848

At the request of Mrs. MCCASKILL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 848, a bill to recognize and clarify the authority of the States to regulate intrastate helicopter medical services, and for other purposes.

S. 864

At the request of Mr. DORGAN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 864, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1129

At the request of Mr. DURBIN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1129, a bill to authorize the Secretary of Education to award grants to local educational agencies to improve college enrollment.

S. 1160

At the request of Mr. SCHUMER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1160, a bill to provide housing assistance for very low-income veterans.

S. 1243

At the request of Mr. HATCH, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1243, a bill to require repayments of obligations and proceeds from the sale of assets under the Troubled Asset Relief Program to be repaid directly into the Treasury for reduction of the public debt.

S. 1439

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1439, a bill to provide for duty-free treatment of certain recreational performance outerwear, and for other purposes.

S. 1932

At the request of Mr. BENNET, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1932, a bill to amend the Elementary and Secondary Education Act of 1965 to allow members of the Armed Forces who served on active duty on or after September 11, 2001, to be eligible to participate in the Troops-to-Teachers Program, and for other purposes.

S. 2747

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2755

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2755, a bill to amend the Internal Revenue Code of 1986 to provide an investment credit for equipment used to fabricate solar energy property, and for other purposes.

S. 2796

At the request of Mr. ENZI, the names of the Senator from Nebraska (Mr. JOHANNS) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 2796, a bill to extend the authority of the Secretary of Education to purchase guaranteed student loans for an additional year, and for other purposes.

S. 2816

At the request of Mr. BUNNING, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2816, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs and to allow the adoption credit to be claimed in the year expenses are incurred, regardless of when the adoption becomes final.

S. 2853

At the request of Mr. GREGG, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2853, a bill to establish a Bipartisan Task Force for Responsible Fiscal Action, to assure the long-term fiscal stability and economic security of the Federal Government of the United States, and to expand future prosperity growth for all Americans.

At the request of Mr. CONRAD, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 2853, supra.

S. RES. 316

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 316, a resolution calling upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, and for other purposes.

AMENDMENT NO. 2789

At the request of Mr. COBURN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of amendment No. 2789 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2793

At the request of Mr. BEGICH, his name was added as a cosponsor of amendment No. 2793 proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2878

At the request of Mr. CARDIN, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from Colorado (Mr. UDALL) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2923

At the request of Mr. DORGAN, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of amendment No. 2923 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2928

At the request of Mr. CASEY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 2928 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2938

At the request of Mrs. GILLIBRAND, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 2938 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2947

At the request of Ms. KLOBUCHAR, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 2947 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2991

At the request of Mr. MENENDEZ, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of amendment No. 2991 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3011

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 3011 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in

the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3030

At the request of Mrs. FEINSTEIN, the names of the Senator from California (Mrs. BOXER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of amendment No. 3030 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3046

At the request of Mr. KERRY, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of amendment No. 3046 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3051

At the request of Mr. BARRASSO, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of amendment No. 3051 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3069

At the request of Mr. KOHL, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of amendment No. 3069 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3071

At the request of Mrs. HAGAN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of amendment No. 3071 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3085

At the request of Mrs. LINCOLN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of amendment No. 3085 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3102

At the request of Mr. DURBIN, the names of the Senator from Illinois (Mr. BURRIS) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 3102 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR:

S. 2863. A bill to provide that an outbreak of infectious disease or act of terrorism may be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. PRYOR. Mr. President, I rise today to introduce two pieces of legislation to address gaps in our preparedness and ability to respond to widespread infectious disease outbreaks and biological attacks.

The H1N1 outbreak demonstrated to us how investments in pandemic preparedness activities, such as the creation of pandemic influenza strategies, can lessen the effects of a pandemic and improve our response. However, we have learned from the H1N1 pandemic that we still have gaps in our ability to prepare for and respond to these types of events and that state and local entities are uncertain in their abilities to respond to a more severe event.

Apart from shortcomings in government coordination and planning, there is also a glaring deficiency in an important statute that underpins our nation's response to disasters. When a natural disaster such as flooding in Arkansas occurs, local and State government resources can be quickly overextended. When that occurs a governor can request and the President can issue a major disaster declaration, which triggers the maximum amount of resources from the Federal disaster response system.

Sometimes the system works well and other times not as well, but we know for certain that without a disaster declaration and effective Federal intervention a natural disaster can have devastating effects on life, property, and our economy.

Unfortunately, due to a lack of clarification of the definition of a major disaster in the Stafford Act, there is no precedent for the President to issue a major disaster declaration when local medical resources are overwhelmed by the exponential spread of life-threatening diseases, or alternatively, a deliberate biological attack by terrorists. The bills that I am introducing today will help to address preparedness shortcomings as well as the deficiency in law.

My first bill, S. 2863, entitled The Emergency Response Act, addresses this shortcoming in law. It will ensure the Federal Government can provide the maximum amount of support to State and local governments by allowing pandemics, acts of terrorism or other man-made disasters to be considered a major disaster under the Stafford Act. This clarification in law will permit the President to issue a major disaster declaration and allow Federal agencies to coordinate their efforts, give technical assistance, give advisory assistance, and work with local authorities and people in the private sector for events such as pandemics, biological attacks or chemical releases.

The second bill, S. 2864, entitled The Defense Against Infectious Disease Act, requires the Federal government to periodically update the National Strategy for Pandemic Influenza and the National Pandemic Implementation plan with the assistance of State, Local and Tribal stakeholders in order to ensure our preparedness plans are up to date and incorporate the latest technologies, medical developments and logistical challenges.

This bill addresses concerns raised by the U.S. Government Accountability Office about both the completeness of these emergency plans and the need for them to be updated. Most Americans may not even know that these emergency plans exist, but they do understand that strong planning is the foundation for effective action. An out-of-date plan is not a plan, and after watching the spread of H1N1 and the missteps in our government's response, Americans can easily imagine what it would be like in the event of an even more serious disease outbreak, and the importance of planning for such an emergency.

This bill will also help address the situation I described previously in which a severe infectious disease outbreak can overwhelm our local medical facilities, many of which have limited resources to handle even their every day needs. To address situations which will over extend local resources, my bill also requires the Federal Government to identify alternative medical care facilities and other resources such as medical equipment, daily supplies and personnel to ensure we know what assets we have to help State and local communities.

The idea here is preparation. We should make the best of the H1N1 outbreak and learn from this experience. That is why I introduced the Emergency Response Act and the Defense Against Infectious Diseases Act. I ask that my colleagues support these bills to ensure that we are prepared for the next pandemic.

Mr. President, I ask unanimous consent that a bill summary be printed in the RECORD.

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

EMERGENCY RESPONSE ACT OF 2009 SUMMARY

The Emergency Response Act of 2009 is intended to improve response to infectious disease outbreaks, acts of terrorism and other disasters.

Section 2 of the legislation amends the Robert T. Stafford Disaster Relief and Emergency Assistant Act to provide that a pandemic, act of terrorism or other manmade disaster be considered a trigger to issue a ''major disaster'' declaration under the Act. Section 3 creates a working group under the auspices of the Secretary of Homeland Security to prepare recommendations for facilitating the dissemination of public health information to State fusion centers and the greater homeland security community.

DEFENSE AGAINST INFECTIOUS DISEASES ACT OF 2009 SUMMARY

The Defense Against Infectious Disease Act of 2009 is intended to address gaps in preparedness in the event of a significant outbreak of an infectious disease.

Section 3 of the legislation directs that a consortium of state, local, and tribal representatives be convened to assess the adequacy of existing guidance and support in the National Strategy for Pandemic Influenza and National Strategy for Pandemic Influenza Implementation plans. Section 4 directs the Secretary of Health and Human Services in coordination with the Secretary of Homeland Security to identify alternative medical care facilities and resources available to locate and distribute both medical and non-medical supplies to support communities over extended by an infectious disease outbreak. Section 5 directs GAO to prepare a report describing the roles and responsibilities, capabilities and coordination of federal government assets in place across various departments for responding to infectious disease outbreaks and biological attacks.

By Ms. LANDRIEU (for herself and Ms. SNOWE):

S. 2869. A bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

Ms. LANDRIEU. Mr. President, our Nation's small businesses have created 64 percent of all new jobs in the last 15 years, yet in the last year nearly 85 percent of the jobs lost have come from small businesses. To reverse this job loss trend and allow small businesses to be the engine of economic growth once again, we must make sure they have the access to capital they need to be successful and help grow our economy.

That is exactly why I, along with the ranking member of the Small Business Committee, OLYMPIA SNOWE of Maine, am introducing the Small Business Job Creation and Access to Capital Act of 2009. This bipartisan legislation is a result of five hearings and roundtables in the Small Business Committee this year as well as numerous meetings with small business owners. It builds off of S. 1832, the Small Business Access to Capital Act of 2009, and S. 1615, the Next Step for Main Street Credit Availability Act of 2009, legislation Senator SNOWE and I have previously introduced.

This legislation enhances the ability of the SBA to support larger loans and provide more options to small businesses. As many other sources of capital have evaporated, loans guaranteed by the SBA, with support of funding through the Recovery Act, have been able to support $16.5 billion in loans to small businesses. Specifically, this act would: increase the loan limit on 7(a) loans from $2 million to $5 million; increase the loan limit on 504 loans from $1.5 million to $5.5 million; increase the loan limit on microloans from $35,000 to $50,000, as well as increase the loan limit to microloan intermediaries from $3.5 million to $5 million; allow the 504 loan program to refinance short-term commercial real estate debt into long-term, fixed rate loans; extend the authorization to provide 90 percent guarantees on 7(a) loans and fee elimination for borrowers on 7(a) and 504 loans through December 31, 2010; and direct the SBA to create a website where small businesses can identify lenders in their communities.

These provisions will have an immediate impact on increasing the availability of credit for small businesses and spurring job growth, with many of these provisions coming at little or no cost to the government. For example, the SBA estimates that the loan limit increases will be budget neutral, but will increase SBA lending by $5 billion next year alone. The refinancing provisions could help save 60,000 jobs next year by allowing small businesses to refinance short-term commercial real estate debt into long-term fixed rate mortgages. To ensure that this program is budget neutral we have included a provision that would require any additional cost created by the program to be funded by the fees of the participants. Additionally, we have placed a number of safeguards on this program, such as requiring that the refinanced loan be current for at least one year, that the business owner invest a minimum of 20 percent equity and that the availability of funds be capped at $65,000 for every job retained.

The extension of the 90 percent guarantees on 7(a) loan and the fee elimination for borrowers on traditional 504 and 7(a) loans extends critical provisions in the Recovery Act. This legislation does not include the appropriations for this funding, but does provide an extension of its authorization should appropriations be made available. It is estimated that if an additional $479 million were to be appropriated for these programs, the SBA would be able to support $18.5 billion in lending to small businesses. Alternately, we are starting to see the impact of this funding not being available. In the first full week of lending since the SBA had to create a waiting list for the final Recovery Act funding, 7(a) loan volume fell from $985 million in the last week of the full funding being available, to $71 million. This $71 million in loan volume is lower than the average weekly volume we were experiencing before the Recovery Act was approved. We also know that as of today there are more than 700 small businesses in the SBA waiting list approved for $350 million in loans if we made more funding available.

It is clear that now is the time to act. Our Nation's small businesses need access to capital and this bill helps facilitate this crucial need.

Ms. SNOWE. Mr. President, we all know the statistics are bleak. Unemployment is at 10 percent, more than 7 million Americans have lost their jobs since the start of this current recession, and the National Federation of Independent Businesses' Optimism Index, a compilation of 10 survey indicators, is at 88.3, a number the NFIB calls ''stuck at recession levels.'' These statistics, and the stories they represent present Congress with myriad challenges including: What will we do to lower unemployment, create jobs, and help our small businesses to grow again?

The legislation Chair LANDRIEU and I are introducing today, the Small Business Job Creation and Access to Capital Act of 2009, aims to meet this challenge and takes the best ideas from Republicans and Democrats, to help put American small businesses back to work. I would especially like to thank the Chair for working with me in such an open manner in developing this bill. Creating jobs and helping small businesses should not be a partisan issue and the Chair has been extremely open to my suggestions, incorporating many of the provisions I originally introduced in the Small Business Lending Improvement Act, the 10 Steps for a Main Street Economic Recovery Act, and the Next Step for a Main Street Economic Recovery Act into this legislation.

In the past year, one cornerstone of small business recovery has been Small Business Administration, SBA, backed lending. Last year, to help address the chronic shortage of capital for small business borrowers, I introduced the 10 Steps for a Main Street Economic Recovery Act. Many of the provisions in this legislation were included in the American Recovery and Reinvestment Act and some have been credited with helping to increase SBA loan volume 79 percent.

One provision which has been extremely popular has been fee reductions for 7(a) and 504 loans. In fact, at a round table on reauthorizing the SBA's access to capital programs the Senate Committee on Small Business and Entrepreneurship heard from Mr. Michael Heath, the owner of Ramunto's Brick Oven Pizza in St. Johnsbury, Vermont. Mr. Heath told the Committee that the funds he saved in SBA fee reductions helped him buy his pizzeria. The bill we are introducing today would extend the fee reductions I originally proposed in 10 Steps to December 31st, 2010. This critical step ensures that we can continue to help entrepreneurs like Mike open businesses on Main Streets across America.

Another vital provision contained in this legislation expands the number of

businesses eligible for SBA-backed loans and expands the size of those loans. I originally proposed this idea in the Small Business Lending Improvement Act which calls for an alternative size standard that would help more small businesses meet the SBA's requirements to access SBA-backed loans, and also included it in the Next Step for Main Street Credit Availability Act, which includes provisions allowing borrowers to take out larger 7(a) loans, microloans, and 504 loans. President Obama has also recognized the need for larger loan sizes and has advocated for this position as a way to create jobs and help small businesses.

Underscoring the inadequate size of SBA loans, I heard testimony earlier this year at a field hearing Senator SHAHEEN and I held in Portland, Maine from Mr. Richard Pfeffer, a local business owner, on how small SBA loan sizes have directly impacted his business. Mr. Pfeffer testified that his two businesses, Aroostook Starch and Gritty McDuff's, a restaurant and pub regarded by many as a Portland landmark, were close to bankruptcy not because of the economic downturn, but rather because of his inability to access larger SBA loans. Mr. Pfeffer is still in business today, and Gritty's is now serving its famous Christmas Ale, but his inability to access capital still looms and it is costing him the opportunity to expand his business and hire more workers. The increased loan limits in this bill would help Mr. Pfeffer and others like him to put the American economy back on track.

This bill also includes another provision I proposed in March and introduced in my Next Steps legislation that would allow SBA borrowers to shop and compare SBA loan rates online, offering borrowers the opportunity to make an informed choice and save time and money.

Finally, the Small Business Job Creation and Access to Capital Act of 2009 would allow borrowers of 504 loans to refinance their debt. This provision will give borrowers critical working capital that they can use to grow and expand their businesses.

These targeted reforms will help put Americans back to work, ease the capital crunch for small businesses, and help bring SBA lending into the future. I urge my colleagues to support this critical legislation to improve America's economy and increase small business lending.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3115. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3116. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3117. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3118. Ms. COLLINS (for herself, Mr. WYDEN, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3119. Mr. WARNER (for himself, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mrs. SHAHEEN, Mrs. HAGAN, Mr. MERKLEY, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. BENNET, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. KIRK, Ms. COLLINS, Ms. KLOBUCHAR, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3120. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3121. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3122. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3123. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3124. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3125. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3126. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3127. Mr. MERKLEY (for himself and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3128. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3129. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3130. Mr. JOHANNS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3131. Mr. KOHL (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3132. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3133. Mr. WICKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3134. Mr. BURR (for himself, Mrs. HUTCHISON, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3135. Mr. SANDERS (for himself, Mr. BROWN, Mr. FRANKEN, and Mr. BURRIS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3136. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3137. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3138. Mrs. HUTCHISON (for herself and Mr. HATCH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3139. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3140. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3141. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3142. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3143. Mrs. HUTCHISON submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3144. Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3145. Mr. MCCONNELL (for himself, Mr. ENSIGN, and Mr. MCCAIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3146. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3147. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3148. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3149. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3150. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3151. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3152. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3153. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3154. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3155. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3156. Mr. LAUTENBERG (for himself, Mr. CARPER, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3157. Mrs. SHAHEEN (for herself and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3158. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3159. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3160. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3161. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3162. Mr. SPECTER (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3163. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3115. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1609, after line 23, insert the following:

SEC. 6108. COMMUNITY INTEGRATED NURSING CARE HOMES DEMONSTRATION PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Community Integrated Nursing Care Homes Demonstration Program Act'' or the ''CINCH Demonstration Program''.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish the CINCH demonstration program to test the viability of multiple small house nursing homes that are embedded within residential neighborhoods and collectively certified to provide services through a single eligible operating entity in order to reduce administrative costs and provide related cost savings to the Medicare and Medicaid programs.

(2) DURATION AND SCOPE.—

(A) DURATION.—The Secretary shall conduct the CINCH demonstration program for a period of 5 years.

(B) SCOPE.—The Secretary shall select not more than 6 sites (as described in paragraph (3)) to participate in the CINCH demonstration program, with each site to be operated by a different eligible operating entity (as described under subsection (c)(2)) and not less than 2 sites to be located in rural areas.

(3) SITES.—

(A) IN GENERAL.—A site shall consist of not less than 2 locations, with each location containing not more than 2 small house nursing homes, that are operated by an eligible operating entity under such entity's nursing home license and provider certification.

(B) LOCATIONS.—

(i) DISTANCES.—Distances between locations within a site may vary based upon market demand and availability, with maximum distances between locations to be established by the eligible operating entity based upon the ability of such entity to—

(I) deliver required services and supervision in a timely and appropriate manner; and

(II) subject to paragraph (5), meet all applicable statutory and regulatory requirements for operation of a nursing home.

(ii) ADJOINING PARCELS.—A location shall—

(I) consist of a single parcel of land or multiple adjoining parcels of land; and

(II) be separate from any other location and operate on a non-adjoining parcel of land from such location.

(C) NUMBER OF SMALL HOUSE NURSING HOMES PER SITE.—A site shall contain not less than 4 small house nursing homes and not greater than—

(i) in rural areas (or a site that encompasses a rural area), 12 small house nursing homes; or

(ii) in urban or suburban areas, 24 small house nursing homes.

(4) CONTINUATION OF TREATMENT AS SINGLE PROVIDER.—The Secretary shall develop a process to allow a site, following the 5-year period for the CINCH demonstration program, to continue operation through a single operating entity and receive certification as a single provider for purposes of Medicare and Medicaid, including provisions to permit such continuation following a change in ownership of a participating small house nursing home.

(5) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI, XVIII, and XIX of the Social Security Act as may be necessary to carry out the CINCH demonstration program and shall develop a process that permits sites to be certified and reimbursed under Medicare and Medicaid.

(c) SELECTION.—

(1) TECHNICAL ASSISTANCE PROVIDER.—

(A) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, through a request for proposal process, shall select a technical assistance provider that shall be responsible for assisting and monitoring eligible operating entities (as described under paragraph (2)).

(B) MINIMUM REQUIREMENTS.—In selecting the technical assistance provider, the Secretary shall ensure that such organization—

(i) is a national not-for-profit organization that is in good standing;

(ii) has a consistent, clearly articulated, and research-based model for operation of small house nursing homes;

(iii) has not less than 10 years of experience in providing development, operation, regulatory, policy, and financial consulting services to clients or partners seeking to innovate the provision of long-term care;

(iv) has demonstrated a successful process and record (for not less than 4 years) for selection and assistance of multiple organizations in implementation of a small house nursing home model, including development, operations, and staff training;

(v) has established curricula for training of leadership, clinical, and direct care staff;

(vi) has demonstrated capacity, through its own resources and consultants, to—

(I) collect Minimum Data Set (''MDS'') information and financial data from eligible operating entities; and

(II) benchmark and analyze such financial data on not less than a quarterly basis;

(vii) has the ability to administer the CINCH demonstration program without additional funding from Federal, State, or local governmental sources;

(viii) agrees to provide technical assistance services to eligible operating entities for a fee that is not greater than its usual and customary fee for such services; and

(ix) agrees to maintain a provider network for small house nursing homes participating in the CINCH demonstration program for a fee that is not greater than its usual and customary fee for such services.

(C) PREFERENCES.—In selecting the technical assistance provider, the Secretary shall give preference to an organization that has demonstrated experience in related business activities, including community-based care models, health care financing, and demonstration programs.

(2) ELIGIBLE OPERATING ENTITY.—

(A) IN GENERAL.—Selection of eligible operating entities shall be determined by the technical assistance provider through a request for proposal process on a continual basis.

(B) MINIMUM REQUIREMENTS.—An eligible operating entity seeking to participate in the CINCH demonstration program shall be required to—

(i) commit to maintaining the small house nursing home requirements described under subsection (d) and permit the technical assistance provider to conduct periodic evaluations to ensure adherence to such requirements;

(ii) maintain membership in a small house nursing home provider network that is maintained by the technical assistance provider; and

(iii) ensure that, for each site, at least 30 percent of the total capacity developed under the CINCH demonstration program is provided to residents that are receiving nursing home benefits under Medicaid.

(d) SMALL HOUSE NURSING HOME REQUIREMENTS.—To be eligible to participate in the CINCH demonstration program, a small house nursing home shall—

(1) subject to subsection (b)(5), have been certified by a State or local entity (in accordance with applicable State and local law) to operate a nursing home;

(2) operate in compliance with any direct care and certified nurse assistant staffing requirements under Federal and State law;

(3) provide nursing home services, as required under State law and applicable licensing standards, that shall not be less comprehensive or high-acuity than services provided by the eligible operating entity within the immediate surrounding community;

(4) provide for meals cooked in the small house nursing home and not prepared in a central kitchen and transported to the nursing home;

(5) provide for a universal worker approach to resident care (such as a certified nursing assistant who provides personal care, socialization services, meal preparation services, and laundry and housekeeping services);

(6) provide for direct care staffing at a rate of not less than 4 hours per resident per day, with direct care staff (including certified nurse assistants) to be onsite, awake, and available within each nursing home at all times;

(7) provide for direct nursing care at a rate of not less than 1 hour per resident per day, with a nurse to be awake and available at each location at all times (with nurses to be shared between not more than 2 nursing homes on each site) as part of a nursing staff that meets or exceeds applicable Federal and State requirements for qualifications, services, and availability;

(8) provide for any other clinical, operational, management, or facility staff and services as required under applicable Federal and State requirements, with such staff to be available from centralized or distributed locations;

(9) provide for consistent staff assignments and self-directed work teams of direct care staff;

(10) provide training for all staff involved in the operations of the nursing home (for not less than 120 hours for each universal worker and not less than 60 hours for each leadership and clinical team member, to be completed for the majority of the staff before they start to work in a small house nursing home) concerning the philosophy, operations, and skills required to implement and maintain self-directed care, self-managed work teams, a noninstitutional approach to life and care in long-term care, appropriate safety and emergency skills, cooking from scratch by the direct care staff and food handling and safety, and other elements required for successful operation of the nursing home;

(11) ensure that the percentage of residents in each nursing home who are short-stay rehabilitation residents does not exceed 20 percent at any time (unless the small house nursing home is entirely devoted to providing rehabilitation services), except that a long-term resident transferring back to a nursing home after an acute episode and who is receiving rehabilitation services for which payment is made under the Medicare program shall not be counted toward such limitation;

(12) provide the technical assistance provider with MDS information and financial data in a timely manner on a monthly basis; and

(13) consist of a physical environment designed to look and feel like a home, rather than an institution, and that shall—

(A) be designed to serve as a fully independent and disabled accessible house or apartment, with not more than 10 residents within such house or apartment, and that shall only be connected to or share areas that would be generally shared between private homes (such as a driveway) or apartments (such as a lobby or laundry room);

(B) contain residential-style design elements and materials throughout the home that are similar to those in the immediate surrounding community and that do not use commercial and institutional elements and products (such as a nurses' station, medication carts, hospital or office-type florescent lighting, acoustical tile ceilings, institutional-style railings and corner guards, and room numbering and labeling) unless mandated by authorities with appropriate jurisdiction over the nursing home;

(C) provide private, single occupancy bedrooms that are shared only at the request of a resident to accommodate a spouse, partner, family member, or friend, and that contains a full private bathroom that includes, at a minimum, a toilet, sink, and accessible shower;

(D) contain a living area where residents and staff may socialize, dine, and prepare food together that provides, at a minimum, a living room seating area, a dining area large enough for a single table serving all residents and not less than 2 staff members, and an open full kitchen;

(E) contain ample natural light in each habitable space that is provided through exterior windows and other means, with window areas, exclusive of skylights and clerestories, being a minimum of 10 percent of the area of the room;

(F) have a life-safety rating that is sufficient to meet State and local standards for nursing facilities and appropriately accommodate individuals who cannot evacuate the nursing home without assistance; and

(G) contain built-in safety features to allow all areas of the nursing home to be accessible to residents during the majority of the day and night.

(e) NO ADDITIONAL PAYMENT.—The technical assistance provider, as well as any eligible operating entities and participating small house nursing homes, shall not receive any additional payment or reimbursement under the Medicare or Medicaid programs based upon their participation in the CINCH demonstration program.

(f) EVALUATION AND REPORT.—

(1) IN GENERAL.—Not later than 4 years after the date of enactment of this Act, the technical assistance provider shall evaluate the performance of each of the sites participating under the CINCH demonstration program and shall submit to Congress and the Secretary a report containing the results of such evaluation.

(2) EVALUATION REQUIREMENTS.—The evaluation shall include an analysis of—

(A) not less than 12 months of MDS information and financial data from at least 10 small house nursing homes; and

(B) results from focus groups or surveys regarding health outcomes for residents and program costs.

(g) DEFINITIONS.—In this section:

(1) CINCH DEMONSTRATION PROGRAM.—The term ''CINCH demonstration program'' means the demonstration program conducted under this section.

(2) MEDICAID.—The term ''Medicaid'' means the program for medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(3) MEDICARE.—The term ''Medicare'' means the program for medical assistance established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) NURSING HOME.—The term ''nursing home'' means—

(A) a skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a))); or

(B) a nursing facility (as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a))).

(5) RESEARCH-BASED.—The term ''research-based'' means research that—

(A) has been conducted by an objective researcher or research team that has—

(i) no financial or affiliated organizational interest in the success of the model; and

(ii) expertise in long-term care, with not less than 3 research articles relating to long-term care that have been published in leading peer-reviewed journals;

(B) has been conducted according to generally accepted research practices;

(C) has been published in a leading peer-reviewed journal on aging or long-term care; and

(D) indicates a measurable improvement in multiple aspects of quality of life and care.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(7) RURAL AREA.—The term ''rural area'' means any area other than an urban or suburban area.

(8) SUBURBAN AREA.—The term ''suburban area'' means any urbanized area that is contiguous and adjacent to an urban area.

(9) URBAN AREA.—The term ''urban area'' means a city or town that has a population of greater than 50,000 inhabitants.

SA 3116. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr.

DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2028, strike lines 9 and 10 and insert the following:

(3) EFFICIENCY ADJUSTMENT BASED ON PREMIUM INCREASES.—

(A) IN GENERAL.—The portion of the fee determined under paragraph (1) with respect to a covered entity for a calendar year which is attributable to net premiums written shall be multiplied by an amount equal to the sum of—

(i) 50 percent, plus

(ii) the applicable percentage.

(B) APPLICABLE PERCENTAGE.—The applicable percentage is a percentage determined by the Secretary in the following manner:

(i) The applicable percentage for the covered entity with the lowest per-capita premium change shall be 0 percent.

(ii) The applicable percentage for the covered entity with the highest per-capita premium change shall be 100 percent.

(iii) The applicable percentage for each other cover entity shall be based on the degree to which the per-capita premium change for such covered entity is greater than the covered entity with the lowest per-capita premium change, except that in determining such amount the Secretary shall ensure that the aggregate fees for all covered entities under this section for the calendar year (after application of this subsection) is equal to $6,700,000,000.

(iv) Notwithstanding clause (iii), the Secretary may reduce the applicable percentage for a covered entity (but not below zero) with respect to any calendar year if the Secretary determines that the amount of the per-capita premium increase for such entity was primarily due to government restrictions on rates, but only to the extent that the amount of the per-capita premium increase was due to such government restrictions, as determined by the Secretary. In the case of any reduction under the preceding sentence, proper adjustment shall be made to the applicable percentages for other covered entities described in clause (iii) such that the aggregate fees for all covered entities under this section for the calendar year (after application of this subsection) is equal to $6,700,000,000. In no case shall any adjustment cause the applicable percentage for any covered entity to exceed 100 percent.

(C) PER-CAPITA PREMIUM CHANGE.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''per-capita premium change'' means, with respect to any calendar year, the excess of—

(I) the per-capita premium amount for the such calendar year, over

(II) the per capita premium amount for the preceding calendar year.

(ii) PER-CAPITA PREMIUM AMOUNT.—The term ''per-capita premium amount'' means, with respect to any calendar year, the total amount of net premiums written with respect to health insurance for any United States health risk for such calendar year divided by the number of United States health risks which are covered under such net written premiums.

(iii) REPORTING.—

(I) IN GENERAL.—Each covered entity shall include in the report required under subsection (g) the number of United States health risks which are covered under net written premiums with respect to health insurance.

(II) PENALTY.—The rules of subsection (g)(2) shall apply to the information required to be reported under subclause (I).

(4) SECRETARIAL DETERMINATION.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under this subsection.

SA 3117. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 164, between lines 2 and 3, insert the following:

SEC. 13___. OPTIONAL FREE CHOICE VOUCHERS.

(a) IN GENERAL.—Any employer may provide a free choice voucher to any employee of such employer, but only if such employer offers free choice vouchers to—

(1) in the case of an offering employer, all employees of such employer who are eligible to participate in an employer-sponsored plan described in subsection (c)(1), and

(2) in the case of any other employer, all employees of the employer.

(b) FREE CHOICE VOUCHER.—

(1) AMOUNT.—

(A) OFFERING EMPLOYERS.—

(i) IN GENERAL.—In the case of an offering employer, the amount of the free choice voucher provided under subsection (a) shall be equal to the monthly portion of the cost of the eligible employer-sponsored plan which would have been paid by the employer if the employee were covered under the plan with respect to which the employer pays the largest portion of the employee's premium. Such amount shall be equal to the amount the employer would pay for an employee with self-only coverage unless such employee elects family coverage (in which case such amount shall be the amount the employer would pay for family coverage).

(ii) DETERMINATION OF COST.—The cost of any health plan shall be determined under the rules similar to the rules of section 2204 of the Public Health Service Act, except that such amount may be adjusted for age and category of coverage in accordance with regulations established by the Secretary.

(B) OTHER EMPLOYERS.—In the case of any other employer, the amount of the voucher provided under subsection (a) shall be not greater than the amount equal to the lowest cost bronze plan of the individual market in the rating area in which the employee resides which—

(i) is offered through an Exchange, and

(ii) provides—

(I) in the case of an employee electing self-only coverage, self-only coverage, and

(II) in any other case, family coverage.

(2) USE OF VOUCHERS.—An Exchange shall credit the amount of any free choice voucher provided under subsection (a) to the monthly premium of any qualified health plan in the Exchange in which the qualified employee is enrolled and the offering employer shall pay any amounts so credited to the Exchange.

(3) PAYMENT OF EXCESS AMOUNTS.—If the amount of the free choice voucher exceeds the amount of the premium of the qualified health plan in which the qualified employee is enrolled for such month, such excess shall be paid to the employee. Any amount paid to the employee under the preceding sentence shall not be taken into account in determining the rate of pay of the employee under the Fair Labor Standards Act of 1938.

(c) OFFERING EMPLOYER.—For purposes of this section, the term ''offering employer'' means any employer who—

(1) offers minimum essential coverage to its employees consisting of coverage through an eligible employer-sponsored plan; and

(2) pays any portion of the costs of such plan.

(d) OTHER DEFINITIONS.—Any term used in this section which is also used in section 5000A of the Internal Revenue Code of 1986 shall have the meaning given such term under such section 5000A.

(e) ACCELERATED ACCESS TO EXCHANGES.—Notwithstanding section 1312(f)(2)(B)—

(1) beginning in 2015, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange, but only in connection with employers who provide free choice vouchers under subsection (a); and

(2) if a State under paragraph (1) allows issuers to offer qualified plans in the large group market though an Exchange, the term ''qualified employer'' (as defined in section 1312(f)(2)) shall include a large employer that—

(A) provides free choice vouchers to its employees under subsection (a); and

(B) elects to make all full-time employees eligible for 1 or more qualified health plans offered in the large group market through the Exchange.

(f) EXCLUSION FROM INCOME FOR EMPLOYEE.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139C the following new section:

''SEC. 139D. FREE CHOICE VOUCHERS.

''Gross income shall not include the amount of any free choice voucher provided by an employer under part I of subtitle D of title I of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer.''.

(2) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139C the following new item:

''Sec. 139D. Free choice vouchers.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(g) DEDUCTION ALLOWED TO EMPLOYER.—

(1) IN GENERAL.—Section 162(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''For purposes of paragraph (1), the amount of a free choice voucher provided under part I of subtitle D of title I of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(h) VOUCHER TAKEN INTO ACCOUNT IN DETERMINING PREMIUM CREDIT.—

(1) IN GENERAL.—Subsection (b)(2) of section 36B of the Internal Revenue Code of 1986, as added by section 1401, is amended by adding at the end the following new flush sentence:

''The amount of any monthly premium under subsection subparagraph (A) and the amount of the adjusted monthly premium for the second lowest cost silver plan under subparagraph (B) shall be reduced by the amount of any free choice voucher provided to the taxpayer under section _____ of the Patient Protection and Affordable Care Act.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2013.

(i) COORDINATION WITH EMPLOYER RESPONSIBILITIES.—

(1) SHARED RESPONSIBILITY PENALTY.—

(A) IN GENERAL.—Subsection (c) of section 4980H of the Internal Revenue Code of 1986, as added by section 1513, is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES FOR EMPLOYERS PROVIDING FREE CHOICE VOUCHERS.—The assessable payment imposed under paragraph (1) shall be reduced (but not below zero) by the amount of any free choice voucher provided to a full-time employee under section ___ of the Patient Protection and Affordable Care Act for any month during which such employee is enrolled in a qualified health plan with respect to which an applicable premium credit or cost-sharing subsidy is allowed or paid with respect to such employee.''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to months beginning after December 31, 2013.

(2) NOTIFICATION REQUIREMENT.—Section 18B(a)(3) of the Fair Labor Standards Act of 1938, as added by section 1512, is amended—

(A) by inserting ''and the employer does not offer a free choice voucher'' after ''Exchange''; and

(B) by striking ''will lose'' and inserting ''may lose''.

SA 3118. Ms. COLLINS (for herself, Mr. WYDEN, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 116, between lines 2 and 3, insert the following:

(3) SPECIAL RULE FOR INDIVIDUALS AGE 30 AND OVER NOT ELIGIBLE FOR EXCHANGE CREDITS AND REDUCTIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), an individual who has attained at least the age of 30 before the beginning of a plan year shall be treated as an individual described in paragraph (2) if the individual is not eligible for the plan year for the premium tax credit under section 36B of the Internal Revenue Code of 1986 or the cost-sharing reductions under section 1402 with respect to enrollment in a qualified health plan offered through an Exchange. The preceding sentence shall not apply to an individual if the individual is not eligible for such credit or reductions because the individual is eligible to enroll in minimum essential coverage consisting of coverage under a government sponsored program described in section 5000A(f)(1)(A).

(B) REQUIREMENTS.—Subparagraph (A) shall only apply to an individual if the individual elects the application of this paragraph and such election provides that—

(i) the individual acknowledges that coverage under the catastrophic plan is the lowest coverage available, that the plan provides no benefits for any plan year until the individual has incurred cost-sharing expenses in an amount equal to the annual limitation in effect under subsection (c)(1) for the plan year (except as provided for in section 2713), and that these cost-sharing expenses could involve significant financial risk for the individual; and

(ii) the individual agrees that—

(I) the individual will not change such coverage until the next applicable annual or special enrollment period under section 1311(c)(5); and

(II) if the individual elects to change such coverage at the time of such enrollment period, the individual may only enroll in the bronze level of coverage.

(4) STATE AUTHORITY.—In accordance with section 1321(d), a State may impose additional requirements or conditions for catastrophic plans described in this subsection to the extent such requirements or conditions are not inconsistent with the requirements under this subsection.

SA 3119. Mr. WARNER (for himself, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mrs. SHAHEEN, Mrs. HAGAN, Mr. MERKLEY, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. BENNET, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. KIRK, Ms. COLLINS, Ms. KLOBUCHAR, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1134, strike line 3 and insert the following:

title).

Subtitle G—Modernizing America's Health Care System

PART I—IMPROVING QUALITY AND VALUE THROUGH DELIVERY SYSTEM REFORM

SEC. 3601. QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.

(a) IN GENERAL.—Section 1886(s) of the Social Security Act, as added by section 3401(f), is amended by adding at the end the following new paragraph:

''(4) QUALITY REPORTING.—

''(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

''(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

''(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

''(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

''(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

''(D) QUALITY MEASURES.—

''(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

''(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

''(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

''(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.''.

(b) CONFORMING AMENDMENT.—Section 1890(b)(7)(B)(i)(I) of the Social Security Act, as added by section 3014, is amended by inserting ''1886(s)(4)(D),'' after ''1886(o)(2),''.

SEC. 3602. PILOT TESTING PAY-FOR-PERFORMANCE PROGRAMS FOR CERTAIN MEDICARE PROVIDERS.

(a) IN GENERAL.—Not later than January 1, 2016, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall, for each provider described in subsection (b), conduct a separate pilot program under title XVIII of the Social Security Act to test the implementation of a value-based purchasing program for payments under such title for the provider.

(b) PROVIDERS DESCRIBED.—The providers described in this paragraph are the following:

(1) Psychiatric hospitals (as described in clause (i) of section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) and psychiatric units (as described in the matter following clause (v) of such section).

(2) Long-term care hospitals (as described in clause (iv) of such section).

(3) Rehabilitation hospitals (as described in clause (ii) of such section).

(4) PPS-exempt cancer hospitals (as described in clause (v) of such section).

(5) Hospice programs (as defined in section 1861(dd)(2) of such Act (42 U.S.C. 1395x(dd)(2))).

(c) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary solely for purposes of carrying out the pilot programs under this section.

(d) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments under this section under the separate pilot program for value based purchasing (as described in subsection (a)) for each provider type described in paragraphs (1) through (5) of subsection (b) for applicable items and services under title XVIII of the Social Security Act for a year shall be established in a manner that does not result in spending more under each such value based purchasing program for such year than would otherwise be expended for such provider type for such year if the pilot program were not implemented, as estimated by the Secretary.

(e) EXPANSION OF PILOT PROGRAM.—The Secretary may, at any point after January 1, 2018, expand the duration and scope of a pilot program conducted under this subsection, to the extent determined appropriate by the Secretary, if—

(1) the Secretary determines that such expansion is expected to—

(A) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or

(B) improve the quality of care and reduce spending;

(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and

(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under such title XIII for Medicare beneficiaries.

SEC. 3603. PLANS FOR A VALUE-BASED PURCHASING PROGRAM FOR AMBULATORY SURGICAL CENTERS.

Section 3006 of this Act is amended by adding at the end the following new subsection:

''(f) AMBULATORY SURGICAL CENTERS.—

''(1) IN GENERAL.—The Secretary shall develop a plan to implement a value-based purchasing program for payments under the Medicare program under title XVIII of the Social Security Act for ambulatory surgical centers (as described in section 1833(i) of the Social Security Act (42 U.S.C. 13951(i))).

''(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall consider the following issues:

''(A) The ongoing development, selection, and modification process for measures (including under section 1890 of the Social Security Act (42 U.S.C. 1395aaa) and section 1890A of such Act, as added by section 3014), to the extent feasible and practicable, of all dimensions of quality and efficiency in ambulatory surgical centers.

''(B) The reporting, collection, and validation of quality data.

''(C) The structure of value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value-based bonus payments.

''(D) Methods for the public disclosure of information on the performance of ambulatory surgical centers.

''(E) Any other issues determined appropriate by the Secretary.

''(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall—

''(A) consult with relevant affected parties; and

''(B) consider experience with such demonstrations that the Secretary determines are relevant to the value-based purchasing program described in paragraph (1).

''(4) REPORT TO CONGRESS.—Not later than January 1, 2011, the Secretary shall submit to Congress a report containing the plan developed under paragraph (1).''.

SEC. 3604. REVISIONS TO NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.

Section 1866D of the Social Security Act, as added by section 3023, is amended—

(1) in paragraph (a)(2)(B), in the matter preceding clause (i), by striking ''8 conditions'' and inserting ''10 conditions'';

(2) by striking subsection (c)(1)(B) and inserting the following:

''(B) EXPANSION.—The Secretary may, at any point after January 1, 2016, expand the duration and scope of the pilot program, to the extent determined appropriate by the Secretary, if—

''(i) the Secretary determines that such expansion is expected to—

''(I) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or

''(II) improve the quality of care and reduce spending;

''(ii) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and

''(iii) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under this title for individuals.''; and

(3) by striking subsection (g).

SEC. 3605. IMPROVEMENTS TO THE MEDICARE SHARED SAVINGS PROGRAM.

Section 1899 of the Social Security Act, as added by section 3022, is amended by adding at the end the following new subsections:

''(i) OPTION TO USE OTHER PAYMENT MODELS.—

''(1) IN GENERAL.—If the Secretary determines appropriate, the Secretary may use any of the payment models described in paragraph (2) or (3) for making payments under the program rather than the payment model described in subsection (d).

''(2) PARTIAL CAPITATION MODEL.—

''(A) IN GENERAL.—Subject to subparagraph (B), a model described in this paragraph is a partial capitation model in which an ACO is at financial risk for some, but not all, of the items and services covered under parts A and B, such as at risk for some or all physicians' services or all items and services under part B. The Secretary may limit a partial capitation model to ACOs that are highly integrated systems of care and to ACOs capable of bearing risk, as determined to be appropriate by the Secretary.

''(B) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments to an ACO for items and services under this title for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary.

''(3) OTHER PAYMENT MODELS.—

''(A) IN GENERAL.—Subject to subparagraph (B), a model described in this paragraph is any payment model that the Secretary determines will improve the quality and efficiency of items and services furnished under this title.

''(B) NO ADDITIONAL PROGRAM EXPENDITURES.—Subparagraph (B) of paragraph (2) shall apply to a payment model under subparagraph (A) in a similar manner as such subparagraph (B) applies to the payment model under paragraph (2).

''(j) INVOLVEMENT IN PRIVATE PAYER AND OTHER THIRD PARTY ARRANGEMENTS.—The Secretary may give preference to ACOs who are participating in similar arrangements with other payers.

''(k) TREATMENT OF PHYSICIAN GROUP PRACTICE DEMONSTRATION.—During the period beginning on the date of the enactment of this section and ending on the date the program is established, the Secretary may enter into an agreement with an ACO under the demonstration under section 1866A, subject to rebasing and other modifications deemed appropriate by the Secretary.''.

SEC. 3606. INCENTIVES TO IMPLEMENT ACTIVITIES TO REDUCE DISPARITIES.

Section 1311(g)(1) of this Act is amended—

(1) in subparagraph (C), by striking ''; and'' and inserting a semicolon;

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

(3) by adding at the end the following:

''(E) the implementation of activities to reduce health and health care disparities, including through the use of language services, community outreach, and cultural competency trainings.''.

SEC. 3607. NATIONAL DIABETES PREVENTION PROGRAM.

Part P of title III of the Public Health Service Act 42 U.S.C. 280g et seq.), as amended by section 5405, is amended by adding at the end the following:

''SEC. 399V-2. NATIONAL DIABETES PREVENTION PROGRAM.

''(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a national diabetes prevention program (referred to in this section as the 'program') targeted at adults at high risk for diabetes in order to eliminate the preventable burden of diabetes.

''(b) PROGRAM ACTIVITIES.—The program described in subsection (a) shall include—

''(1) a grant program for community-based diabetes prevention program model sites;

''(2) a program within the Centers for Disease Control and Prevention to determine eligibility of entities to deliver community-based diabetes prevention services;

''(3) a training and outreach program for lifestyle intervention instructors; and

''(4) evaluation, monitoring and technical assistance, and applied research carried out by the Centers for Disease Control and Prevention.

''(c) ELIGIBLE ENTITIES.—To be eligible for a grant under subsection (b)(1), an entity shall be a State or local health department, a tribal organization, a national network of community-based non-profits focused on health and wellbeing, an academic institution, or other entity, as the Secretary determines.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.''.

SEC. 3608. SELECTION OF EFFICIENCY MEASURES.

Sections 1890(b)(7) and 1890A of the Social Security Act, as added by section 3014, are amended by striking ''quality'' each place it appears and inserting ''quality and efficiency''.

SEC. 3609. REGIONAL TESTING OF PAYMENT AND SERVICE DELIVERY MODELS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

Section 1115A(a) of the Social Security Act, as added by section 3021, is amended by inserting at the end the following new paragraph:

''(5) TESTING WITHIN CERTAIN GEOGRAPHIC AREAS.—For purposes of testing payment and service delivery models under this section, the Secretary may elect to limit testing of a model to certain geographic areas.''.

SEC. 3610. ADDITIONAL IMPROVEMENTS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

Section 1115A(a) of the Social Security Act, as added by section 3021, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A)—

(i) in the second sentence, by striking ''the preceding sentence may include'' and inserting ''this subparagraph may include, but are not limited to,''; and

(ii) by inserting after the first sentence the following new sentence: ''The Secretary shall focus on models expected to reduce program costs under the applicable title while preserving or enhancing the quality of care received by individuals receiving benefits under such title.''; and

(B) in subparagraph (C), by adding at the end the following new clause:

''(viii) Whether the model demonstrates effective linkage with other public sector or private sector payers.'';

(2) in subsection (b)(4), by adding at the end the following new subparagraph:

''(C) MEASURE SELECTION.—To the extent feasible, the Secretary shall select measures under this paragraph that reflect national priorities for quality improvement and patient-centered care consistent with the measures described in 1890(b)(7)(B).''; and

(3) in subsection (c)—

(A) in paragraph (1)(B), by striking ''care and reduce spending; and'' and inserting ''patient care without increasing spending;'';

(B) in paragraph (2), by striking ''reduce program spending under applicable titles.'' and inserting ''reduce (or would not result in any increase in) net program spending under applicable titles; and''; and

(C) by adding at the end the following:

''(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable title for applicable individuals.

In determining which models or demonstration projects to expand under the preceding sentence, the Secretary shall focus on models and demonstration projects that improve the quality of patient care and reduce spending.''.

SEC. 3611. IMPROVEMENTS TO THE PHYSICIAN QUALITY REPORTING SYSTEM.

(a) IN GENERAL.—Section 1848(m) of the Social Security Act (42 U.S.C. 1395w–4(m)) is amended by adding at the end the following new paragraph:

''(7) ADDITIONAL INCENTIVE PAYMENT.—

''(A) IN GENERAL.—For 2011 through 2014, if an eligible professional meets the requirements described in subparagraph (B), the applicable quality percent for such year, as described in clauses (iii) and (iv) of paragraph (1)(B), shall be increased by 0.5 percentage points.

''(B) REQUIREMENTS DESCRIBED.—In order to qualify for the additional incentive payment described in subparagraph (A), an eligible professional shall meet the following requirements:

''(i) The eligible professional shall—

''(I) satisfactorily submit data on quality measures for purposes of paragraph (1) for a year; and

''(II) have such data submitted on their behalf through a Maintenance of Certification Program (as defined in subparagraph (C)(i)) that meets—

''(aa) the criteria for a registry (as described in subsection (k)(4)); or

''(bb) an alternative form and manner determined appropriate by the Secretary.

''(ii) The eligible professional, more frequently than is required to qualify for or maintain board certification status—

''(I) participates in such a Maintenance of Certification program for a year; and

''(II) successfully completes a qualified Maintenance of Certification Program practice assessment (as defined in subparagraph (C)(ii)) for such year.

''(iii) A Maintenance of Certification program submits to the Secretary, on behalf of the eligible professional, information—

''(I) in a form and manner specified by the Secretary, that the eligible professional has successfully met the requirements of clause (ii) (which may be in the form of a structural measure);

''(II) if requested by the Secretary, on the survey of patient experience with care (as described in subparagraph (C)(ii)(II)); and

''(III) as the Secretary may require, on the methods, measures, and data used under the Maintenance of Certification Program and the qualified Maintenance of Certification Program practice assessment.

''(C) DEFINITIONS.—For purposes of this paragraph:

''(i) The term 'Maintenance of Certification Program' means a continuous assessment program, such as qualified American Board of Medical Specialties Maintenance of Certification program or an equivalent program (as determined by the Secretary), that advances quality and the lifelong learning and self-assessment of board certified specialty physicians by focusing on the competencies of patient care, medical knowledge, practice-based learning, interpersonal and communication skills and professionalism. Such a program shall include the following:

''(I) The program requires the physician to maintain a valid, unrestricted medical license in the United States.

''(II) The program requires a physician to participate in educational and self-assessment programs that require an assessment of what was learned.

''(III) The program requires a physician to demonstrate, through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge, and clinical judgment to provide quality care in their respective specialty.

''(IV) The program requires successful completion of a qualified Maintenance of Certification Program practice assessment as described in clause (ii).

''(ii) The term 'qualified Maintenance of Certification Program practice assessment' means an assessment of a physician's practice that—

''(I) includes an initial assessment of an eligible professional's practice that is designed to demonstrate the physician's use of evidence-based medicine;

''(II) includes a survey of patient experience with care; and

''(III) requires a physician to implement a quality improvement intervention to address a practice weakness identified in the initial assessment under subclause (I) and then to remeasure to assess performance improvement after such intervention.''.

(b) AUTHORITY.—Section 3002(c) of this Act is amended by adding at the end the following new paragraph:

''(3) AUTHORITY.—For years after 2014, if the Secretary of Health and Human Services determines it to be appropriate, the Secretary may incorporate participation in a Maintenance of Certification Program and successful completion of a qualified Maintenance of Certification Program practice assessment into the composite of measures of quality of care furnished pursuant to the physician fee schedule payment modifier, as described in section 1848(p)(2) of the Social Security Act (42 U.S.C. 1395w–4(p)(2)).''.

(c) ELIMINATION OF MA REGIONAL PLAN STABILIZATION FUND.—

(1) IN GENERAL.—Section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is amended by striking subsection (e).

(2) TRANSITION.—Any amount contained in the MA Regional Plan Stabilization Fund as of the date of the enactment of this Act shall be transferred to the Federal Supplementary Medical Insurance Trust Fund.

SEC. 3612. IMPROVEMENT IN PART D MEDICATION THERAPY MANAGEMENT (MTM) PROGRAMS.

(a) IN GENERAL.—Section 1860D–4(c)(2) of the Social Security Act (42 U.S.C. 1395w–104(c)(2)) is amended—

(1) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (E), (F), and (G), respectively; and

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

''(C) REQUIRED INTERVENTIONS.—For plan years beginning on or after the date that is 2 years after the date of the enactment of the Patient Protection and Affordable Care Act, prescription drug plan sponsors shall offer medication therapy management services to targeted beneficiaries described in subparagraph (A)(ii) that include, at a minimum, the following to increase adherence to prescription medications or other goals deemed necessary by the Secretary:

''(i) An annual comprehensive medication review furnished person-to-person or using telehealth technologies (as defined by the Secretary) by a licensed pharmacist or other qualified provider. The comprehensive medication review—

''(I) shall include a review of the individual's medications and may result in the creation of a recommended medication action plan or other actions in consultation with the individual and with input from the prescriber to the extent necessary and practicable; and

''(II) shall include providing the individual with a written or printed summary of the results of the review.

The Secretary, in consultation with relevant stakeholders, shall develop a standardized format for the action plan under subclause (I) and the summary under subclause (II).

''(ii) Follow-up interventions as warranted based on the findings of the annual medication review or the targeted medication enrollment and which may be provided person-to-person or using telehealth technologies (as defined by the Secretary).

''(D) ASSESSMENT.—The prescription drug plan sponsor shall have in place a process to assess, at least on a quarterly basis, the medication use of individuals who are at risk but not enrolled in the medication therapy management program, including individuals who have experienced a transition in care, if the prescription drug plan sponsor has access to that information.

''(E) AUTOMATIC ENROLLMENT WITH ABILITY TO OPT-OUT.—The prescription drug plan sponsor shall have in place a process to—

''(i) subject to clause (ii), automatically enroll targeted beneficiaries described in subparagraph (A)(ii), including beneficiaries identified under subparagraph (D), in the medication therapy management program required under this subsection; and

''(ii) permit such beneficiaries to opt-out of enrollment in such program.''.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall limit the authority of the Secretary of Health and Human Services to modify or broaden requirements for a medication therapy management program under part D of title XVIII of the Social Security Act or to study new models for medication therapy management through the Center for Medicare and Medicaid Innovation under section 1115A of such Act, as added by section 3021.

SEC. 3613. EVALUATION OF TELEHEALTH UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

Section 1115A(b)(2)(B) of the Social Security Act, as added by section 3021, is amended by adding at the end the following new clause:

''(xix) Utilizing, in particular in entities located in medically underserved areas and facilities of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act)), telehealth services—

''(I) in treating behavioral health issues (such as post-traumatic stress disorder) and stroke; and

''(II) to improve the capacity of non-medical providers and non-specialized medical providers to provide health services for patients with chronic complex conditions.''.

SEC. 3614. REVISIONS TO THE EXTENSION FOR THE RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Subsection (g) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2272), as added by section 3123(a) of this Act, is amended to read as follows:

''(g) FIVE-YEAR EXTENSION OF DEMONSTRATION PROGRAM.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall conduct the demonstration program under this section for an additional 5-year period (in this section referred to as the '5-year extension period') that begins on the date immediately following the last day of the initial 5-year period under subsection (a)(5).

''(2) EXPANSION OF DEMONSTRATION STATES.—Notwithstanding subsection (a)(2), during the 5-year extension period, the Secretary shall expand the number of States with low population densities determined by the Secretary under such subsection to 20. In determining which States to include in such expansion, the Secretary shall use the same criteria and data that the Secretary used to determine the States under such subsection for purposes of the initial 5-year period.

''(3) INCREASE IN MAXIMUM NUMBER OF HOSPITALS PARTICIPATING IN THE DEMONSTRATION PROGRAM.—Notwithstanding subsection (a)(4), during the 5-year extension period, not more than 30 rural community hospitals may participate in the demonstration program under this section.

''(4) HOSPITALS IN DEMONSTRATION PROGRAM ON DATE OF ENACTMENT.—In the case of a rural community hospital that is participating in the demonstration program under this section as of the last day of the initial 5-year period, the Secretary—

''(A) shall provide for the continued participation of such rural community hospital in the demonstration program during the 5-year extension period unless the rural community hospital makes an election, in such form and manner as the Secretary may specify, to discontinue such participation; and

''(B) in calculating the amount of payment under subsection (b) to the rural community hospital for covered inpatient hospital services furnished by the hospital during such 5-year extension period, shall substitute, under paragraph (1)(A) of such subsection—

''(i) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the first day of the 5-year extension period, for

''(ii) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program.''.

(b) CONFORMING AMENDMENTS.—Subsection (a)(5) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2272), as amended by section 3123(b) of this Act, is amended by striking ''1-year extension'' and inserting ''5-year extension''.

PART II—PROMOTING TRANSPARENCY AND COMPETITION

SEC. 3621. DEVELOPING METHODOLOGY TO ASSESS HEALTH PLAN VALUE.

(a) DEVELOPMENT.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), in consultation with relevant stakeholders including health insurance issuers, health care consumers, employers, health care providers, and other entities determined appropriate by the Secretary, shall develop a methodology to measure health plan value. Such methodology shall take into consideration, where applicable—

(1) the overall cost to enrollees under the plan;

(2) the quality of the care provided for under the plan;

(3) the efficiency of the plan in providing care;

(4) the relative risk of the plan's enrollees as compared to other plans;

(5) the actuarial value or other comparative measure of the benefits covered under the plan; and

(6) other factors determined relevant by the Secretary.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report concerning the methodology developed under subsection (a).

SEC. 3622. DATA COLLECTION; PUBLIC REPORTING.

Section 399II(a) of the Public Health Service Act, as added by section 3015, is amended to read as follows:

''(a) IN GENERAL.—

''(1) ESTABLISHMENT OF STRATEGIC FRAMEWORK.—The Secretary shall establish and implement an overall strategic framework to carry out the public reporting of performance information, as described in section 399JJ. Such strategic framework may include methods and related timelines for implementing nationally consistent data collection, data aggregation, and analysis methods.

''(2) COLLECTION AND AGGREGATION OF DATA.—The Secretary shall collect and aggregate consistent data on quality and resource use measures from information systems used to support health care delivery, and may award grants or contracts for this purpose. The Secretary shall align such collection and aggregation efforts with the requirements and assistance regarding the expansion of health information technology systems, the interoperability of such technology systems, and related standards that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

''(3) SCOPE.—The Secretary shall ensure that the data collection, data aggregation, and analysis systems described in paragraph (1) involve an increasingly broad range of patient populations, providers, and geographic areas over time.''.

SEC. 3623. MODERNIZING COMPUTER AND DATA SYSTEMS OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES TO SUPPORT IMPROVEMENTS IN CARE DELIVERY.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop a plan (and detailed budget for the resources needed to implement such plan) to modernize the computer and data systems of the Centers for Medicare & Medicaid Services (in this section referred to as ''CMS'').

(b) CONSIDERATIONS.—In developing the plan, the Secretary shall consider how such modernized computer system could—

(1) in accordance with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, make available data in a reliable and timely manner to providers of services and suppliers to support their efforts to better manage and coordinate care furnished to beneficiaries of CMS programs; and

(2) support consistent evaluations of payment and delivery system reforms under CMS programs.

(c) POSTING OF PLAN.—By not later than 9 months after the date of the enactment of this Act, the Secretary shall post on the website of the Centers for Medicare & Medicaid Services the plan described in subsection (a).

SEC. 3624. EXPANSION OF THE SCOPE OF THE INDEPENDENT MEDICARE ADVISORY BOARD.

(a) ANNUAL PUBLIC REPORT.—

(1) REPORT.—Section 1899A of the Social Security Act, as added by section 3403, is amended by adding at the end the following new subsection:

''(n) ANNUAL PUBLIC REPORT.—

''(1) IN GENERAL.—Not later than July 1, 2014, and annually thereafter, the Board shall produce a public report containing standardized information on system-wide health care costs, patient access to care, utilization, and quality-of-care that allows for comparison by region, types of services, types of providers, and both private payers and the program under this title.

''(2) REQUIREMENTS.—Each report produced pursuant to paragraph (1) shall include information with respect to the following areas:

''(A) The quality and costs of care for the population at the most local level determined practical by the Board (with quality and costs compared to national benchmarks and reflecting rates of change, taking into account quality measures described in section 1890(b)(7)(B)).

''(B) Beneficiary and consumer access to care, patient and caregiver experience of care, and the cost-sharing or out-of-pocket burden on patients.

''(C) Epidemiological shifts and demographic changes.

''(D) The proliferation, effectiveness, and utilization of health care technologies, including variation in provider practice patterns and costs.

''(E) Any other areas that the Board determines affect overall spending and quality of care in the private sector.''.

(2) ALIGNMENT WITH MEDICARE PROPOSALS.—Section 1899A(c)(2)(B) of the Social Security Act, as added by section 3403, is amended—

(A) in clause (v), by striking ''and'' at the end;

(B) in clause (vi), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new clause:

''(vii) take into account the data and findings contained in the annual reports under subsection (n) in order to develop proposals that can most effectively promote the delivery of efficient, high quality care to Medicare beneficiaries.''.

(b) ADVISORY RECOMMENDATIONS FOR NON-FEDERAL HEALTH CARE PROGRAMS.—Section 1899A of the Social Security Act, as added by section 3403 and as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

''(o) ADVISORY RECOMMENDATIONS FOR NON-FEDERAL HEALTH CARE PROGRAMS.—

''(1) IN GENERAL.—Not later than January 15, 2015, and at least once every two years thereafter, the Board shall submit to Congress and the President recommendations to slow the growth in national health expenditures (excluding expenditures under this title and in other Federal health care programs) while preserving or enhancing quality of care, such as recommendations—

''(A) that the Secretary or other Federal agencies can implement administratively;

''(B) that may require legislation to be enacted by Congress in order to be implemented;

''(C) that may require legislation to be enacted by State or local governments in order to be implemented;

''(D) that private sector entities can voluntarily implement; and

''(E) with respect to other areas determined appropriate by the Board.

''(2) COORDINATION.—In making recommendations under paragraph (1), the Board shall coordinate such recommendations with recommendations contained in proposals and advisory reports produced by the Board under subsection (c).

''(3) AVAILABLE TO PUBLIC.—The Board shall make recommendations submitted to Congress and the President under this subsection available to the public.''.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall preclude the Independent Medicare Advisory Board, as established under section 1899A of the Social Security Act (as added by section 3403), from solely using data from public or private sources to carry out the amendments made by subsections (a)(1) and (b).

SEC. 3625. ADDITIONAL PRIORITY FOR THE NATIONAL HEALTH CARE WORKFORCE COMMISSION.

Section 5101(d)(4)(A) of this Act is amended by adding at the end the following new clause:

''(v) An analysis of, and recommendations for, eliminating the barriers to entering and staying in primary care, including provider compensation.''.

PART III—PROMOTING ACCOUNTABILITY AND RESPONSIBILITY

SEC. 3631. HEALTH CARE FRAUD ENFORCEMENT.

(a) FRAUD SENTENCING GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''Federal health care offense'' has the meaning given that term in section 24 of title 18, United States Code, as amended by this Act.

(2) REVIEW AND AMENDMENTS.—Pursuant to the authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall—

(A) review the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses;

(B) amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs to provide that the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss by the defendant; and

(C) amend the Federal Sentencing Guidelines to provide—

(i) a 2-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $1,000,000 and less than $7,000,000;

(ii) a 3-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $7,000,000 and less than $20,000,000;

(iii) a 4-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $20,000,000; and

(iv) if appropriate, otherwise amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs.

(3) REQUIREMENTS.—In carrying this subsection, the United States Sentencing Commission shall—

(A) ensure that the Federal Sentencing Guidelines and policy statements—

(i) reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud; and

(ii) provide increased penalties for persons convicted of health care fraud offenses in appropriate circumstances;

(B) consult with individuals or groups representing health care fraud victims, law enforcement officials, the health care industry, and the Federal judiciary as part of the review described in paragraph (2);

(C) ensure reasonable consistency with other relevant directives and with other guidelines under the Federal Sentencing Guidelines;

(D) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal Sentencing Guidelines, as in effect on the date of enactment of this Act, provide sentencing enhancements;

(E) make any necessary conforming changes to the Federal Sentencing Guidelines; and

(F) ensure that the Federal Sentencing Guidelines adequately meet the purposes of sentencing.

(b) INTENT REQUIREMENT FOR HEALTH CARE FRAUD.—Section 1347 of title 18, United States Code, is amended—

(1) by inserting ''(a)'' before ''Whoever knowingly''; and

(2) by adding at the end the following:

''(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.''.

(c) HEALTH CARE FRAUD OFFENSE.—Section 24(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking the semicolon and inserting ''or section 1128B of the Social Security Act (42 U.S.C. 1320a–7b); or''; and

(2) in paragraph (2)—

(A) by inserting ''1349,'' after ''1343,''; and

(B) by inserting ''section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), or section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131),'' after ''title,''.

(d) SUBPOENA AUTHORITY RELATING TO HEALTH CARE.—

(1) SUBPOENAS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.—Section 1510(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking ''to the grand jury''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''grand jury subpoena'' and inserting ''subpoena for records''; and

(ii) in the matter following subparagraph (B), by striking ''to the grand jury''.

(2) SUBPOENAS UNDER THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.—The Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997 et seq.) is amended by inserting after section 3 the following:

''SEC. 3A. SUBPOENA AUTHORITY.

''(a) AUTHORITY.—The Attorney General, or at the direction of the Attorney General, any officer or employee of the Department of Justice may require by subpoena access to any institution that is the subject of an investigation under this Act and to any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report relating to any institution that is the subject of an investigation under this Act to determine whether there are conditions which deprive persons residing in or confined to the institution of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

''(b) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

''(1) ISSUANCE.—Subpoenas issued under this section—

''(A) shall bear the signature of the Attorney General or any officer or employee of the Department of Justice as designated by the Attorney General; and

''(B) shall be served by any person or class of persons designated by the Attorney General or a designated officer or employee for that purpose.

''(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under this section, the United States district court for the judicial district in which the institution is located may issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt that court.

''(c) PROTECTION OF SUBPOENAED RECORDS AND INFORMATION.—Any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report or other information obtained under a subpoena issued under this section—

''(1) may not be used for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution;

''(2) may not be transmitted by or within the Department of Justice for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution; and

''(3) shall be redacted, obscured, or otherwise altered if used in any publicly available manner so as to prevent the disclosure of any personally identifiable information.''.

SEC. 3632. DEVELOPMENT OF STANDARDS FOR FINANCIAL AND ADMINISTRATIVE TRANSACTIONS.

(a) ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—

(1) DEVELOPMENT OF ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—Section 1173(a) of the Social Security Act (42 U.S.C. 1320d–2(a)), as amended by section 1104(b)(2), is amended—

(A) in paragraph (1)(B), by inserting before the period the following: '', and subject to the requirements under paragraph (5)''; and

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

''(5) CONSIDERATION OF STANDARDIZATION OF ACTIVITIES AND ITEMS.—

''(A) IN GENERAL.—For purposes of carrying out paragraph (1)(B), the Secretary shall solicit, not later than January 1, 2012, and not less than every 3 years thereafter, input from entities described in subparagraph (B) on—

''(i) whether there could be greater uniformity in financial and administrative activities and items, as determined appropriate by the Secretary; and

''(ii) whether such activities should be considered financial and administrative transactions (as described in paragraph (1)(B)) for which the adoption of standards and operating rules would improve the operation of the health care system and reduce administrative costs.

''(B) SOLICITATION OF INPUT.—For purposes of subparagraph (A), the Secretary shall seek input from—

''(i) the National Committee on Vital and Health Statistics, the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee; and

''(ii) standard setting organizations and stakeholders, as determined appropriate by the Secretary.''.

(b) ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION.—For purposes of section 1173(a)(5) of the Social Security Act, as added by subsection (a), the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall, not later than January 1, 2012, seek input on activities and items relating to the following areas:

(1) Whether the application process, including the use of a uniform application form, for enrollment of health care providers by health plans could be made electronic and standardized.

(2) Whether standards and operating rules described in section 1173 of the Social Security Act should apply to the health care transactions of automobile insurance, worker's compensation, and other programs or persons not described in section 1172(a) of such Act (42 U.S.C. 1320d–1(a)).

(3) Whether standardized forms could apply to financial audits required by health plans, Federal and State agencies (including State auditors, the Office of the Inspector General of the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), and other relevant entities as determined appropriate by the Secretary.

(4) Whether there could be greater transparency and consistency of methodologies and processes used to establish claim edits used by health plans (as described in section 1171(5) of the Social Security Act (42 U.S.C. 1320d(5))).

(5) Whether health plans should be required to publish their timeliness of payment rules.

(c) ICD CODING CROSSWALKS.—

(1) ICD-9 TO ICD-10 CROSSWALK.—The Secretary shall task the ICD-9-CM Coordination and Maintenance Committee to convene a meeting, not later than January 1, 2011, to receive input from appropriate stakeholders (including health plans, health care providers, and clinicians) regarding the crosswalk between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD-9 and ICD-10, respectively) that is posted on the website of the Centers for Medicare & Medicaid Services, and make recommendations about appropriate revisions to such crosswalk.

(2) REVISION OF CROSSWALK.—For purposes of the crosswalk described in paragraph (1), the Secretary shall make appropriate revisions and post any such revised crosswalk on the website of the Centers for Medicare & Medicaid Services.

(3) USE OF REVISED CROSSWALK.—For purposes of paragraph (2), any revised crosswalk shall be treated as a code set for which a standard has been adopted by the Secretary for purposes of section 1173(c)(1)(B) of the Social Security Act (42 U.S.C. 1320d–2(c)(1)(B)).

(4) SUBSEQUENT CROSSWALKS.—For subsequent revisions of the International Classification of Diseases that are adopted by the Secretary as a standard code set under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)), the Secretary shall, after consultation with the appropriate stakeholders, post on the website of the Centers for Medicare & Medicaid Services a crosswalk between the previous and subsequent version of the International Classification of Diseases not later than the date of implementation of such subsequent revision.

SA 3120. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1997, strike line 1 and all that follows through page 1998, line 12.

SA 3121. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2045, strike line 1 and all that follows through page 2046, line 24.

SA 3122. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1998, strike lines 13 through 24.

SA 3123. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2034, strike line 16 and all that follows through page 2035, line 15.

SA 3124. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2040, strike line 18 and all that follows through page 2044, line 7.

SA 3125. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1999, strike lines 1 through 20.

SA 3126. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, insert the following:

SEC. 9024. EXEMPTION FROM TAXES, FEES, AND PENALTIES.

(a) IN GENERAL.—No tax, fee, or penalty imposed by this Act shall apply to any taxpayer for any taxable year if, as determined by the Secretary of the Treasury, such tax, fee, or penalty would increase the rate of tax imposed on such taxpayer under any provision of the Internal Revenue Code of 1986 or any other applicable Federal law in effect on the day before the date of the enactment of this Act, as compared to the rate of tax imposed on such taxpayer under such provision of law on December 31, 1999.

(b) NEW TAXPAYERS.—In the case of a taxpayer that was not in existence on December 31, 1999, or that had no Federal tax liability on such date, subsection (a) shall be applied by substituting ''December 31 of the first calendar year after 1999 in which such taxpayer had Federal tax liability greater than zero'' for ''December 31, 1999''.

SA 3127. Mr. MERKLEY (for himself and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1382, between lines 10 and 11, insert the following:

(c) ADVANCED TECHNOLOGY EDUCATION PROGRAM FOR NURSING.—Title VIII of the Public Health Service Act is amended by inserting after section 831A (42 U.S.C. 296b), as added by subsection (b), the following:

''SEC. 831B. ADVANCED TECHNOLOGY EDUCATION PROGRAM FOR NURSING.

''(a) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a grant program to assist consortia in advancing nursing education and the career ladder.

''(b) PROGRAM DESIGN.—The grant program established under subsection (a) shall—

''(1) be designed to strengthen and expand the nursing career ladder, particularly with regard to innovative programs that encourage registered nurses to pursue advanced degrees in nursing, with an emphasis on integrating innovative technology into nursing education programs; and

''(2) place emphasis on the needs of nontraditional students and underserved groups.

''(c) APPLICATIONS.—An application for a grant under subsection (a) shall be submitted—

''(1) by a two-year educational institution on behalf of the consortia seeking the grant; and

''(2) at such time, in such manner, and containing such information as the Secretary may require.

''(d) ADVANCED TECHNOLOGY EDUCATION PROJECTS IN NURSING.—Funds made available

through a grant under subsection (a) shall be used to support nursing education projects, to enhance nursing education programs, and to assist students in transferring academic credit from a two-year educational institution to an advanced degree program in nursing through activities such as—

''(1) alignment and enhancement of curriculum to ensure that academic credit earned at a two-year educational institutions can be transferred to baccalaureate or graduate degree programs in nursing;

''(2) establishment of innovative partnerships and articulation agreements to facilitate the transfer by students of academic credit from a two-year educational institution to an advanced degree program in nursing;

''(3) the purchase or lease of state-of-the-art technologies essential in developing innovative nursing education programs and in preparing nursing students to use current and future health technologies, such as simulation and visualization tools and telehealth;

''(4) the acquisition of technical support necessary for developing innovative nursing curriculum and advanced technology training capabilities among nursing faculty;

''(5) professional development and training of nursing faculty, both full- and part-time, in the nursing profession;

''(6) development and dissemination of exemplary curricula and instructional materials in nursing;

''(7) development and implementation of innovative workshops, mentoring activities, and professional development activities for nursing students, registered nurses, and nursing faculty to encourage education advancement and retention in a nursing career; and

''(8) development and implementing internship programs for nurses or nursing students to encourage mentoring.

''(e) DEFINITION.—In this section—

''(1) the term 'consortia' means a collaboration that—

''(A) shall include a two-year educational institution in partnership with a four-year college or university; and

''(B) may include one or more of the following: another two-year or four-year college or university, a school of nursing, the private sector, a State or local government, a State workforce investment board, a local workforce investment board, a community-based allied health program, a health professions school, a teaching hospital, a graduate medical education program, an academic health center, and any other appropriate public or private non-profit entity;

in order to inform and improve nursing education programs;

''(2) the term 'four-year educational institution' means a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program in professional nursing and related subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, or to an equivalent degree, and including advanced training related to such program of education provided by such school;

''(3) the term 'local workforce investment board' refers to a local workforce investment board established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

''(4) the term 'State workforce investment board' refers to a State workforce investment board established under section 111 of the Workforce Investment Act of 1998 (29 U.S.C. 2821); and

''(5) the term 'two-year educational institution' means a department, division, or other administrative unit in a junior or community college which provides primarily or exclusively a two-year accredited nursing program leading to an associate degree in nursing or an equivalent degree, but only if such program, or such unit or college, is accredited.

''(f) FUNDING.—There are authorized to be appropriated to award grants under this section, $12,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2015.''.

SA 3128. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 921, between lines 20 and 21, insert the following:

SEC. 3210. EXPANSION OF 340B PROGRAM COVERED ENTITIES AND RECEIPT BY CERTAIN PACE PROGRAMS AND SNPS OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.

(a) EXPANSION OF 340B PROGRAM COVERED ENTITIES.—Section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)), as amended by section 7101, is further amended by adding at the end the following:

''(P) An entity that is—

''(i) a PACE program under section 1894 of the Social Security Act; or

''(ii) a specialized MA plan for special needs individuals described in section 1859(b)(6)(B)(ii) of such Act, all or nearly all of whom are nursing home certifiable, that is fully integrated with capitated contracts with States for Medicaid benefits.''.

(b) RECEIPT BY CERTAIN PACE PROGRAMS AND SNPS OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

(1) PACE PROGRAMS.—Section 1894 of the Social Security Act (42 U.S.C. 1395eee), as amended by section 3201(i), is further amended—

(A) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(B) by inserting after subsection (h) the following new subsection:

''(i) RECEIPT BY CERTAIN PACE PROGRAMS OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

''(1) IN GENERAL.—An applicable PACE program is eligible to receive from the Secretary an amount equal to 10 percent of the estimated savings to the program under this title as a result of participation in the program under section 340B of the Public Health Service Act (as determined by the Secretary).

''(2) APPLICABLE PACE PROGRAM DEFINED.—For purposes of paragraph (1), the term 'applicable PACE program' means a PACE program that—

''(A) is participating in the program under section 340B of the Public Health Service Act;

''(B) submits to the Secretary an application in such form and manner, and containing such information, as the Secretary may specify; and

''(C) has in effect a plan approved by the Secretary for the use of any amounts received by the program or plan under paragraph (1) to provide enhanced formulary coverage, medication management, or disease management to enrollees.''.

(2) SNPS.—Section 1859 of the Social Security Act (42 U.S.C. 1395w–28), as amended by section 3208, is further amended by adding at the end the following new subsection:

''(h) RECEIPT BY CERTAIN SNPS OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

''(1) IN GENERAL.—An applicable specialized MA plan for specialized needs individuals is eligible to receive from the Secretary an amount equal to 10 percent of the estimated savings to the program under this title as a result of participation in the program under section 340B of the Public Health Service Act (as determined by the Secretary).

''(2) APPLICABLE SPECIALIZED MA PLAN FOR SPECIAL NEEDS INDIVIDUALS DEFINED.—For purposes of paragraph (1), the term 'applicable specialized MA plan for special needs individuals' means a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii), all or nearly all of whom are nursing home certifiable, that is fully integrated with capitated contracts with States for Medicaid benefits that—

''(A) is participating in the program under section 340B of the Public Health Service Act;

''(B) submits to the Secretary an application in such form and manner, and containing such information, as the Secretary may specify; and

''(C) has in effect a plan approved by the Secretary for the use of any amounts received by the program or plan under paragraph (1) to provide enhanced formulary coverage, medication management, or disease management to enrollees.''.

(c) DEVELOPMENT OF NEW PROGRAM.—The Secretary of Health and Human Services may develop and implement a program whereby such Secretary enters into an agreement with manufacturers that participate in the program under section 340B of the Public Health Service Act (42 U.S.C. 256b) under which enrollees in PACE programs under section 1894 of the Social Security Act (42 U.S.C. 1395eee) and specialized MA plans for special needs individuals described in section 1859(b)(6)(B)(ii) of such Act (42 U.S.C. 1395w–28) may receive covered drugs (as defined under such section 340B) from pharmacies selected by the PACE program or specialized MA plan, including local pharmacies.

SA 3129. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1411, between lines 5 and 6, insert the following:

SEC. 5316. SECONDARY SCHOOL HEALTH SCIENCES TRAINING PROGRAM.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to establish a health sciences training program consisting of awarding grants, on a competitive basis, to eligible recipients to enable the eligible recipients to prepare secondary school students for careers in health professions.

(2) CONSULTATION AND COLLABORATION.—The Secretary of Education shall—

(A) consult with the Secretary of Health and Human Services and the Secretary of Labor prior to the issuance of a solicitation for grant applications under this section; and

(B) specifically collaborate with the Secretary of Health and Human Services to coordinate the program under this section with any programs administered by the Health Resources and Services Administration that create a pipeline of professionals for the health care workforce.

(b) DEVELOPMENT AND IMPLEMENTATION OF HEALTH SCIENCES PROGRAMS OF STUDY.—An eligible recipient receiving a grant under this section shall use grant funds—

(1) to implement a secondary school health sciences program of study that—

(A) meets the requirements for a career and technical program of study under section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342(c)(1)(A));

(B) is aligned with—

(i) the career and technical programs of study supported by the State in which the eligible recipient is located, in accordance with the State's plan under section 122(c) of such Act (20 U.S.C. 2342(c)); and

(ii) any technical standards required for State licensure in a health profession; and

(C) prepares students for—

(i) a postsecondary certificate, credential, or accredited associate's or baccalaureate degree program in the health profession; or

(ii) an accredited baccalaureate degree program in an academic major related to the health profession; and

(2) to increase the interest of secondary school students in applying to, and enrolling in, programs described in clause (i) or (ii) of paragraph (1)(C), including through—

(A) work-study programs;

(B) pre-apprenticeship programs;

(C) programs to increase awareness of careers in health professions; or

(D) other activities to increase such interest.

(c) ELIGIBILITY.—To be eligible for a grant under this section, an eligible recipient shall—

(1) provide assurances that activities under the grant will be carried out in partnership with—

(A) an accredited health professions school or program at the postsecondary level; and

(B) a public or private nonprofit hospital or public or private nonprofit entity with a focus on health sciences or health professions; and

(2) provide an explanation of how activities under the grant are consistent with the State plan and local plan being implemented under sections 122 and 134, respectively, of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342, 2354), for the area to be served by the grant.

(d) PREFERENCE.—In awarding grants under this section, the Secretary shall give preference to an eligible recipient that has a demonstrated record of not less than one of the following:

(1) Graduating, or collaborating with an eligible recipient that graduates, a high or significantly improved percentage of students who have exhibited mastery in secondary school State science standards.

(2) Graduating students from disadvantaged backgrounds, including racial and ethnic minorities who are underrepresented in—

(A) the programs described in clause (i) or (ii) of subsection (b)(1)(C); or

(B) the health professions.

(e) REPORT.—The Secretary shall submit to Congress an annual report on the program carried out under this section.

(f) DEFINITIONS.—In this section:

(1) ELIGIBLE RECIPIENT.—The term ''eligible recipient'' means an eligible recipient described in section 3(14)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(14)(A)).

(2) HEALTH CARE WORKFORCE.—The term ''health care workforce'' has the meaning given the term in section 5101(i).

(3) HEALTH PROFESSION.—The term ''health profession'' means the profession of a member of the health care workforce.

(4) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(5) SECONDARY SCHOOL.—The term ''secondary school''—

(A) means a secondary school, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

(B) includes a middle school.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Education, except as otherwise specified.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2011 through 2015.

SA 3130. Mr. JOHANNS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 245, between lines 14 and 15, and insert the following:

(B) SPECIAL RULE FOR LOW-INCOME ADULTS NOT ELIGIBLE FOR MEDICAID.—If a taxpayer is an individual who, but for the application of section 1902(k)(2) of the Social Security Act, a State would be required under subclause (VIII) of subsection (a)(10)(A)(i) to provide medical assistance to under the State Medicaid plan, the taxpayer shall—

(i) for purposes of the credit under this section, be treated as an applicable taxpayer and the applicable percentage with respect to such taxpayer shall be 2.0 percent; and

(ii) for purposes of reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, shall be treated as having household income of more than 100 percent but less than 150 percent of the poverty line (as so defined) applicable to a family of the size involved.

On page 398, between lines 9 and 10, insert the following:

(B) SPECIAL RULES FOR STATES WITH A BUDGET DEFICIT OR AT RISK OF HAVING TO RAISE TAXES OR BEING UNABLE TO DELIVER ESSENTIAL STATE FUNCTIONS.—Section 1902(k) of such Act (42 U.S.C. 1396a(k)), as added by subparagraph (A), is amended by adding at the end the following:

''(2) If a State submits a certification to the Secretary in 2013 that in 2014, complying with the requirement under subclause (VIII) of subsection (a)(10)(A)(i) to provide medical assistance to individuals described in that subclause would cause the State to have a budget deficit, or require the State to raise taxes, or reduce or eliminate spending for education, transportation, law enforcement or other essential State functions, then, in the case of individuals described in the subclause who have attained 19 years of age, the State only shall be required to provide medical assistance under that subclause to those individuals with income (as determined under subsection (e)(14)) that does not exceed 75 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved.''.

SA 3131. Mr. KOHL (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—PROHIBITION ON DATA MINING

SEC. __01. PURPOSE.

(a) IN GENERAL.—It is the purpose of this title to—

(1) safeguard the confidentiality of prescribing information;

(2) protect the integrity of the doctor-patient relationship;

(3) maintain the integrity and public trust in the medical profession;

(4) combat vexatious and harassing sales practices;

(5) restrain undue influence exerted by pharmaceutical industry marketing representatives over prescribing decisions; and

(6) improve the quality and lower the cost of health care.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to regulate the monitoring of prescribing practices for uses other than marketing (such as quality control, research unrelated to marketing, or use by governments or other entities not in the business of selling health care products).

SEC. __02. DEFINITIONS.

In this title:

(1) BONA FIDE CLINICAL TRIAL.—The term ''bona fide clinical trial'' means any research project that—

(A) prospectively assigns human subjects to intervention and comparison groups to study the cause and effect relationship between a medical intervention and a health outcome;

(B) has received approval from an appropriate Institutional Review Board; and

(C) has been registered at ClinicalTrials.Gov prior to commencement.

(2) COMPANY MAKING OR SELLING PRESCRIBED PRODUCTS.—The term ''company making or selling prescribed products'' means a pharmacy, a pharmacy benefit manager, a pharmaceutical manufacturer, pharmaceutical wholesaler, or any other entity whose primary purpose is the marketing of pharmaceutical product for financial gain. Such term does not include health plans, health care providers, or State or Federal public health programs and research organizations.

(3) INDIVIDUAL IDENTIFYING INFORMATION.—The term ''individual identifying information'' means information that directly or indirectly identifies a prescriber or a patient, where the information is derived from or relates to a prescription for any prescribed product.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(5) HEALTH PLAN.—

(A) IN GENERAL.—The term ''health plan'' means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2))). Such term includes the following (singly or in combination):

(i) A group health plan, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(ii) A health insurance issuer, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(iii) A health maintenance organization, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(iv) Part A or part B of the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(v) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et seq.

(vi) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1))).

(vii) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.

(viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(ix) The health care program for active military personnel under title 10, United States Code.

(x) The veterans health care program under chapter 17 of title 38, United States Code.

(xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in section 1072(4) of title 10, United States Code).

(xii) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq).

(xiii) The Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code.

(xiv) An approved State child health plan under title XXI of the Social Security Act, providing benefits for child health assistance that meet the requirements of section 2103 of such Act (42 U.S.C. 1397, et seq).

(xv) The Medicare+Choice program under Part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.).

(xvi) A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.

(xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2))).

(B) LIMITATION.—Such terms shall not include the following:

(i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(c)(1)).

(ii) A government-funded program (other than a program listed in clauses (i) through (xvi) of subparagraph (A)—

(I) whose principal purpose is other than providing, or paying the cost of, health care; or

(II) whose principal activity is—

(aa) the direct provision of health care to persons; or

(bb) the making of grants to fund the direct provision of health care to persons.

(6) MARKETING.—The term ''marketing'' means any activity advertising, promoting, or selling a prescribed product for commercial gain, including—

(A) identifying individuals to receive a message promoting use of a particular product;

(B) identifying individuals to receive any form of gift, product sample, consultancy, or any other item, service, compensation or employment of value;

(C) planning the substance of a sales representative visit or communication or the substance of an advertisement or other promotional message or document; or

(D) evaluating or compensating sales representatives.

(7) PERSON.—The term ''person'' means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

(8) PHARMACY.—The term ''pharmacy'' means any person licensed under State or Federal law to dispense prescribed products.

(9) PRESCRIBED PRODUCT.—The term ''prescribed product'' includes a biological product as defined in section 351 of the Public Health Service Act (42 U.S.C. 262) and a device or a drug as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(10) REGULATED RECORD.—The term ''regulated record'' means information or documentation from a prescription.

SEC. __03. PRIVACY PROTECTIONS.

(a) PROHIBITION.—No company or person in possession of regulated records, or their agents, or those acting on their behalf shall knowingly disclose, sell, or use regulated records containing individual identifying information for marketing a prescribed product.

(b) PERMITTED TRANSFERS.—A regulated record containing individual identifying information may be transferred to another entity, including to another branch or subsidiary of the same entity, only if the transfer provides satisfactory assurance that the recipient will safeguard the records from being disclosed or used for a marketing purpose prohibited under this section.

(c) PERMITTED USES.—

(1) IN GENERAL.—Regulated records containing individual identifying information may be disclosed, sold, transferred, exchanged, or used for any purpose other than marketing a prescribed product, including—

(A) to fill a valid prescription, including communication by a pharmacist about patient safety or generic substitution, or in response to patient or physician questions about a medication, as well as any transfer necessary for billing or pharmacy reimbursement;

(B) to conduct of a bona fide clinical trial;

(C) to disseminate safety warnings, labeling changes, risk evaluation and mitigation strategies (REMS) compliance communications, or to facilitate adverse event reporting, or to otherwise implement a REMS;

(D) for the purposes of academic detailing or public health communications;

(E) for the administration of a patient's health insurance or benefits plan, including determining compliance with the terms of coverage or medical necessity; or

(F) to comply with existing State or Federal law.

(2) RULES OF CONSTRUCTION.—This section shall not be construed to—

(A) prohibit any communication between a health care provider and patients under his or her care, or any communication between health care providers for the purpose of patient care;

(B) prohibit the use of data by a health plan or a pharmacy benefit manager where such plan or manager is acting in the fiduciary interest of such organizations, for purposes of planning, conducting, or evaluating formulary compliance or quality assurance program based on evidence based prescribing or cost-containment goals;

(C) prohibit conduct that involves the collection, use, transfer, or sale of regulated records for marketing purposes if—

(i) the data involved does not contain individually identifying information; and

(ii) there is no reasonable basis to believe that the data can be used to obtain individually identifying information; and

(D) prevent any person from disclosing regulated records to the identified individual as long as the information does not include protected information pertaining to any other person.

(d) REGULATIONS.—The Attorney General may promulgate regulations as necessary to implement this title.

(e) ENFORCEMENT.—Any person who knowingly fails to comply with the requirements of this title, or regulations promulgated pursuant to this title, by using or disclosing regulated records in a manner not authorized by this title, or regulations, shall be subject to an civil penalty of at least $10,000, and not more than $50,000, per violation, as assessed by the Attorney General. Each disclosure of a regulated record shall constitute a violation of this title. The Attorney General shall take necessary action to enforce the payment of penalties assessed under this section.

SEC. __04. SEVERABILITY.

If any provision of this title, or its application to any person or circumstance, is held invalid, the remainder of this title, or the application of the provision, to other persons or circumstances shall not be affected.

SEC. __05. NO EFFECT ON TRUTHFUL SPEECH TO DOCTORS OR PATIENTS.

Nothing in this title shall be construed to regulate the content, time, place, or manner of any discussion between a prescriber and their patient, or a prescriber and any person representing a prescription drug manufacturer.

SA 3132. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, between lines 21 and 22, insert the following:

SEC. 1003A. STUDY TO PROVIDE HEALTH CARE INFLATION TRANSPARENCY AND ACCOUNTABILITY.

(a) FINDINGS.—Congress finds the following:

(1) Manufacturers of drugs have increased wholesale prices of brand-name drugs by approximately 9 percent in the period from 2008 to 2009, while all other sectors of the economy experienced a 1.3 percent decline in such period.

(2) Insurance brokers and benefits consultants predict that the small business clients of such brokers and consultants will experience an increase in premiums by an average of approximately 15 percent for 2010, which is double the rate of such increase that occurred for 2009.

(b) DEFINITIONS.—In this section:

(1) HEALTH CARE SECTOR.—The term ''health care sector'' includes manufacturers of drugs, manufacturers of devices, hospitals, insurance companies, laboratories, and health care providers that are affected by this Act (and the amendments made by this Act).

(2) HEALTH INSURANCE ISSUER.—The term ''health insurance issuer'' means those health insurance issuers subject to section 2794(a) of the Public Health Service Act (as added by section 1003)

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(c) ANNUAL STUDY.—

(1) IN GENERAL.—The Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, shall, on an annual basis, collect and study data on pricing in the health care sector. Such data shall include the information provided to the Secretary under section 2794(b)(1)(A) of the Public Health Service Act (as added by section 1003).

(2) INITIAL STUDY.—The initial such study shall be for the 1-year period beginning on July 1, 2009, and ending on the date of the first report under subsection (e).

(3) SUBSEQUENT STUDIES.—Each subsequent study shall be for the 1-year period following the date of the preceding report under subsection (e).

(d) COLLECTION OF DATA.—Health insurance issuers and entities operating within the health care sector shall provide to the Secretary information on price, demographics, and any other variable or factor the Secretary may deem necessary to determine if premiums, retail or wholesale prices, or other costs are being increased unreasonably, including information about the actuarial value of the plans of the issuer and the medical loss ratio of such plans.

(e) REPORTS.—

(1) IN GENERAL.—Based on the annual study conducted under subsection (c), the Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, shall publish an annual report on the excess price inflation in the health care sector that occurred during the period described in such subsection.

(2) EXCESS PRICE INFLATION.—For purposes of the report, the term ''excess price inflation'' shall be defined by the Secretary, in consultation with the Attorney General, the Director of the Congressional Budget Office, and other Government experts and economists as the Secretary determines appropriate.

(f) EFFECT OF STUDY AND REPORTS.—

(1) REIMBURSEMENT RATES.—The results of the study and report under this section shall be taken into account—

(A) when reimbursement rates for Federal health programs are established for the years following such report; and

(B) by States, when making recommendations under section 2974(b)(1)(B) of the Public Health Service Act (as added by section 1003).

(2) REBATES.—

(A) HEALTH INSURANCE ISSUERS.—Based on a study conducted under subsection (c), if insurance premiums of a health insurance issuer are determined by the Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, to meet the definition of excess price inflation, such issuer shall provide to each enrollee of such issuer a rebate. The amount of the rebate shall be calculated using the formula described under section 2718(b) of the Public Health Service Act (as added by section 1001), except for the amount of the excess price inflation shall be substituted for the amount of the premium revenues.

(B) HEALTH CARE SECTOR ENTITIES.—Based on a study conducted under subsection (c), if the Secretary determines, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, that an entity within the health care sector has increased price of goods or services related to such entity's participation in the health care sector, such as drugs or devices, sufficient to meet the definition of excess price inflation, then such entity shall pay to the Treasury the amount of the excess price inflation for the purpose of deficit reduction.

(3) APPEAL OF DETERMINATION.—The Secretary shall establish an effective appeals process under which a health insurance issuer or health care entity within the health care sector may appeal the determination of excess price inflation described in paragraph (2). In making an appeals determination, the Secretary may consult with the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Congressional Budget Office, and other Government experts and economists as the Secretary determines appropriate.

(g) PUBLIC AVAILABILITY.—The Secretary shall make each report under subsection (e), and the supporting data describing excess price inflation in the health care sector, available to the public.

SA 3133. Mr. WICKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

TITLE X—ADDITIONAL PROVISIONS

Subtitle A—Physician Payment Update Commission

SEC. 10001. SHORT TITLE.

This subtitle may be cited as the ''Physician Payment Update Commission Act''.

SEC. 10002. ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE COMMISSION.

(a) MEDICARE PHYSICIAN FEE SCHEDULE UPDATE AND SUNSET OF MEDICARE SUSTAINABLE GROWTH RATE FORMULA.—

(1) UPDATE FOR 2010 AND 2011.—Section 1848(d)(10) of the Social Security Act (42 U.S.C. 1395w–4(d)(10)), as added by section 3101, is amended to read as follows:

''(10) UPDATE FOR 2010 AND 2011.—

''(A) IN GENERAL.—The update to the single conversion factor established in paragraph (1)(C) for 2010 and 2011 shall be 0 percent.

''(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2012 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2012 and subsequent years as if subparagraph (A) had never applied.''.

(2) SUNSET OF MEDICARE SUSTAINABLE GROWTH RATE FORMULA.—Effective January 1, 2012, subsection (f) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is repealed.

(b) ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE COMMISSION.—

(1) IN GENERAL.—There is established a commission to be known as the ''Physician Payment Update Commission'' (referred to in this section as the ''Commission'').

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 17 members appointed by the Comptroller General of the United States, upon the recommendation of the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives.

(B) DATE OF APPOINTMENTS.—Members of the Commission shall be appointed not later than 2 months after the date of enactment of this Act.

(3) QUALIFICATIONS.—

(A) IN GENERAL.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, integrated delivery systems, allopathic and osteopathic medicine and other areas of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) INCLUSION.—The members of the Commission shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(C) MAJORITY PHYSICIANS AND OTHER HEALTH PROFESSIONALS.—Individuals who are physicians or other health professionals shall constitute a majority of the membership of the Commission.

(4) TERM; VACANCIES.—

(A) TERM.—A member shall be appointed for the life of the Commission.

(B) VACANCIES.—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment was made.

(5) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRPERSON.—The Comptroller General shall designate a member of the Commission, at the time of the appointment of the member, as Chairperson.

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a study of all matters relating to payment rates under the Medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4).

(2) RECOMMENDATIONS.—The Commission shall develop recommendations on the establishment of a new physician payment system under the Medicare program that would appropriately reimburse physicians by keeping pace with increases in medical practice costs and providing stable, positive Medicare updates.

(3) REPORT.—Not later than December 1, 2010, the Commission shall submit to the appropriate Committees of Congress and the Medicare Payment Advisory Commission—

(A) a detailed statement of the findings and conclusions of the Commission;

(B) the recommendations of the Commission for such legislation and administrative actions as the Commission considers appropriate (including proposed legislative language to carry out such recommendations); and

(C) a long-term CBO cost estimate regarding such recommendations (as described under subsection (i)).

(d) POWERS.—

(1) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.

(B) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of the agency shall provide the information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(e) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) IN GENERAL.—Members of the Commission shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(B) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) STAFF AND SUPPORT SERVICES.—

(A) EXECUTIVE DIRECTOR.—The Chairperson shall appoint an executive director of the Commission.

(B) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director considers appropriate.

(C) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) TERMINATION OF COMMISSION.—The Commission shall terminate 30 days after the date on which the Commission submits its report under subsection (c)(3).

(g) REVIEW AND RESPONSE TO RECOMMENDATIONS BY THE MEDICARE PAYMENT ADVISORY COMMISSION.—

(1) IN GENERAL.—Not later than February 1, 2011, the Medicare Payment Advisory Commission shall—

(A) review the recommendations included in the report submitted under subsection (c)(3);

(B) examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities; and

(C) submit to the appropriate Committees of Congress a report on such review.

(2) CONTENTS OF REPORT ON REVIEW OF COMMISSION RECOMMENDATIONS.—The report submitted under paragraph (1)(C) shall include—

(A) if the Medicare Payment Advisory Commission supports the recommendations of the Commission, the reasons for such support; or

(B) if the Medicare Payment Advisory Commission does not support such recommendations, the recommendations of the Medicare Payment Advisory Commission, together with an explanation as to why the Medicare Payment Advisory Commission does not support the recommendations of the Commission.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the Commission to carry out this section. Such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t).

(i) LONG-TERM CBO COST ESTIMATE.—

(1) PREPARATION AND SUBMISSION.—When the Commission submits a written request to the Director of the Congressional Budget Office for a long-term CBO cost estimate of recommended legislation or administrative actions (as described under subsection (c)(3)), the Director shall prepare the estimate and have it published in the Congressional Record as expeditiously as possible.

(2) CONTENT.—A long-term CBO cost estimate shall include—

(A) an estimate of the cost of each provision (if practicable) or group of provisions of the recommended legislation or administrative actions for first fiscal year it would take effect and for each of the 49 fiscal years thereafter; and

(B) a statement of any estimated future costs not reflected by the estimate described in subparagraph (A).

(3) FORM.—To the extent that a long-term CBO cost estimate presented in dollars is impracticable, the Director of the Congressional Budget Office may instead present the estimate in terms of percentages of gross domestic product, with rounding to the nearest 1/10 of 1 percent of gross domestic product.

(4) LIMITATIONS ON DISCRETIONARY SPENDING.—A long-term CBO cost estimate shall only consider the effects of provisions affecting revenues and direct spending (as defined by the Balanced Budget and Emergency Deficit Control Act of 1985), and shall not assume that any changes in outlays will result from limitations on, or reductions in, annual appropriations.

(j) EXPEDITED CONSIDERATION OF COMMISSION RECOMMENDATIONS.—

(1) INTRODUCTION.—

(A) IN GENERAL.—The proposed legislative language contained in the report submitted pursuant to subsection (c)(3) (referred to in this subsection as the ''Commission bill'') shall be introduced within the first 10 calendar days of the 112th Congress (or on the first session day thereafter) in the House of Representatives and in the Senate by the majority leader of each House of Congress, for himself, the minority leader of each House of Congress, for himself, or any member of the House designated by the majority leader or minority leader. If the Commission bill is not introduced in accordance with the preceding sentence in either House of Congress, then any Member of that House may introduce the Commission bill on any day thereafter. Upon introduction, the Commission bill shall be referred to the appropriate committees under subparagraph (B).

(B) COMMITTEE CONSIDERATION.—A Commission bill introduced in either House of Congress shall be jointly referred to the committee or committees of jurisdiction, which shall report the bill without any revision and with a favorable recommendation, an unfavorable recommendation, or without recommendation, not later than 10 calendar days after the date of introduction of the bill in that House. If any committee fails to report the bill within that period, that committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

(2) EXPEDITED PROCEDURE.—

(A) IN THE HOUSE OF REPRESENTATIVES.—

(i) IN GENERAL.—Not later than 5 days of session after the date on which a Commission bill is reported or discharged from all committees to which it was referred, the majority leader of the House of Representatives or the majority leader's designee shall move to proceed to the consideration of the Commission bill. It shall also be in order for any Member of the House of Representatives to move to proceed to the consideration of the Commission bill at any time after the conclusion of such 5-day period.

(ii) MOTION TO PROCEED.—A motion to proceed to the consideration of the Commission bill is highly privileged in the House of Representatives and is not debatable. The motion is not subject to amendment or to a motion to postpone consideration of the Commission bill. A motion to proceed to the consideration of other business shall not be in order. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the House of Representatives shall immediately proceed to consideration of the Commission bill without intervening motion, order, or other business, and the Commission bill shall remain the unfinished business of the House of Representatives until disposed of.

(iii) LIMITS ON DEBATE.—Debate in the House of Representatives on a Commission bill under this paragraph shall not exceed a total of 100 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate is in order and shall not be debatable. It shall not be in order to move to recommit a Commission bill under this paragraph or to move to reconsider the vote by which the bill is agreed to or disagreed to.

(iv) APPEALS.—Appeals from decisions of the chair relating to the application of the Rules of the House of Representatives to the procedure relating to a Commission bill shall be decided without debate.

(v) APPLICATION OF HOUSE RULES.—Except to the extent specifically provided in this paragraph, consideration of a Commission bill shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any Commission bill introduced pursuant to the provisions of this subsection under a suspension of the rules or under a special rule.

(vi) NO AMENDMENTS.—No amendment to the Commission bill shall be in order in the House of Representatives.

(vii) VOTE ON FINAL PASSAGE.—In the House of Representatives, immediately following the conclusion of consideration of the Commission bill, the vote on final passage of the Commission bill shall occur without any intervening action or motion, requiring an affirmative vote of 3/5 of the Members, duly chosen and sworn. If the Commission bill is passed, the Clerk of the House of Representatives shall cause the bill to be transmitted to the Senate before the close of the next day of session of the House.

(B) IN THE SENATE.—

(i) IN GENERAL.—Not later than 5 days of session after the date on which a Commission bill is reported or discharged from all committees to which it was referred, the majority leader of the Senate or the majority leader's designee shall move to proceed to the consideration of the Commission bill. It shall also be in order for any Member of the Senate to move to proceed to the consideration of the Commission bill at any time after the conclusion of such 5-day period.

(ii) MOTION TO PROCEED.—A motion to proceed to the consideration of the Commission bill is privileged in the Senate and is not debatable. The motion is not subject to amendment or to a motion to postpone consideration of the Commission bill. A motion to proceed to consideration of the Commission bill may be made even though a previous motion to the same effect has been disagreed to. A motion to proceed to the consideration of other business shall not be in order. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the Senate shall immediately proceed to consideration of the Commission bill without intervening motion,

order, or other business, and the Commission bill shall remain the unfinished business of the Senate until disposed of.

(iii) LIMITS ON DEBATE.—In the Senate, consideration of the Commission bill and on all debatable motions and appeals in connection therewith shall not exceed a total of 100 hours, which shall be divided equally between those favoring and those opposing the Commission bill. A motion further to limit debate on the Commission bill is in order and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the Commission bill, including time used for quorum calls and voting, shall be counted against the total 100 hours of consideration.

(iv) NO AMENDMENTS.—No amendment to the Commission bill shall be in order in the Senate.

(v) MOTION TO RECOMMIT.—A motion to recommit a Commission bill shall not be in order under this paragraph.

(vi) VOTE ON FINAL PASSAGE.—In the Senate, immediately following the conclusion of consideration of the Commission bill and a request to establish the presence of a quorum, the vote on final passage of the Commission bill shall occur and shall require an affirmative vote of ⅗ of the Members, duly chosen and sworn.

(vii) OTHER MOTIONS NOT IN ORDER.—A motion to postpone or a motion to proceed to the consideration of other business is not in order in the Senate. A motion to reconsider the vote by which the Commission bill is agreed to or not agreed to is not in order in the Senate.

(viii) CONSIDERATION OF THE HOUSE BILL.—

(I) IN GENERAL.—If the Senate has received the House companion bill to the Commission bill introduced in the Senate prior to the vote required under clause (vi) and the House companion bill is identical to the Commission bill introduced in the Senate, then the Senate shall consider, and the vote under clause (vi) shall occur on, the House companion bill.

(II) PROCEDURE AFTER VOTE ON SENATE BILL.—If the Senate votes, pursuant to clause (vi), on the bill introduced in the Senate, the Senate bill shall be held pending receipt of the House message on the bill. Upon receipt of the House companion bill, if the House bill is identical to the Senate bill, the House bill shall be deemed to be considered, read for the third time, and the vote on passage of the Senate bill shall be considered to be the vote on the bill received from the House.

(C) NO SUSPENSION.—No motion to suspend the application of this paragraph shall be in order in the Senate or in the House of Representatives.

Subtitle B—Medical Care Access Protection

SEC. 10101. SHORT TITLE.

This subtitle may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. 10102. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 10103. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 10104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. 10105. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 10106. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health

care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. 10107. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 10108. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. 10109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

SEC. 10110. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 10111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10105(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 10112. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

Subtitle C—Rescission of Unused Stimulus Funds

SEC. 10201. RESCISSION IN ARRA.

Effective as of October 1, 2010, any unobligated balances available on such date of funds made available by division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) are rescinded.

SA 3134. Mr. BURR (for himself, Mrs. HUTCHISON, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25 insert the following:

TITLE X—ADDITIONAL PROVISIONS

Subtitle A—Medicare Physician Fee Schedule Update for 2010, 2011, and 2012

SEC. 10001. MEDICARE PHYSICIAN FEE SCHEDULE UPDATE FOR 2010, 2011, AND 2012.

Section 1848(d)(10) of the Social Security Act (42 U.S.C. 1395w–4(d)), as added by section 3101, is amended to read as follows:

''(10) UPDATE FOR 2010, 2011, AND 2012.—

''(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for each of 2010, 2011, and 2012, the update to the single conversion factor shall be 0.5 percent.

''(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2013 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2013 and subsequent years as if subparagraph (A) had never applied.''.

Subtitle B—Medical Care Access Protection

SEC. 10101. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 10102. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health

care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 10103. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. 10104. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 10105. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. 10106. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 10107. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. 10108. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

SEC. 10109. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 10110. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10104(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 10111. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

Subtitle C—Rescission of Discretionary Amounts Appropriated by the American Recovery and Reinvestment Act of 2009

SEC. 10201. RESCISSION OF DISCRETIONARY AMOUNTS APPROPRIATED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

(a) IN GENERAL.—All discretionary amounts made available by the American Recovery and Reinvestment Act of 2009 (123 Stat. 115; Public Law No: 111-5) that are unobligated on the date of the enactment of this Act are hereby rescinded.

(b) ADMINISTRATION.—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall—

(1) administer the reduction specified in subsection (a); and

(2) submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives a report specifying the account and the amount of each reduction made pursuant to subsection (a).

SA 3135. Mr. SANDERS (for himself, Mr. BROWN, Mr. FRANKEN, and Mr. BURRIS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1979, line 20, strike all through page 1996, line 3, and insert the following:

SEC. 9001. SURCHARGE ON HIGH INCOME INDIVIDUALS.

(a) IN GENERAL.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new part:

"PART VIII—SURCHARGE ON HIGH INCOME INDIVIDUALS

"Sec. 59B. Surcharge on high income individuals.

"SEC. 59B. SURCHARGE ON HIGH INCOME INDIVIDUALS.

"(a) GENERAL RULE.—In the case of a taxpayer other than a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 5.4 percent of so much of the modified adjusted gross income of the taxpayer as exceeds $4,800,000.

"(b) TAXPAYERS NOT MAKING A JOINT RETURN.—In the case of any taxpayer other than a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), subsection (a) shall be applied by substituting '$2,400,000' for '$4,800,000'.

"(c) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this section, the term 'modified adjusted gross income' means adjusted gross income reduced by any deduction (not taken into account in determining adjusted gross income) allowed for investment interest (as defined in section 163(d)). In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).

"(d) SPECIAL RULES.—

"(1) NONRESIDENT ALIEN.—In the case of a nonresident alien individual, only amounts taken into account in connection with the tax imposed under section 871(b) shall be taken into account under this section.

"(2) CITIZENS AND RESIDENTS LIVING ABROAD.—The dollar amount in effect under subsection (a) (after the application of subsection (b)) shall be decreased by the excess of—

"(A) the amounts excluded from the taxpayer's gross income under section 911, over

"(B) the amounts of any deductions or exclusions disallowed under section 911(d)(6) with respect to the amounts described in subparagraph (A).

"(3) CHARITABLE TRUSTS.—Subsection (a) shall not apply to a trust all the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

"(4) NOT TREATED AS TAX IMPOSED BY THIS CHAPTER FOR CERTAIN PURPOSES.—The tax imposed under this section shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"PART VIII. SURCHARGE ON HIGH INCOME INDIVIDUALS.".

(c) SECTION 15 NOT TO APPLY.—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SA 3136. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, AND MR. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 796, between lines 5 and 6, insert the following:

PART IV—TELEHEALTH AND REMOTE PATIENT MONITORING

SEC. 3031. TELEHEALTH AND REMOTE PATIENT MONITORING.

(a) IMPROVING CREDENTIALING AND PRIVILEGING STANDARDS FOR TELEHEALTH SERVICES.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended by adding at the end the following new paragraph:

"(5) ESTABLISHMENT OF REMOTE CREDENTIALING AND PRIVILEGING STANDARDS.—

"(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this paragraph, the Secretary shall establish regulations for considering the remote credentialing and privileging standards applicable to telehealth services, including interpretative services, for originating sites under this subsection. Such regulations shall allow an originating site to accept, and not duplicate, the credentialing and privileging processes and decisions made by another site.

"(B) CLARIFICATION REGARDING ACCEPTANCE OF PROCESSES AND DECISIONS PRIOR TO ENACTMENT OF REGULATIONS.—During the period beginning on such date of enactment and ending on the effective date of the regulations under subparagraph (A), the Secretary shall not take any punitive action under any rule or regulation against an originating site on the basis of that site's acceptance, for purposes of receiving telehealth services (including interpretive services), the credentialing and privileging processes and decisions made by another site that is certified by a national body recognized by the Secretary if the site accepting such credentialing and privileging processes is also so certified and complies with the applicable requirements for such acceptance.".

(b) EXPANDING ACCESS TO STROKE TELEHEALTH EVALUATION.—

(1) IN GENERAL.—Section 1834(m)(4) of the Social Security Act (42 U.S.C. 1395m(m)(4)) is amended by adding at the end the following new subparagraph:

"(G) STROKE TELEHEALTH SERVICES.—The term 'stroke telehealth services' means a telehealth service used for the evaluation of individuals with acute stroke.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to telehealth services furnished on or after the date that is 6 months after the date of enactment of this Act.

(c) IMPROVING ACCESS TO TELEHEALTH SERVICES AT IHS FACILITIES.—

(1) COVERAGE OF METROPOLITAN SITES.—Section 1834(m)(4)(C)(i) of such Act (42 U.S.C. 1395m(m)(4)(C)(i)) is amended—

(A) in subclause (II), by deleting "or" at the end;

(B) in subclause (III), by deleting the period at the end and inserting "; or"; and

(C) by adding at the end the following subclause:

"(IV) from a facility of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as

those terms are defined in section 4 of the Indian Health Care Improvement Act)).''.

(2) INCLUSION OF IHS FACILITIES AS ORIGINATING SITES.—Section 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding at the end the following new subclause:

''(IX) A facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to telehealth services furnished on or after the date that is 6 months after the date of enactment of this Act.

(d) COMMUNITY-BASED PATIENT MONITORING.—Section 3026(B) of this Act is amended by adding at the end the following new clause:

''(vi) Utilizing telehealth, remote patient monitoring, and other technology when medically appropriate to enhance care transition services provided across the continuum of care.''.

(e) TELEHEALTH ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Section 1868 of the Social Security Act (42 U.S.C. 1395ee) is amended—

(A) in the heading, by adding at the end the following: ''TELEHEALTH ADVISORY COMMITTEE''; and

(B) by adding at the end the following new subsection:

''(c) TELEHEALTH ADVISORY COMMITTEE.—

''(1) IN GENERAL.—A Telehealth Advisory Committee (in this subsection referred to as the 'Advisory Committee') shall be appointed by the Secretary to make annual recommendations to the Secretary on policies of the Centers for Medicare & Medicaid Services regarding telehealth services as established under section 1834(m), including the appropriate addition or deletion of services (and HCPCS codes) to those specified in paragraphs (4)(F)(i) and (4)(F)(ii) of such section and for authorized payment under paragraph (1) of such section, and to Congress on areas in which originating sites are located (as specified in paragraph (4)(C)(i) of such section) and eligible telehealth sites (as described in paragraph (4)(C)(ii) of such section).

''(2) MEMBERSHIP; TERMS.—

''(A) MEMBERSHIP.—

''(i) IN GENERAL.—The Advisory Committee shall be composed of 10 members, to be appointed by the Secretary, of whom—

''(I) 5 shall be practicing physicians;

''(II) 2 shall be practicing nonphysician health care practitioners;

''(III) 2 shall be administrators of telehealth programs; and

''(IV) 1 shall be an informatics or technology expert.

''(ii) REQUIREMENTS FOR APPOINTING MEMBERS.—In appointing members of the Advisory Committee, the Secretary shall—

''(I) ensure that each member has prior experience with the practice of telemedicine or telehealth;

''(II) give preference to individuals who are currently providing telemedicine or telehealth services or who are involved in telemedicine or telehealth programs;

''(III) ensure that the membership of the Advisory Committee represents a balance of specialties and geographic regions; and

''(IV) take into account the recommendations of stakeholders.

''(B) TERMS.—The members of the Advisory Committee shall serve for a 3-year term.

''(C) CONFLICTS OF INTEREST.—A member of the Advisory Committee may not participate with respect to a particular matter considered in a meeting of the Advisory Committee if such member (or an immediate family member of such member) has a financial interest that could be affected by the advice given to the Secretary with respect to such matter.

''(D) PRIORITY AREAS FOR CONSIDERATION.—In making recommendations under paragraph (1), the committee shall consider recommendations to Congress on the following:

''(i) Increasing coverage of telehealth services to all geographic areas of the United States. Such consideration shall take into account the costs to the Federal Government of such increased coverage and the total offsetting savings accrued to the Federal Government as a result of investments in telehealth.

''(ii) Including providing payments under section 1834(m) for store and forward services for all eligible areas. Such consideration should take into account the experience in Alaska and Hawaii in providing such services under this title, including the impact on costs, the effect on the quality and availability of health services, and ways in which the Federal Government can minimize the risk of fraud and abuse for such services.

''(iii) Expanding coverage under this title of remote monitoring services for—

''(I) individuals with chronic diseases;

''(II) individuals recently discharged from a facility that is an originating site under such section; and

''(III) individuals assigned to an accountable care organization under section 1899, individuals discharged from a hospital that receives disproportionate share payments under section 1886(d)(5)(F) who are in need of transitional care, and individuals who are furnished services under the national pilot program on payment bundling under section 1866D.

Each recommendation made under paragraph (1) shall take into consideration the costs to the Federal Government and the total offsetting savings accrued to the Federal Government as a result of investments in telehealth and ways in which the Federal Government can minimize the risk of fraud and abuse for telehealth services.

''(3) REQUIREMENT TO REVIEW AND PROVIDE RECOMMENDATIONS.—The Advisory Committee shall review and provide recommendations to the Secretary on legislation that would allow other providers of services and suppliers to provide telehealth services to Medicare beneficiaries.

''(4) DEADLINE.—Not later than December 31, 2010, the Advisory Committee shall submit to Congress any recommendations to Congress under paragraph (1), including the recommendations considered under paragraph (2)(D).''.

(2) FOLLOWING RECOMMENDATIONS.—Section 1834(m)(4)(F) of such Act (42 U.S.C. 1395m(m)(4)(F)) is amended by adding at the end the following new clause:

''(iii) RECOMMENDATIONS OF THE TELEHEALTH ADVISORY COMMITTEE.—In making determinations under clauses (i) and (ii), the Secretary shall take into account the recommendations of the Telehealth Advisory Committee (established under section 1868(c)) when adding or deleting services (and HCPCS codes) and in establishing policies of the Centers for Medicare & Medicaid Services regarding the delivery of telehealth services. If the Secretary does not implement such a recommendation, the Secretary shall publish in the Federal Register a statement regarding the reason such recommendation was not implemented.''.

(3) WAIVER OF ADMINISTRATIVE LIMITATION.—The Secretary of Health and Human Services shall establish the Telehealth Advisory Committee under the amendment made by paragraph (1) notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).

(f) LIST OF COVERED TELEHEALTH SERVICES.—Section 1834(m)(4)(F) of such Act (42 U.S.C. 1395m(m)(4)(F)), as amended by subsection (e), is further amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv);

(2) by inserting after clause (i) the following new clause:

''(ii) ORIGINATING SITE SERVICES.—

''(I) IN GENERAL.—Subject to subclause (II), the Secretary may make payments under this subsection to an originating site described in subparagraph (C)(ii) for services originating at the site.

''(II) LIMITATION.—The Secretary may not make such payments with respect to a service described in subclause (I) if the Secretary finds, upon review of the available evidence, that a service is not safe, effective, or medically beneficial when performed as a telehealth service.''; and

(3) by striking clause (iii), as redesignated under paragraph (1), and inserting the following new clause:

''(iii) YEARLY UPDATE.—The Secretary shall establish a process that provides, on an annual basis—

''(I) for the addition of telehealth services (and HCPCS codes), to those specified in clauses (i) and (ii) for authorized payment under this subsection, unless the Secretary finds, upon review of the available evidence, that a service is not safe, effective, or medically beneficial when performed as a telehealth service; and

''(II) for the deletion of such services (and HCPCS codes), from those specified in clauses (i) and (ii) for authorized payment under this subsection, that the Secretary finds, upon review of additional evidence, are not safe, effective, or medically beneficial when performed as a telehealth service.''.

(g) TELEHEALTH ACCESS TO SMALL POPULATION METROPOLITAN COUNTIES.—Section 1834(m)(4)(C)(i)(II) of such Act (42 U.S.C. 1395m(4)(C)(i)(II)) is amended to read as follows:

''(II) in a county with a population of less than 35,000, according to the most recent decennial census, or that is not included in a Metropolitan Statistical Area; or''.

(h) TELEHEALTH ACCESS FOR ''STORE AND FORWARD'' DIAGNOSTIC CONSULTATIONS.—Section 1834(m)(1) of such Act (42 U.S.C. 1395(m)(1)) is amended by adding at the end the following sentence: ''For purposes of the first sentence, in the case of telehealth services that are furnished by a facility of the Indian Health Service, a rural health clinic, a Federally qualified health center, or a critical access hospital (as described in paragraph (4)(C)(ii)) , or a sole community hospital (as defined in section 1886(d)(5)(D)(iii)), the term 'telecommunications system' includes store-and-forward technologies described in the preceding sentence.''.

SA 3137. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1339, between lines 18 and 19, insert the following:

SEC. 5211. INCREASING ACCESS TO PRIMARY CARE SERVICES.

(a) STATE GRANTS TO HEALTH CARE PROVIDERS WHO PROVIDE SERVICES TO A HIGH PERCENTAGE OF MEDICALLY UNDERSERVED POPULATIONS OR OTHER SPECIAL POPULATIONS.—

(1) IN GENERAL.—A State may award grants to health care providers who treat a high percentage, as determined by such State, of medically underserved populations or other special populations in such State.

(2) SOURCE OF FUNDS.—A grant program established by a State under paragraph (1) may not be established within a department, agency, or other entity of such State that administers the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and no Federal or State funds allocated to such Medicaid program, the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), or the TRICARE program under chapter 55 of title 10, United States Code, may be used to award grants or to pay administrative costs associated with a grant program established under paragraph (1).

(b) PROVIDING FOR UNDERSERVED MEDICARE POPULATIONS DEMONSTRATION PROJECT.—Subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254l et seq.) is amended by adding at the end the following:

''SEC. 338N. PROVIDING FOR UNDERSERVED MEDICARE POPULATIONS DEMONSTRATION PROJECT.

''(a) IN GENERAL.—The Secretary shall establish, in not more than 5 States, a demonstration project, to be known as the Providing for Underserved Medicare Populations Demonstration Project, for the purpose of encouraging health care providers who are recent graduates of a health care program to enter into primary care practice, by providing incentive payments to eligible primary health services providers.

''(b) DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—The Secretary shall grant awards, on a competitive basis, to eligible primary health services providers, as described in paragraph (2). Each recipient of such an award shall receive such award for a period of 3 years, provided such recipient continues to meet the eligibility criteria described in subsection (c).

''(2) AWARD AMOUNTS.—Each award described in paragraph (1) shall be in an amount not to exceed—

''(A) $50,000 per year for the repayment of student loans associated with the health care educational expenses of such recipient; or

''(B) $37,500 per year in cash incentive payments.

''(c) ELIGIBLE PRIMARY HEALTH SERVICES PROVIDERS.—The Secretary shall establish criteria for individuals to be eligible to receive an award under this section, which shall include requirements that such individual—

''(1) be actively employed as a primary health services provider, or have arrangements to commence active employment as a primary health services provider, in one of the 5 States that the Secretary has selected for participation in this demonstration project and in a community with a population of not less than 35,000 and not more than 350,000 and not designated as a health professional shortage area;

''(2) have graduated, not more than 2 years after the date on which such individual would begin receiving incentive payments under this project, from an accredited program that qualifies such individual to maintain employment as a primary health services provider;

''(3) agree that, of the patients receiving care from such primary health services provider in the period during which such individual participates in the project, not less than 60 percent of such patients shall be enrolled in the Medicare program under title XVIII of the Social Security Act;

''(4) be employed, as described in paragraph (1), in a State in which the 65-and-over population is expected to grow at least 50 percent between 2010 and 2020, according to United States Census Bureau projections; and

''(5) meet such other eligibility criteria established by the Secretary.

''(d) DURATION OF PROGRAM.—The Secretary shall make initial awards to individuals under this section for each of fiscal years 2011 through 2013.

''(e) REPORT.—Not later than December 31, 2015, the Secretary shall submit to Congress a report concerning the results of the demonstration project.

''(f) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $25,000,000 for fiscal years 2011 through 2015.''.

(c) FACULTY LOAN REPAYMENT FOR PHYSICIAN ASSISTANTS.—Section 738(a)(3) of the Public Health Service Act (42 U.S.C.293b(a)(3)) is amended by inserting ''schools offering physician assistant education programs,'' after ''public health,''.

(d) NATIONAL HEALTH SERVICE CORPS.—

(1) FULFILLMENT OF OBLIGATED SERVICE REQUIREMENT THROUGH HALF-TIME SERVICE.—

(A) WAIVERS.—Subsection (i) of section 331 (42 U.S.C. 254d) is amended—

(i) in paragraph (1), by striking ''In carrying out subpart III'' and all that follows through the period and inserting ''In carrying out subpart III, the Secretary may, in accordance with this subsection, issue waivers to individuals who have entered into a contract for obligated service under the Scholarship Program or the Loan Repayment Program under which the individuals are authorized to satisfy the requirement of obligated service through providing clinical practice that is half time.'';

(ii) in paragraph (2)—

(I) in subparagraphs (A)(ii) and (B), by striking ''less than full time'' each place it appears and inserting ''half time'';

(II) in subparagraphs (C) and (F), by striking ''less than full-time service'' each place it appears and inserting ''half-time service''; and

(III) by amending subparagraphs (D) and (E) to read as follows:

''(D) the entity and the Corps member agree in writing that the Corps member will perform half-time clinical practice;

''(E) the Corps member agrees in writing to fulfill all of the service obligations under section 338C through half-time clinical practice and either—

''(i) double the period of obligated service that would otherwise be required; or

''(ii) in the case of contracts entered into under section 338B, accept a minimum service obligation of 2 years with an award amount equal to 50 percent of the amount that would otherwise be payable for full-time service; and''; and

(iii) in paragraph (3), by striking ''In evaluating a demonstration project described in paragraph (1)'' and inserting ''In evaluating waivers issued under paragraph (1)''.

(B) DEFINITIONS.—Subsection (j) of section 331 (42 U.S.C. 254d) is amended by adding at the end the following:

''(5) The terms 'full time' and 'full-time' mean a minimum of 40 hours per week in a clinical practice, for a minimum of 45 weeks per year.

''(6) The terms 'half time' and 'half-time' mean a minimum of 20 hours per week (not to exceed 39 hours per week) in a clinical practice, for a minimum of 45 weeks per year.''.

(2) REAPPOINTMENT TO NATIONAL ADVISORY COUNCIL.—Section 337(b)(1) (42 U.S.C. 254j(b)(1)) is amended by striking ''Members may not be reappointed to the Council.''.

(3) LOAN REPAYMENT AMOUNT.—Section 338B(g)(2)(A) (42 U.S.C. 254l–1(g)(2)(A)) is amended by striking ''$35,000'' and inserting ''$50,000, plus, beginning with fiscal year 2012, an amount determined by the Secretary on an annual basis to reflect inflation,''.

(4) TREATMENT OF TEACHING AS OBLIGATED SERVICE.—Subsection (a) of section 338C (42 U.S.C. 254m) is amended by adding at the end the following: ''The Secretary may treat teaching as clinical practice for up to 20 percent of such period of obligated service.''.

SA 3138. Mrs. HUTCHISON (for herself and Mr. HATCH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike sections 2551 and 3133.

SA 3139. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, between lines 2 and 3, insert the following:

(D) EXEMPTION FOR EMPLOYERS IN STATES WITH HIGH PREMIUM INCREASES.—

(i) IN GENERAL.—If a State is described in clause (ii), then, on and after the certification date, no employer in such State shall be treated as an applicable large employer for purposes of this section.

(ii) STATE DESCRIBED.—For purposes of this subparagraph—

(I) IN GENERAL.—A State is described in this clause if the applicable State authority determines for any calendar year after 2013 that the percentage increase in average annual premiums for health insurance coverage in such State for the calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(II) CERTIFICATION DATE.—The term ''certification date'' means the first date on which the applicable State authority certifies a determination described in subclause (I).

(III) APPLICABLE STATE AUTHORITY.—The term ''applicable State authority'' has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

SA 3140. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 16 and 17, insert the following:

''(g) LIMITATION.—

''(1) IN GENERAL.—This section shall not apply to any individual residing in a State where the Secretary makes the determination described in paragraph (2) for a taxable year.

''(2) DETERMINATION.—A determination described in this paragraph is a determination that the average cost of premiums for health insurance coverage within the State for the year involved has increase by a percentage that is greater than the percentage increase in the Consumer Price Index for the year.''.

SA 3141. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE__MEDICAL CARE ACCESS PROTECTION

SEC. __1. SHORT TITLE.

This title may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. __2. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider in a medically underserved community, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services) in a medically underserved community.

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services in a medically underserved community, affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICALLY UNDERSERVED COMMUNITY.—The term ''medically underserved community'' means a health manpower shortage area as designated under section 332 of the Public Health Service Act.

(15) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. _3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. _4. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. _5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. _6. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. _7. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may

allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. __8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. __9. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. __10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section ___4(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. __11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3142. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2026, strike line 3 and insert the following:

(i) EXCLUSION OF DEVICES FOR CANCER DIAGNOSIS AND TREATMENT.—

(1) IN GENERAL.—The term ''medical device sales'' shall not include sales of any device which is primarily designed to diagnose or treat any form of cancer.

(2) REDUCTION OF AGGREGATE FEE AMOUNT.—The $2,000,000,000 amount in subsection (b)(1) shall be reduced by the amount which bears the same ratio to such $2,000,000,000 amount as the amount of the sales of devices described in paragraph (1) for calendar year 2010 bears to the amount of total medical device sales (without regard to this subsection) for such calendar year, as determined by the Secretary.

(j) APPLICATION OF SECTION.—This section shall

SA 3143. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

SEC. ___. STATE OPT OUT.

(a) IN GENERAL.—The provisions described in subsection (b) shall not apply to

(1) individuals residing within a State;

(2) employers located within a State; and

(3) health coverage offered within a State; if the State enacts a law rejecting such provisions as described in subsection (b) and attests to the Secretary that the State will implement reforms appropriate for application within the State to reduce the uninsured population of the State and increase access to affordable health insurance options.

(b) EFFECT OF STATE LAW.—The provisions described in this subsection are the following:

(1) The insurance market reform provisions of title I (and the amendments made by such title), except for section 2704 of the Public Health Service Act (as added by section 1201 (relating to preexisting condition exclusions).

(2) The requirements relating to obtaining or providing individual and employer health insurance coverage under title I (and the amendments made by such title).

(3) The provisions relating to Medicaid expansion under the amendments made by title I.

(4) The provisions relating to the Medicare program (and the amendments to such program) under title III and (IV).

(5) The provisions relating to the imposition of, or increases in, fees paid by insurance issuers and drug and medical device manufacturers under the amendments made by this Act.

(6) Any other provision of this Act (or an amendment made by this Act), except for this section.

(c) ABOVE-THE-LINE DEDUCTION FOR HEALTH INSURANCE PREMIUMS.—

(1) IN GENERAL.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by inserting after paragraph (21) the following new paragraph:

''(22) HEALTH INSURANCE PAYMENTS.—

''(A) IN GENERAL.—Any amount allowable as a deduction under section 213 (determined without regard to any income limitation under subsection (a) thereof) by reason of subsection (d)(1)(D) thereof for qualified health insurance.

''(B) QUALIFIED HEALTH INSURANCE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified health insurance' means insurance offered to individuals located in a State that enacts a law described in section ___(a) of the Patient Protection and Affordable Care Act which constitutes medical care as defined in section 213(d) without regard to—

''(I) paragraph (1)(C) thereof, and

''(II) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance contracts.

''(ii) EXCLUSION OF CERTAIN OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits are excepted benefits (as defined in section 9832(c)).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2009.

SA 3144. Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title VI, insert the following:

SEC. ___. ANTI-FRAUD CONSULTATION GROUP.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services jointly with the Attorney General shall establish an anti-fraud consultation group for the purpose of coordinating expertise and best practices relating to the analysis, detection, and prevention of fraud, waste, and abuse arising from, or related to, health care.

(b) COMPOSITION.—The anti-fraud consultation group under subsection (a) shall be composed of individuals, to be appointed jointly by the Secretary of Health and Human Services and the Attorney General, with expertise from both the public and private sectors in fraud arising from, or related to, health care, including law enforcement personnel, health insurance issuers, physicians and other health care providers, insurance anti-fraud organizations, academic experts, consumer groups, and insurance regulators.

(c) DUTIES.—At the request of the Secretary of Health and Human Services and the Attorney General, the anti-fraud consultation group under subsection (a) shall provide advice concerning—

(1) methods of preventing fraud against Federal and State health care programs, consumers, providers, employers, and health insurance issuers;

(2) the evaluation of information and data to improve the ability to detect and prevent fraud;

(3) the enhancement of anti-fraud information data systems, consistent with the protection of personal privacy; and

(4) the coordination of public and private resources in the analysis, detection, and prevention of fraud arising from, or related to, health care.

(d) ANNUAL REPORT.—The anti-fraud consultation group under subsection (a) shall, not later than 1 year after the date of enactment of this Act, and annually thereafter, submit to the Secretary of Health and Human Services and the Attorney General a report concerning the group's—

(1) accomplishments to improve the coordination of public and private health care anti-fraud actions;

(2) development of enhanced techniques for the analysis, detection, and prevention of fraud; and

(3) recommendations for the improvement of anti-fraud programs.

(e) FUNDING.—The Secretary and the Attorney General shall use funds appropriated to the Secretary or Attorney General prior to the date of enactment of this Act, and otherwise available, to carry out this section.

SA 3145. Mr. MCCONNELL (for himself, Mr. ENSIGN, and Mr. MCCAIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out

of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this Act, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. 5. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this Act shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 6. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. 7. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 8. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device''

have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

SEC. 10. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this Act shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this Act shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 5(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this Act (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this Act;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 12. APPLICABILITY; EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3146. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 340, between lines 14 and 15, insert the following:

''(g) PENALTIES CREDITED TO INDIVIDUAL ACCOUNTS AND USED FOR PREMIUMS.—

''(1) IN GENERAL.—The Secretary shall not later than January 1, 2014, establish and implement a program under which—

''(A) if a penalty has been imposed under this section with respect to an applicable individual for months during any calendar year, the Secretary—

''(i) establishes an account on behalf of the applicable individual, and

''(ii) credits such account with an amount equal to the amount of the penalty, and

''(B) if the applicable individual subsequently becomes covered under minimum essential coverage for 1 or more months, the Secretary pays to or on behalf of the applicable individual an amount equal to the premiums paid by the individual for such coverage (or, if lesser, the balance in the account established under subparagraph (A)).

''(2) AMOUNTS AVAILABLE ONLY FOR 3 YEARS.—

''(A) IN GENERAL.—If an account is credited under paragraph (1)(A) with an amount for any calendar year, such amount shall be available for payment under paragraph (1)(B) only for premiums for minimum essential coverage for months occurring during the 3 calendar years immediately following such calendar year.

''(B) SPECIAL RULES.—For purposes of this subsection—

''(i) the Secretary need only establish 1 account for an individual, and

''(ii) amounts shall be treated as paid out of an account on a first-in, first-out basis.''.

SA 3147. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 12 and 13, insert the following:

''(5) HIGH DEDUCTIBLE HEALTH PLAN.—

''(A) IN GENERAL.—If an applicable individual—

''(i) is an employee of an employer who ceases to offer the employee the opportunity to enroll in an eligible employer-sponsored plan, or

''(ii) ceases employment with an employer and is not otherwise eligible to enroll in an eligible employer-sponsored plan,

the applicable individual may enroll in a high deductible health plan described in subparagraph (C) and such plan shall be treated as minimum essential coverage.

''(B) CONTINUED ENROLLMENT.—If an individual described in subparagraph (A) enrolls in a high deductible health plan described in subparagraph (C), such plan shall continue to be treated as minimum essential coverage with respect to that individual during any continuous period of enrollment even if the individual is otherwise eligible to enroll in an eligible employer-sponsored plan.

''(C) PLAN DESCRIBED.—A health plan is described in this subparagraph if it is a high deductible health plan (as defined in section 223(c)(2)) that meets all requirements under such section to be offered in connection with a health savings account. No requirement imposed by any provision of, or any amendment made by, the Patient Protection and Affordable Care Act shall apply with respect to the plan or issuer thereof.

SA 3148. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 396, between lines 8 and 9, insert the following:

Subtitle H—Sunset if Premiums Increase Too Rapidly

SEC. 1601. SUNSET.

(a) IN GENERAL.—The following requirements shall not apply to health insurance coverage and group health plans offered in the individual or group market within a State during plan years beginning after the sunset date with respect to that market:

(1) Any requirement under section 1301 of this title, section 2707 of the Public Health Service Act, or any other provision of, or amendment made by, this title that a health plan provide an essential health benefits package described in section 1302(a) of this title, including any requirement that the plan provide—

(A) for essential health benefits described in section 1302(b);

(B) in the case of a plan offered in the group market, an annual limitation on the plan's deductible described in section 1302(c)(2); and

(C) a level of coverage described in section 1302(d).

(2) The requirements of section 2701 of the Public Health Service Act (relating to limits on premiums).

(b) COORDINATION WITH QUALIFIED HEALTH PLANS AND PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.—In the case of a State to which subsection (a) applies, the Secretary shall establish procedures for establishing which health plans shall be treated as qualified health plans for purposes of the Exchanges established within such State. Such procedures shall ensure that the aggregate amount of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 with respect to qualified health plans in the individual market within such State does not exceed the aggregate amount of such credits and reductions that would have been allowed if subsection (a) did not apply to such State.

(c) SUNSET DATE.—For purposes of this section—

(1) IN GENERAL.—The term ''sunset date'' means, with respect to the individual or group market within a State, the first date on which the applicable State authority determines under paragraph (2) that the percentage increase in average annual premiums within such market for a calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(2) DETERMINATION.—The applicable State authority shall for each calendar year after 2013 make the determination described in paragraph (1).

(3) APPLICABLE STATE AUTHORITY.—The term ''applicable State authority'' has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

SA 3149. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 999, between lines 16 and 17, insert the following:

(q) BUDGET-NEUTRAL EXEMPTION OF CERTAIN PROVIDERS.—Notwithstanding the provisions of, and amendments made by, the preceding subsections of this section—

(1) such provisions and amendments shall not apply to a health care provider that—

(A) is described in section 340B(a)(4) of the Public Health Service Act or 1927(c)(1)(D)(i)(IV) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(D)(i)(IV)); and

(B) is located in an area that is not a metropolitan statistical area (as determined by the Bureau of the Census); and

(2) the Secretary of Health and Human Services shall make appropriate adjustments in the application of such provisions and amendments to ensure that the amount of expenditures under title XVIII of the Social Security Act is equal to the amount of expenditures that would have been made under such title if this subsection had not been enacted, as estimated by the Secretary.

SA 3150. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, strike line 23 and insert the following: ''plan. When establishing geographically adjusted premium rates under the preceding sentence, the Secretary shall not take into account direct graduate medical education payments, Medicare disproportionate share payments, and health information technology funding under the American Recovery and Reinvestment Act of 2009.''.

SA 3151. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 201, between lines 6 and 7, insert the following:

SEC. 1325. PROHIBITION ON FEDERAL BAILOUT OF A CO-OP PLAN OR A COMMUNITY HEALTH INSURANCE OPTION.

(a) PROHIBITION.—Notwithstanding any provision of (or amendment made by) this Act, no Federal funds shall paid to, or used to support the operation of (including ensuring the solvency of), a qualified health plan offered under the Consumer Operated and Oriented Plan (CO-OP) program under section 1322 or a community health insurance option under section 1323.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) loans and grants under section 1322(b) or loans or payments under section 1323(c); or

(2) any premium tax credit under section 36B of the Internal Revenue Code of 1986 or any cost-sharing reduction under section 1402, or any advance payment of either, with respect to an individual enrolled in a plan or option described in subsection (a).

SA 3152. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—MEDICAL CARE ACCESS PROTECTION

SEC. _1. SHORT TITLE.

This title may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. _2. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment

for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. _3. INCREASED FMAP FOR MEDICAL LIABILITY REFORM.

With respect to fiscal years 2011 and 2012, the Secretary of Health and Human Services shall increase by an amount equal to 2 percent of the total amount of Federal payments estimated to be made to a State under section 1903(a)(1) of the Social Security Act (42 U.S.C. 1396b(a)(1)) for providing medical assistance for children under the State Medicaid program during the fiscal year if the Secretary determines that the State has enacted a law that substantially complies with this title.

SEC. _4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. _5. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. __6. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. __7. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. __8. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. __9. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. __10. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under

this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. _11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section _5(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. _12. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3153. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 16 and 17, insert the following:

''(g) LIMITATION.—This section shall not apply to an individual for a taxable year if such individual—

''(1) in under 30 years of age when such year begins; or

''(2) has a modified gross income that does not exceed $30,000 for such year.''.

SA 3154. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2034, strike lines 8 through 15.

SA 3155. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 201, between lines 6 and 7, insert the following:

SEC. 1325. ANNUAL AUDITS.

(a) IN GENERAL.—The Secretary shall enter into contracts with one or more private accounting firms for the conduct of annual audits of the CO-OP program under section 1322 and the community health insurance option program under section 1323. SUch contracts shall require that such firms submit annual reports to the Secretary concerning the results of such audits.

(b) INCLUSION IN MEDICARE TRUSTEES REPORT.—Sections 1817(b) and 1841(b) of the Social Security Act (42 U.S.C. 1395i(b); 1395t(b)) are each amended by inserting at the end the following new sentence: ''Each report submitted under paragraph (2) (beginning with the report for 2014) shall include a description of the results of the audits conducted under section 1325(a) of the Patient Protection and Affordable Care Act for the year involved.''.

SA 3156. Mr. LAUTENBERG (for himself, Mr. CARPER, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE X—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 10001. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2009''.

SEC. 10002. 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. 10003. 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. 10004. 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 10003, 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 10004(e) of the Pharmaceutical Market Access and Drug Safety Act of 2009, 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. 10005. 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 10004, 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. 10006. 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 10004.

(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. 10007. 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. 10008. 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. 10009. 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. 10010. 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 affected thereby.

SEC. 10011. CERTIFICATION.

(a) IN GENERAL.—This title (other than this section), and the amendments made by this title, shall become effective only if the Secretary of Health and Human Services certifies to Congress that the implementation of this title, and the amendments made by this title, will—

(1) pose no additional risk to the public's health and safety; and

(2) result in a significant reduction in the cost of covered products to the American consumer.

(b) EFFECTIVE DATE.—Notwithstanding any other provision of this title, or of any amendment made by this title—

(1) any reference in this title, or in such amendments, to the date of enactment of this title shall be deemed to be a reference to the date of the certification under subsection (a); and

(2) each reference to ''January 1, 2012'' in section 10006(c) shall be substituted with ''90 days after the effective date of this title''.

SA 3157. Mrs. SHAHEEN (for herself, and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1703, between lines 4 and 5, insert the following:

SEC. 6303. IMPROVEMENTS TO COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.

Section 1181 of the Social Security Act (as added by section 6301) is amended—

(1) in subsection (d)(2)(B)—

(A) in clause (ii)(IV)—

(i) by inserting '', as described in subparagraph (A)(ii),'' after ''original research''; and

(ii) by inserting '', as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate'' after ''publication''; and

(B) by amending clause (iv) to read as follows:

''(iv) SUBSEQUENT USE OF THE DATA.—The Institute shall not allow the subsequent use of data from original research in work-for-hire contracts with individuals, entities, or instrumentalities that have a financial interest in the results, unless approved under a data use agreement with the Institute.'';

(2) in subsection (d)(8)(A)(iv), by striking ''not be construed as mandates for'' and inserting ''do not include''; and

(3) in subsection (f)(1)(C), by amending clause (ii) to read as follows:

''(ii) 5 members representing physicians and providers, including 3 members representing physicians (at least 1 of whom is a surgeon), 1 of whom is either a nurse or a State-licensed integrative health care practitioner, and 1 of whom is a representative of a hospital.''.

SA 3158. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE__—PROVIDING TAX EQUITY

Subtitle A—Use of Health Savings Accounts for Non-Group High Deductible Health Plan Premiums

SEC. __001. USE OF HEALTH SAVINGS ACCOUNTS FOR NON-GROUP HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS.

(a) IN GENERAL.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

Subtitle B—Medical Care Access Protection

SEC. __101. SHORT TITLE.

This subtitle may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. __102. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. __103. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any

person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. _104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. _105. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that

party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. __106. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. __107. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. __108. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. __109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

SEC. __110. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act

establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. __111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section __105(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. __112. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3159. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE K__—HSA CONTRIBUTION LIMIT

Subtitle A—Increase in HSA Contribution Limit

SEC. __001. INCREASE IN LIMIT FOR HSA CONTRIBUTIONS TO EQUAL MAXIMUM HIGH DEDUCTIBLE HEALTH PLAN OUT-OF-POCKET LIMIT.

(a) IN GENERAL.—Section 223(b)(2) of the Internal Revenue Code of 1986 (relating to exceptions) is amended—

(1) by striking ''$2,250'' in subparagraph (A) and inserting ''the dollar amount specified under subsection (c)(2)(A)(ii)(I) for such taxable year'', and

(2) by striking ''$4,500'' in subparagraph (B) and inserting ''the dollar amount specified under subsection (c)(2)(A)(ii)(II) for such taxable year''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after the date of the enactment of this Act.

Subtitle B—Medical Care Access Protection

SEC. __101. SHORT TITLE.

This subtitle may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. __102. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. __103. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of

society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. __104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. __105. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting

for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. __106. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. __107. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. __108. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. __109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

SEC. __110. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law

under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. __111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section __105(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. __112. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3160. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title IV, insert the following:

SEC. 4208. INTERAGENCY TASK FORCE TO ASSESS AND IMPROVE ACCESS TO HEALTH CARE IN THE STATE OF ALASKA.

(a) ESTABLISHMENT.—There is established a task force to be known as the ''Interagency Access to Health Care in Alaska Task Force'' (referred to in this section as the ''Task Force'').

(b) DUTIES.—The Task Force shall—

(1) assess access to health care for beneficiaries of Federal health care systems in Alaska; and

(2) develop a strategy for the Federal Government to improve delivery of health care to Federal beneficiaries in the State of Alaska.

(c) MEMBERSHIP.—The Task Force shall be comprised of Federal members who shall be appointed, not later than 45 days after the date of enactment of this Act, as follows:

(1) The Secretary of Health and Human Services shall appoint one representative of each of the following:

(A) The Department of Health and Human Services.

(B) The Centers for Medicare and Medicaid Services.

(C) The Indian Health Service.

(2) The Secretary of Defense shall appoint one representative of the TRICARE Management Activity.

(3) The Secretary of the Army shall appoint one representative of the Army Medical Department.

(4) The Secretary of the Air Force shall appoint one representative of the Air Force, from among officers at the Air Force performing medical service functions.

(5) The Secretary of Veterans Affairs shall appoint one representative of each of the following:

(A) The Department of Veterans Affairs.

(B) The Veterans Health Administration.

(6) The Secretary of Homeland Security shall appoint one representative of the United States Coast Guard.

(d) CHAIRPERSON.—One chairperson of the Task Force shall be appointed by the Secretary at the time of appointment of members under subsection (c), selected from among the members appointed under paragraph (1).

(e) MEETINGS.—The Task Force shall meet at the call of the chairperson.

(f) REPORT.—Not later than 180 days after the date of enactment of this Act, the Task Force shall submit to Congress a report detailing the activities of the Task Force and containing the findings, strategies, recommendations, policies, and initiatives developed pursuant to the duty described in subsection (b)(2). In preparing such report, the Task Force shall consider completed and ongoing efforts by Federal agencies to improve access to health care in the State of Alaska.

(g) TERMINATION.—The Task Force shall be terminated on the date of submission of the report described in subsection (f).

SA 3161. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, between lines 19 and 20, insert the following:

(3) INCLUSION OF HIGH DEDUCTIBLE HEALTH PLANS IN CERTAIN STATES.—

(A) IN GENERAL.—If a State is described in subparagraph (B) with respect to health plans offered in the individual or small group market, then, on and after the certification date—

(i) a health plan described in subparagraph (C) shall be treated as a qualified health plan under this section, and as minimum essential coverage under section 5000A of such Code, for purposes of this Act and the amendments made by this Act; and

(ii) no requirement imposed by any provision of, or any amendment made by, this Act shall apply with respect to such plan or issuer thereof.

(B) STATE DESCRIBED.—For purposes of this paragraph—

(i) IN GENERAL.—A State is described in this subparagraph with respect to the individual or small group market within the State if the applicable State authority determines for any calendar year after 2013 that the percentage increase in average annual premiums for health insurance coverage in such market for the calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(ii) CERTIFICATION DATE.—The term ''certification date'' means the first date on which the applicable State authority certifies a determination described in clause (i).

(iii) APPLICABLE STATE AUTHORITY.—The term ''applicable State authority'' has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

(C) HIGH DEDUCTIBLE HEALTH PLAN.—A health plan is described in this subparagraph if the plan is a high deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986) that meets all requirements under such section to be offered in connection with a health savings account.

SA 3162. Mr. SPECTER (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1925, between lines 14 and 15, insert the following:

Subtitle C—Provisions Relating to the Safety of Drugs and Biological Products

SEC. 7201. ENSURING THE SAFETY OF DRUGS AND BIOLOGICAL PRODUCTS CONTAINING BLOOD, BLOOD COMPONENTS, AND BLOOD DERIVATIVES.

Section 351 of the Public Health Service Act (42 U.S.C. 262), as amended by section 7002, is further amended by adding at the end the following:

''(m) BLOOD, BLOOD COMPONENTS, AND BLOOD DERIVATIVES.—

''(1) REGULATION AND LICENSURE.—The Secretary shall issue regulations that—

''(A) require a person seeking approval of any drug or licensure of a biological product that contains blood, blood components, or blood derivatives to—

''(i) submit an application for licensure pursuant to this section; and

''(ii) demonstrate the clinical safety, purity, and potency of such drug or product; and

''(B) provide analytical methods and standards to evaluate the quality of the blood, blood components, or blood derivatives contained in the new drug or biological product throughout the manufacturing process.

''(2) BIOLOGICAL PRODUCTS AND DRUG PRODUCTS CONTAINING BLOOD, BLOOD COMPONENTS, OR BLOOD DERIVATIVES.—A drug or biological product described in paragraph (1) that contains blood, blood components, or blood derivatives shall include any drug or biological product that includes an active or inactive ingredient that—

''(A) contains blood, blood components, or blood derivatives and has the potential to—

''(i) transmit infectious agents, such as of a prion or a microbial origin; or

''(ii) cause an adverse immune reaction due to the presence of blood, blood components, or blood derivatives; and

''(B) is—

''(i) essential to the manufacture of the drug or product;

''(ii) determinate of the absorption and distribution of the drug or product when administered; and

''(iii) essential to the safety and efficacy of the drug or product.

''(3) OTHER PRODUCTS CONTAINING BLOOD, BLOOD PRODUCTS, OR BLOOD DERIVATIVES.—In addition to the drugs and biological products that meet the criteria described in paragraph (2), the Secretary may issue regulations to include other products containing blood, blood products, or blood derivatives as biological products subject to paragraph (1).

''(4) CONSISTENCY OF DEFINITIONS.—Notwithstanding any other provision of this Act or the Federal Food, Drug, and Cosmetic Act, after the date of enactment of the Patient Protection and Affordable Care Act, a drug or biological product that has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act and that meets the criteria described in paragraph (2) shall be treated by the Secretary as a biological product approved under a biologics license application under this section.''.

SA 3163. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 869, between lines 14 and 15, insert the following:

SEC. 3143. REVISION TO PAYMENT FOR CONSULTATION CODES.

(a) TEMPORARY DELAY OF ELIMINATION OF PAYMENT FOR CONSULTATION CODES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not, prior to January 1, 2011, implement any provision contained in a final rule that eliminates or discontinues payment for consultation codes under the physician fee schedule and part B of title XVIII of the Social Security Act.

(b) EVALUATION PERIOD.—During the period prior to January 1, 2011, the Secretary of Health and Human Services shall consult with the Current Procedural Terminology Editorial Panel of the American Medical Association for the purpose of developing proposals to—

(1) modify existing consultation codes or establish new consultation codes to more accurately reflect the value provided through such consultation services; and

(2) minimize coding errors.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development, be authorized to meet during the session on the Senate on December 10, 2009 at 9:30 a.m., to conduct a hearing entitled ''Examining the Federal Role in Overseeing the Safety of Public Transportation Systems.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on December 10, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BAUCUS. 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 December 10, 2009, at 9:30 a.m. in room 406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. BAUCUS. 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 on December 10, 2009.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. BAUCUS. 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 December 10, 2009, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on December 10, 2009, 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.

AD HOC SUBCOMMITTEE ON DISASTER RECOVERY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 10, 2009, at 2:30 p.m. to conduct a hearing entitled, ''Children and Disasters: A Progress Report on Addressing Needs.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 10, 2009, at 2:30 p.m.

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

SUBCOMMITTEE ON AVIATION OPERATIONS, SAFETY, AND SECURITY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Subcommittee on Aviation Operations, Safety, and Security of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m. in room 253 of the Russell Senate Office Building.

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

PRIVILEGES OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following staff of the Finance Committee be permitted the privileges of the floor during debate on the health care bill: Angela Franklin, Kaitlin Guarascio, and Scott Allen.

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

EXTENSION OF AUTHORITY OF THE SECRETARY OF THE ARMY

Mr. DURBIN. Mr. President, I ask unanimous consent to proceed to the immediate consideration of H.R. 4165, which was received from the House.

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

The bill clerk read as follows:

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

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

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 4165) was ordered to a third reading, was read the third time, and passed.

EXTENDING AIRPORT AND AIRWAY TRUST FUND AUTHORITY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4217, which was received from the House.

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

The bill clerk read as follows:

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

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

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 4217) was ordered to a third reading, was read the third time, and passed.

NO SOCIAL SECURITY BENEFITS FOR PRISONERS ACT OF 2009

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4218, which was received from the House and is at the desk.

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

The bill clerk read as follows:

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

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

Mr. BAUCUS. Mr. President, I urge the Senate to pass by unanimous consent the ''No Social Security Benefits for Prisoners Act of 2009,'' which was recently passed by the House of Representatives.

This bill would prevent retroactive Social Security and Supplemental Security Income benefit payments from being issued to individuals while they are in prison, or in violation of conditions of parole or probation, or are fleeing to avoid prosecution for a felony or a crime punishable by sentence of more than one year.

Under current law, the Social Security Act already prohibits payment of current monthly benefits to such individuals. This bill ensures this prohibition applies to retroactive benefit payments as well. The bill allows any payments that are withheld to be paid once the person is no longer in prison, or in violation of conditions of parole or probation, or are fleeing to avoid prosecution.

This bill makes a common sense reform to the Social Security Act and I urge my colleagues to support the bill.

I thank my colleagues for their support.

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to the matter be printed in the RECORD.

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

The bill (H.R. 4218) was ordered to a third reading, was read the third time, and passed.

ORDERS FOR FRIDAY, DECEMBER 11, 2009

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Friday, December 11; that follow the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each, with Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

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

PROGRAM

Mr. DURBIN. Mr. President, the majority leader came to the floor this evening and asked for permission to move to four pending amendments on the health care bill and it was not given. The Republican leader objected. We are hoping to renew that unanimous consent request tomorrow so we can wrap up the Omnibus appropriations bill and move quickly back to debate on the health care bill. I am hoping we can do that, in the interests of moving through some of the important amendments now pending.

We expect two votes tomorrow on motions to waive points of order with respect to the consolidated appropriations conference report. Those votes should require 60 affirmative votes. Senators will be notified when votes are scheduled. Senators should also be prepared for votes Saturday morning.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DURBIN. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 8:04 p.m., adjourned until Friday, December 11, 2009, at 10 a.m.

EXTENSIONS OF REMARKS

TRIBUTE TO SAM SIMMERMAKER

HON. MIKE PENCE
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. PENCE. Madam Speaker, I rise today to celebrate the long and distinguished career of one of my heroes in broadcasting, Sam Simmermaker.

For fifty years, Sam Simmermaker has been a fixture on the airwaves of WCSI/WKKG in my hometown of Columbus, Indiana. As the ''Voice of High School Sports'', Sam has amassed an extraordinary career over the last half century that deserves to be commemorated on the floor of the People's House.

Both graduates of Indiana University in Bloomington, Sam and his beloved wife Fran came to Columbus in December of 1959 for what they thought would be a brief stop on their way to St. Louis. Sam was and still is a diehard Cardinals fan and it was his dream to become the radio voice of that baseball team.

Thankfully, the Simmermakers never left our community in Eastern Indiana and on January 1, 2010, Sam will celebrate fifty years in broadcasting on WCSI.

The list of awards and recognitions that Sam Simmermaker has received is long and distinguished. In 1976 and 1997, Sam was chosen as the National Sportscasters and Sportswriters ''Sportscaster of the Year.''

He was inducted into the Indiana Sportswriters and Sportscasters Hall of Fame in 1998 and the Indiana Broadcast Association Hall of Fame a decade later.

One of the biggest awards that Sam Simmermaker received was his induction into the Indiana Basketball Hall of Fame. In 2006, he joined the long list of legendary Hoosier basketball players and coaches as a St. Vincent Silver Medal Award winner.

Columbus High School basketball fans know him as the familiar voice of the Bull Dogs who for decades has brought a unique yet consistent style to a game that has evolved tremendously during his decades of service.

Listeners and fans alike can identify Sam by his trademark call—''Holy Cow!''—during his play-by-play call of local high school basketball, football and baseball games.

Aside from his professional role, Sam continues to be an active citizen in the community. He serves as a board member of the Columbus Fire Department's Cheer Fund and is a member of the First Christian Church.

Still an athlete, Sam can still be found playing first base in the Columbus Parks and Recreation Department's Old-Timer Slow Pitch Softball League.

Sam's long career has spanned many games over the last fifty years, but more importantly, it is a testament to his dedication to his community, friends and family.

Sam Simmermaker has become an icon in Columbus, Indiana and across its airwaves. To me, he will forever be a dear friend and mentor.

HONORING MR. EDGAR H. LANCASTER, JR.

HON. RODNEY ALEXANDER
OF LOUISIANA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ALEXANDER. Madam Speaker, I rise today in honor and remembrance of the life and achievements of Edgar H. Lancaster, Jr., who died on October 12, 2009, at the age of 91.

Lancaster was a graduate of Tallulah High School, Louisiana Tech University, and Louisiana State University School of Law. He proudly served his country in the U.S. Army during World War II. Following his discharge, he returned to Louisiana to pursue his law degree, in which he actively practiced from 1948 until the time of his death.

Lancaster served in the Louisiana House of Representatives from 1952 to 1968, where he continued his service to his community and state. In this capacity, he also served as Chairman of the House Judiciary Committee and Speaker Pro Tempore.

Among his impressive list of endeavors, Lancaster also was an organizer of Southern National Bank at Tallulah, where he served on its Board of Directors, in addition to working as the bank's attorney.

For his remarkable life's work, Lancaster received numerous awards and distinctions. In 1986, the Louisiana Bar Foundation named him Attorney of the Year, and he was inducted into the LSU Law School Hall of Fame in 1987. He was appointed by the Louisiana Supreme Court as the 6th Judicial District Judge Pro Tempore from 1992 to 1993, and served on the Louisiana Law Institute for over 50 years, also acting as past president and chairman emeritus of the Institute. Moreover, Lancaster was very involved in the Louisiana State Bar Association, where he served on both the Board of Governors and the Attorney Ethics Commission.

A devoted husband and father, Lancaster is survived by his lovely wife of sixty-five years, Beverly Vedros Lancaster, and their three children. They are also the proud grandparents to three grandsons.

A man of many dimensions, Lancaster was an avid golfer and an unofficial historian in his spare time.

It is my pleasure to honor the late Edgar H. Lancaster, a man who served the people of Madison Parish as well as the state of Louisiana for many years. His commitment, hard work and leadership warrant this laudable recognition.

HONORING 373RD ANNIVERSARY OF THE NATIONAL GUARD

SPEECH OF
HON. LAURA RICHARDSON
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Monday, December 7, 2009

Ms. RICHARDSON. Mr. Speaker, I rise today in strong support of House Resolution 940, a resolution recognizing and honoring the National Guard on the occasion of its 373rd anniversary. The National Guard has a rich and vital history of protecting our Nation, and I am proud to support this resolution honoring them.

I would like to thank Congressman LATTA for authoring this important resolution, and House Majority Leader STENY HOYER and Speaker NANCY PELOSI for their skill and leadership in bringing it to the floor.

Mr. Speaker, since the attacks on September 11, 2001, hundreds of thousands of members of the Army and Air National Guard have been called upon by their States and the Federal Government to provide security at home and combat terrorism abroad. As a conferee on H.R. 2647, the National Defense Authorization Act for Fiscal Year 2010, I was proud to support the provision of $200 million to support National Guard and Reserve military construction projects. The men and women of the National Guard make so many sacrifices to keep our Nation and its people safe, and we need to make sure they have the support and funding to perform their duties. This resolution recognizes and honors those sacrifices.

In conclusion, Mr. Speaker, I support this resolution thanking the members of the National Guard for their service and continued support, as well as expressing condolences and gratitude to the families of members of the National Guard who have lost their lives. I am proud to honor and support the compassionate, courageous, and dedicated members of the National Guard who serve a critical role in protecting the United States and its citizens' freedoms and treasured liberties.

Mr. Speaker, I urge my colleagues to join me in supporting H. Res. 940.

RECOGNIZING THE BLUEWATER ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD

HON. HARRY TEAGUE
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. TEAGUE. Madam Speaker, I want to congratulate Bluewater Elementary School in Bluewater, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Bluewater Elementary School is serving its students well and helping them make strides forward in their academic careers.

Schools like Bluewater Elementary achieve such great distinctions because of the hard work and dedication of the teachers, staff, and administration. Their students also deserve to be commended for fully taking advantage of all of the opportunities provided to them by their exceptional staff. Bluewater Elementary School is a model for the progress other schools throughout the nation should strive to achieve.

I am honored to have Blue Ribbon Schools like Bluewater Elementary School in my district. I commend their achievement and wish them luck in the continuing their academic achievement.

HONORING MIKE NURY

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Mike Nury upon being honored with the ''Lifetime Achievement Award'' at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California on Friday, November 20, 2009.

Mr. Mike Nury came to the United States in November 1945 to attend American International University in Springfield, Massachusetts. In 1946 he was drafted into the United States Army and served during the Korean War. Upon completion of his military career, he arrived in California and attended the University of California, Berkley. He later transferred to the University of California, Davis where he earned a bachelor of science and master of science degree in food science in 1952. In 1953, Mr. Nury started his career with Vie-Del Company, a Fresno, California based winery, as a research chemist. His role at the winery had a tremendous impact on the company, as well as the industry as a whole. He played a major role in developing an improved method of concentrating grape flavors by adjusting the temperature and time used to concentrate the grapes. The outcomes were significant. The new concentrate had no ethanol, which was important for those unable to metabolize ethanol, thus eliminating ethanol taxes on the original concentrate. It also weighed less, reducing shipping costs, and the new concentrate made it possible to add wine flavor to more products.

In 1972, Mr. Nury was named President of the Vie-Del, and in 1990 the Nury family purchased the controlling interest in Vie-Del from Joseph E. Seagram & Sons. Since then, the company has continued to grow, producing millions of gallons of concentrate per year. Mr. Nury has served as president and owner, and after his semi-retirement, he served as chairman of the board. His family has also taken an interest in the wine industry. Two of his three daughters, Dianne and Roxanne, have spent many years with the company and his brother, Fred, taught Enology at California State University, Fresno and later worked for Seagram in the Bay Area. Mr. Nury is only one of three winemakers to have served as president of the Wine Institute and the American Society of Enology and Viticulture. He has also played an active role with the Fresno Rotary for over thirty-five years, served as a member of the Fresno Community Hospital Foundation Board and Chairman of the Finance Committee.

Madam Speaker, I rise today to commend and congratulate Mike Nury upon being honored with the ''Lifetime Achievement Award.'' I invite my colleagues to join me in wishing Mr. Nury many years of continued success.

OPPOSITION TO THE STUPAK AMENDMENT

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. SLAUGHTER. Madam Speaker, I have witnessed the horror of the choice between a back alley abortion and a forced marriage to avoid disgrace. These were the realities women faced prior to 1973. My fear is that if this harmful Stupak/Pitts language is signed into law, we will revert back to those dark times.

Until now, for over 30 years we lived in this House in peaceful coexistence, the pros and the cons getting together on the fact that the Hyde amendment said no federal money can be spent. We on our side simply had the law.

Critical to this debate is to break down the facts. The opposition claims that the Stupak/Pitts Amendment codifies current law. This is grossly incorrect.

Stupak-Pitts goes far beyond current law by placing unprecedented restrictions on individuals' use of their own private dollars. The Hyde Amendment does not apply to private funding nor does it apply to administrative costs. It has only placed limits on direct federal appropriations being used to fund abortion benefits. The Stupak Amendment expands the Hyde prohibitions on the use of Federal funds for an abortion benefit to include ''any part of the costs of any health plan that includes coverage of abortion.''

The Hyde Amendment does not include similar, far-reaching language. Seventeen States currently provide abortion coverage in Medicaid with separate State funding.

The opposition claims that this amendment will not change current insurance plans for women. This is blatantly wrong.

A report by health policy experts at the George Washington University School of Public Health concludes that the Stupak Amendment ''will have an industry-wide effect, eliminating coverage of medically indicated abortions over time for all women, not only those whose coverage is derived through a health insurance exchange.''

The opposition claims that the segregation of funding under the House bill is an accounting sham. This is blatantly false.

In the Capps Amendment, the segregation of funding piece is based on the current model the Federal Government uses to pay for abortions currently permitted in Medicaid. States are permitted to use their own funding to provide additional abortion coverage under Medicaid.

For me, and for many of my colleagues, it means 30 or 40 years of our life is being cancelled out with this amendment.

I am afraid that we are driving young women, poor women, all women of child-bearing age back to the back alley, and I dread to see that day.

COMMENDING RAPIDES PARISH SCHOOL SUPERINTENDENT, GARY JONES

HON. RODNEY ALEXANDER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ALEXANDER. Madam Speaker, I rise today with pride to commend Rapides Parish School District Superintendent, Gary Jones, for his contributions to local education, specifically his plans to launch Aiken cyberacademy this spring, which will revolutionize learning options available to our students.

This virtual academy is modeled similarly to an online charter school in that it will be interactive and self-paced. Since students will be registered in the district system, Aiken will differ from online charter schools since students will be able to take other courses, as well as join extracurricular activities by attending a regular school.

As our nation's educators continue to look for ways to improve and strengthen education in our country, I believe this is an innovative alternative for students who have not thrived in the traditional classroom. In addition, this plan will provide more choices for homeschooled children.

To keep our communities on the cutting edge of educational advancements, I am proud of Gary Jones for ensuring such a creative option is available to help prepare our students. Please join me in honoring him for his work on behalf of our young students.

PROTECT REPRODUCTIVE RIGHTS IN HEALTH CARE REFORM

HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. DEGETTE. Madam Speaker, we came to work this year to deliver affordable, high-quality health care to all Americans. Instead of offering the possibility of health care to all Americans, some want to deny essential health care—reproductive health care—to women.

For politicians to intrude on a woman or couple's most personal and painful decisions is cynical and wrong. Nobody in America has the right to use government to impose their religious beliefs on someone else. Yet the Stupak-Pitts amendment would do just that.

The Stupak-Pitts amendment adopted by this House does not—does not—preserve the status quo on abortion. The Stupak-Pitts amendment tells millions of middle-class

Americans that they cannot use their own money to purchase private health insurance to cover legal medical procedures. This is an unprecedented and dramatic departure from current law.

Not long ago, Supreme Court Justice Ruth Bader Ginsburg observed that reproductive rights "center on a woman's autonomy to determine her life's course." Trading away those rights for limited access to health care is a devil's bargain that we will not make.

I urge my colleagues to act—to support women's access to a full range of reproductive health services, and to bring health care to all Americans.

HONORING JOSEPH TORCHIA

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Joseph Torchia, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Joseph has been very active with his troop participating in many scout activities. Over the many years Joseph has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Joseph Torchia for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

CONGRATULATING PRESIDENT AND MRS. GORDON MOULTON ON THE OCCASION OF THE NAMING OF THE USA BELL TOWER IN THEIR HONOR

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BONNER. Madam Speaker, I am pleased to offer congratulations to University of South Alabama President Gordon Moulton and his wife, Geri, whose efforts in support of the University are being permanently heralded by the naming of the new campus bell tower in their honor.

On September 18, 2009, the University of South Alabama Board of Trustees officially announced that the school's new bell tower will be dedicated "in honor of 'the exceptional service' of President Gordon Moulton and his wife, Geri."

When the 135-foot structure is completed in December, it will be the "premier landmark and the enduring symbol of spirit of the University of South Alabama," the board said. The impressive tower with four large bronze bells will also serve as a monument honoring alumni who are providing support for the project.

Madam Speaker, Gordon and Geri are deserving of such a lasting recognition. President Moulton has not only been the helmsman of the University since 1998—overseeing milestones in student enrollment and graduation, enhancement of campus life, and greater involvement of faculty and students in the community—he has also had a direct role in the establishment of the Mitchell Cancer Institute.

The University of South Alabama has also seen the benefit of his support of the University's Technology and Research Park and the Children's and Women's Hospital, to name a few.

President and Mrs. Moulton are well known for their advocacy of local causes important to the community. Geri was also honored in 2009 with the dedication of the Geri Moulton Children's Park.

I wish to extend my congratulations and appreciation to both President and Mrs. Moulton and look forward to their continued beneficial leadership of the University of South Alabama.

MAKE NO COMMITMENTS AT COPENHAGEN

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. WHITFIELD. Madam Speaker, I rise today in response to President Obama's expected commitment to the world at the Copenhagen climate change discussion for the United States to reduce carbon emissions by 17 percent by 2020.

It is simply ludicrous to think that we can reduce carbon emissions by 17 percent by 2020 without wrecking our economy. I am also concerned about the Administration's so-called endangerment finding to regulate carbon emissions under the Clean Air Act. This is a disastrous move forward to regulate carbon under a law that was clearly not intended to regulate carbon emissions. In many cases, it is not required under this law to take into consideration the impact on the economy, which poses enormous problems. Going further on the science of climate change, in light of the emails that show that scientists have been suppressing information about the scientific proof of climate change, I believe that it is even more important that we take a step back and ensure that we understand the impact of carbon emissions.

The trick that scientists have been using to make the data work has been reported as being called, "trick and hide." It seems, Madam Speaker, that not only are the scientists "tricking and hiding" the American people on the science of climate changes, but the Democratic Majority is "tricking and hiding" the truth about the cap and trade bill. The truth about the cap and trade bill is that this bill will increase electricity rates in some states, like Kentucky, as much as 40 percent. Additionally, the cap and trade bill is nothing more than a hidden tax on the American people. I might add that I am not against reducing carbon emissions as I have cosponsored and helped move the Carbon Capture and Sequestration legislation that was sponsored by Congressman BOUCHER and others.

It is important that we develop this technology before enacting any regulatory regime to dramatically reduce carbon emissions. These efforts are essential in keeping electricity rates low. However, I am against the President making a commitment that we cannot meet and that China and India will not match. I am also against the Administration's movement to regulate carbon through the Clean Air Act.

We must take a step back and study the science on this issue to make certain we get this right and I call on the Administration to do just that. I call on my colleagues to speak up about negative impacts of the "trick and hide" bill and urge the Administration not to make any commitments at Copenhagen.

HONORING VFW POST 8946 IN WOODCLIFF LAKE, NEW JERSEY

HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GARRETT of New Jersey. Madam Speaker, today I rise to honor the work of VFW Post 8946 in Woodcliff Lake, New Jersey for their selfless and inspiring deeds towards their fellow citizens. For the past few years this group of extraordinary individuals has been traveling to the Walter Reed Medical Center in Washington DC as well as the Walter Reed National Military Medical Center in Bethesda, Maryland. During their trips the members of the Post have spent time with wounded veterans and their families. They have brought items such as clothing, CD players, electric shavers and even a large TV for the Recreation Room.

After one of their more recent visits to Walter Reed Medical Center in Washington, William Huston, a member of the Post, told a local reporter that, "these young men have a remarkable attitude, we cannot properly express the admiration we have for them." It is this sense of genuine commitment towards helping those who have given so much to our nation that makes this Post unique in many ways.

As I reflect on the deeds they have done I cannot help but be reminded of the enduring words from President Abraham Lincoln's second inaugural address. Lincoln challenged his fellow Americans to "care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." The men of this Post are a living testament to these words.

I want to once again thank this group of exceptional men for their service towards their fellow citizens. I am proud to represent such a fine group of people in the United States House of Representatives and I would like to recognize individually: William Huston, Gerard DeCicco, Joseph M. Poggi, Faust Faustini, Ray Johns, Peter Mauro, James Horris, Edward Powers, Sergei Leoniuk, Edward Halvey, George Kritzler, Fredrick Singer, and Robery Schmitt.

RECOGNIZING MORRILL WORCESTER FOR HIS WORK IN HONORING OUR NATION'S FALLEN

HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. HUNTER. Madam Speaker, today I rise in recognition of Mr. Morrill Worcester of Harrington, Maine. Morrill is President of the Worcester Wreath Company, and he and his company have provided Christmas wreaths for Arlington National Cemetery since 1992.

Morrill Worcester's story begins in 1962 when at the age of 12 he won a trip to Washington, DC, from his local paper. After visiting Arlington National Cemetery, he was awestruck by the enormity of the cemetery and its perfectly aligned rows of headstones representing the thousands who have died in service to this country. The powerful imagery of Arlington left a lasting impression on Morrill, one that would stay with him long after he began his business selling Christmas wreaths.

In 1992, the Worcester Wreath Company had an overstock of Christmas wreaths. Unwilling to simply throw the extra wreaths away, and with the image of Arlington still a treasured memory, Morrill was inspired. With the help of volunteers, he spent 6 hours in the rain placing a wreath at each headstone. For 18 years, Morrill has taken time out of his busiest season to deliver handmade wreaths to Arlington National Cemetery and lead volunteers in laying them on the headstones.

When word of his efforts spread around the Internet, hundreds more Americans from across the country began to ask how they could get involved and show their respect for our fallen. Morrill soon expanded the project into Wreaths Across America, allowing anyone to donate a wreath to honor the fallen. As a result, Wreaths Across America have laid over 100,000 wreaths at numerous national cemeteries. Congress has recognized his work by declaring December 13, 2008 as ''Wreaths Across America Day.''

Madam Speaker, this gentleman's dedication and actions directly reflect his selfless resolve to honor and remember our Nation's fallen. Individuals like Morrill and the volunteers of Wreaths Across America embody the great respect that we as a nation have for those who have died defending our freedom. On the second Saturday of December this year, and hopefully for many more Decembers to come, Morrill will be at Arlington National Cemetery in solemn remembrance to lay more wreaths.

Mr. Morrill Worcester, thank you for remembering those who have given so much for our freedom, and thank you for sharing your passion to honor these brave men and women with the American people.

HONORING NORWICH UNIVERSITY AND ITS INAUGURAL DAY OF SERVICE

HON. PETER WELCH

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. WELCH. Madam Speaker, I rise today to acknowledge Norwich University and its inaugural Day of Service.

Located in the foothills of the Green Mountains in Northfield, Vermont, Norwich University is the oldest private military college in the Nation. The university's founder, Captain Alden Partridge, believed in the importance of service and experiential learning. On November 7, 2009, over 150 alumni, undergraduate and graduate students, staff, and friends of Norwich University exemplified these principles by joining together in the university's inaugural Day of Service. The date was chosen specifically to coincide with Veterans Day, with most of the volunteer opportunities focused on supporting our Nation's veterans and active duty military.

Here in the DC area, dozens of alumni and friends volunteered at Walter Reed Army Medical Center's Fisher Houses, which are nonprofit homes where family members of injured soldiers can stay while their soldier recuperates from injury. Meanwhile, in Philadelphia, Norwich alumni visited with veterans at the local Veterans' Community Living Center and sponsored an afternoon of pizza and bingo. Norwich community volunteers in Massachusetts, New York, and Florida collected hundreds of toys and books to be distributed through the Armed Forces Foundation and Operation Paperback. Elsewhere around the country volunteers assembled care packages that will be sent to Norwich University alumni currently serving in Iraq. In North Carolina, alumni rallied to support Wakefield High School's anti-drunk driving efforts, and in San Antonio over 20 alumni and friends spent the morning volunteering in the fruit and vegetable gardens of the San Antonio Food Bank. In my home State of Vermont, over 50 students and alumni helped with local river cleanup, volunteered at the Vermont Food Bank and Habitat for Humanity, and provided logistical support for the White River Junction Mobile Vet Center.

At a time when so many of the men and women of our armed forces are serving around the globe, the Norwich Day of Service is a praiseworthy example of how those of us at home can volunteer our time to thank our servicemembers and veterans for their sacrifice.

HONORING THE SERVICE OF HUGH S. BRANYON UPON HIS RETIREMENT

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BONNER. Madam Speaker, I rise to honor the exemplary public service of Mr. Hugh S. Branyon who is retiring on December 11, 2009, after 35 years as superintendent of Gulf State Park on Alabama's Gulf Coast.

A native of Fayette in northwest Alabama, Mr. Branyon first came to Baldwin County in 1957 to work at Gulf State Park. His experience along the gulf sparked such a love of the outdoors that he devoted not only his career, but indeed, his life to the service of Alabama's state parks.

Mr. Branyon's labors have spanned a half century and the length of Alabama. After his first job at Gulf State Park, Mr. Branyon traveled upstate to Lake Guntersville State Park, where he rose to acting manager. Over the ensuing years, he traversed the state, heading back for a brief stint at Gulf State Park before being appointed ranger at Auburn's Chewacla State Park. In 1967, he was called to the State capital to become Chief of Operation in Maintenance to all Alabama state parks and fishing lakes. In 1972, Mr. Branyon returned to Baldwin County where he eventually became Superintendent of Gulf State Park and has since served continuously.

Mr. Branyon has always preferred to call his job a way of life. It was his dedication to the mission of preserving our outdoors that led Mr. Branyon to also assume the role of Southwest District Superintendent over five other south Alabama parks: Bladon Springs, Frank Jackson, Chickasaw, Florala and Meaher.

He has shepherded Gulf State Park through 13 named tropical storms and hurricanes. He oversaw the original construction of Gulf State Park's much-used fishing pier in 1967 and its reconstruction, nearly doubling its length. Under his supervision, Gulf State Park has steadily grown to become one of Alabama's most popular state parks.

No stranger to volunteer service in his community and across the state, he has also been active in many local civic clubs and organizations. His selfless service has led to his receipt of the highest awards from Rotary and Lions clubs international.

Mr. Branyon has been more than a park superintendent, but rather a friend, to so many of his employees and those who crossed his path over the decades in Alabama's parks. His devotion to preserving the treasures of Alabama's outdoors will be hard to match. All those who have enjoyed the beauty and splendor of our pristine parks owe Hugh Branyon a debt of thanks.

Mr. Branyon and his wife, Carol Wenzel Branyon, have two daughters and five grandchildren. Upon retirement, Mr. Branyon plans to devote even more time to his beloved outdoors, including fishing with his grandchildren.

I join thousands of Alabamians in wishing Hugh Branyon the best as he enters his well-deserved retirement.

TRIBUTE TO BROTHER BOB BEVINGTON

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. DUNCAN. Madam Speaker, today I wish to pay tribute to a beloved pastor from my District who was one of the most tireless servants of the Lord I have ever known.

I knew Rev. Bob Bevington—affectionately called Brother Bob by all—from the time I was a small boy. He was the advisor to the Christian Student Organization when I was in High School, and I had tremendous admiration and respect for him.

Most especially, I admired his unwavering faith during the passing of both of his sons. The pain of losing two children is unimaginable, but Brother Bob relied on his creator during those dark days and showed us all that God can help us even through terrible and tragic times.

Brother Bob's impact on my District is incalculable. He started the Knoxville Baptist Tabernacle Church in 1951, and his calling to

preach the Word had no limits. The Church continued to grow, and in 1971 Brother Bob launched the Knoxville Baptist Christian School, which is still going strong today.

Knowing that there were more people who needed to hear his message than his pews could hold, Brother Bob also published many newsletters and newspaper columns and launched a radio ministry called the Revival of the Air in 1948. Broadcasts continued right up until his passing.

While eulogizing Brother Bob, the current Pastor of Knoxville Baptist Tabernacle Church, Brother Tony Greene, spoke of Brother Bob's legacy, saying ''From this church have gone hundreds of soul winners, preachers, and missionaries. At this church have preached the mighty voices of the 20th century.''

He continued, ''Just hours before his Homegoing, the Lord allowed Brother Bob the strength to do one final radio broadcast. What a testimony of faithfulness to the end! A life well-lived, to the finish. 'Well done, thou good and faithful servant.' ''

In a recent tribute to Brother Bob, a commentator in the Knoxville News Sentinel appropriately wrote, ''Maybe the words 'good and decent' don't tell the whole story. Brother Bob, you were one exceptional man.''

Madam Speaker, the passing of Brother Bob Bevington is a tremendous loss for my District, his wife Mary Lou, daughter and son-in-law Marilyn and Bob Russell, his grandchildren and great-grandchildren, many other family and friends and the thousands of people devoted to his message of loving the Lord. I want to call his service and faith in God to the attention of my Colleagues and other readers of the RECORD and thank him for showing us all the way to a better life.

HONORING BOB McINTURF

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Bob McInturf upon being honored with the ''Lifetime Achievement Award'' at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California on Friday, November 20, 2009.

Mr. Bob McInturf began farming in Madera and Fresno counties in 1946. For approximately fifty years he has been an integral member of the farming community; promoting farmers and small business owners, and working closely with vineyards around the San Joaquin Valley. Mr. McInturf was one of the original incorporators of Allied Grape Growers and served as President from 1956 through 1987. He has also served on the board of directors for Sun Maid Raisin Growers, the Agricultural Council of California, the National Council of Farm Cooperatives, the California Association of Winegrape Growers and the San Joaquin Valley Winegrowers Association. Mr. McInturf is the past chairman of the Agricultural Advisory Committee for the University of California.

Mr. McInturf has worked on many boards and committees representing the grape and agricultural industry on the local, state, national and international arenas. For many years he was involved with the marketing order of grapes for crushing and served as chairman of the Specialty Crop Committee for Trade Negotiations with the European Community Market.

Mr. McInturf and his wife, Rosalie, had lived in Fresno most of their lives. After Mr. McInturf retired they moved to Roseville, California. They have two children, Cindy and Stan. Mr. McInturf has been involved with his church and many church activities throughout his life.

Madam Speaker, I rise today to commend and congratulate Bob McInturf upon being honored with the ''Lifetime Achievement Award.'' I invite my colleagues to join me in wishing Mr. McInturf many years of continued success.

TRIBUTE TO FORMER ALABAMA STATE SENATOR PIERRE PELHAM

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BONNER. Madam Speaker, last week, Alabama lost one of its luminaries—a gifted public servant who will be remembered not only for his articulate and persuasive oratory, but also for his many contributions to our region.

Former State Senator Pierre Pelham of Mobile passed away on December 3, 2009, at the age of 80.

A native of Chatom, Alabama, Pierre Pelham was a scholar, a patriot, and an astute and skilled politician who was admired by many.

Senator Pelham distinguished himself early in life as a Phi Beta Kappa graduate of the University of Alabama and went on to graduate cum laude from Harvard University Law School.

He served his country during the Korean War, rising to the rank of Lieutenant in the Army. During his military service, he earned the Combat Infantryman and the Expert Infantryman badges.

Back home in Alabama, he developed a passion for public service. He was a delegate to the Democratic National Conventions in 1960 and 1964, laying the groundwork for later public office. From 1966 to 1974, he represented Mobile in the Alabama State Senate. He attained the position of president pro tempore of the Alabama Senate while only in his second term.

During his political career, Senator Pelham is credited with helping to establish the College of Medicine at the University of South Alabama in Mobile. Today, the USA College of Medicine plays a leading role in education and research to save the lives of thousands of Alabamians and others along the Gulf Coast.

A Fellow of Harvard University's Kennedy Institute of Politics, Senator Pelham was widely known for his command of the political craft and the spoken word. He was formidable in his ability to persuade his colleagues during debate.

Senator Pelham was also known for his deep, abiding faith and his lifelong membership and support of the Chatom United Methodist Church.

I rise to extend my condolences to his wife, Eva, and four children, Joseph, Marc, Pier, and Patrice Pelham, and 12 grandchildren.

May his family know that they are in our thoughts and prayers at this difficult time.

IN OPPOSITION TO THE STUPAK AMENDMENT

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. LEE of California. Madam Speaker, I rise to join my colleagues in opposition to further restrictions on the constitutionally guaranteed right to abortion.

Last night the other body wisely defeated an amendment mirrored on the Stupak language that would have gone far and away beyond the current Hyde Amendment restrictions on abortion law.

That amendment, like the Stupak amendment we adopted in the House represented a blatant attack on women.

It attempts to dictate how individual Americans can spend their own money. That is simply outrageous.

The federal government has no place inserting itself between the medical decisions that a woman makes with her doctor.

This is a democracy, not a theocracy. The religious views of some should not dictate public policy for all.

We've got to follow the Senate's lead and strip the Stupak language from the final health reform bill and ensure that woman can exercise their right to seek an abortion.

We cannot and should not compromise away the rights of women to win votes.

We have already compromised far too much.

IN RECOGNITION OF ROBERT K. McCLEARY

HON. JOHN GARAMENDI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GARAMENDI. Madam Speaker, Representatives GEORGE MILLER, Representative JERRY MCNEARNEY and I rise today in honor of Robert McCleary, who has served as the Executive Director for the Contra Costa Transportation Authority for the last 20 years. As his colleagues, friends and family gather together to celebrate the next chapter of his life, we ask all of our colleagues to join us in saluting this outstanding public servant.

Bob McCleary's visionary efforts and hard work have benefited this generation and will benefit many more generations in the years to come. Transportation projects such as the BART extension to Pittsburg/BayPoint, the widening of Routes 4, 242 and 680, the Richmond Parkway, the intermodal stations at Richmond and Martinez, along with numerous other local transportation improvements have all been constructed under Bob McCleary's stay at the Contra Costa Transportation Authority and serve as a true testament to his judicious hard work and dedication.

Bob McCleary was faced with the daunting task of implementing Contra Costa's first transportation sales tax—Measure C—passed by the voters in 1988. Bob McCleary has

worked diligently to ensure that the transportation sales tax program has been executed in an efficient, effective and equitable manner, consistent with the voters' intent. He recently played an integral role in establishing the necessary consensus building efforts leading to the successful passage in 2004, of Measure J—the successor transportation sales tax to Measure C. His legacy will live on in this Measure and in a series of transportation projects that are instrumental and essential to the communities they serve.

Prior to serving as the executive director for the Contra Costa Transportation Authority, Bob McCleary was also involved in other regional programs such as the Santa Clara County Traffic Authority where he served as the Deputy Director for Project Management. During Bob's stay at the Santa Clara County Traffic Authority he helped establish the new authority and manage the day to day project implementation of a $1 billion dollar local sales tax program. This program would fund three State highways, the first of its kind in California and relied heavily on a partnership with Caltrans, local government, and the private sector for success. Bob McCleary made sure it became a success.

Madam Speaker, we are truly honored to pay tribute to our friend and dedicated public servant. We ask all of our colleagues to join with us in thanking Robert McCleary for his long and dedicated service to the citizens of California and wishing him continued success and happiness in all of his future endeavors along with a happy retirement.

PERSONAL EXPLANATION

HON. JOHN BARROW

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BARROW. Madam Speaker, due to the death of a family member, I was absent from the House for the week of November 30 and thus not recorded for any votes that week. Had I been present, I would have voted in the following way on bills considered by the House:

On rollcall vote No. 911, on H.R. 3029, I would have voted ''yea'';

On rollcall vote No. 912, on H.R. 727, I would have voted ''yea'';

On rollcall vote No. 913, on H.R. 3667, I would have voted ''yea'';

On rollcall vote No. 914, on H. Res. 494, I would have voted ''yea'';

On rollcall vote No. 915, on H. Con. Res. 129, I would have voted ''yea'';

On rollcall vote No. 916, on H. Res. 861, I would have voted ''yea'';

On rollcall vote No. 917, on H. Res. 897, I would have voted ''yea'';

On rollcall vote No. 918, on H.R. 3634, I would have voted ''yea'';

On rollcall vote No. 919, on H.R. 515, I would have voted ''yea'';

On rollcall vote No. 920, on H. Con. Res. 197, I would have voted ''yea'';

On rollcall vote No. 921, on H.R. 1242, I would have voted ''yea'';

On rollcall vote No. 922, on H.R. 3980, I would have voted ''yea'';

On rollcall vote No. 923, on the Motion on Ordering the Previous Question on the Rule for H.R. 4154, I would have voted ''yea'';

On rollcall vote No. 924, on H. Res. 941, I would have voted ''yea'';

On rollcall vote No. 925, on approving the Journal, I would have voted ''yea'';

On rollcall vote No. 926, on H. Res. 28, I would have voted ''yea'';

On rollcall vote No. 927, on the Motion to Table the Appeal of the Ruling of the Chair, I would have voted ''yea'';

On rollcall vote No. 928, on the Motion to Recommit H.R. 4154, I would have voted ''nay'';

On rollcall vote No. 929, on H.R. 4154, I would have voted ''yea'';

On rollcall vote No. 930, on H.R. 3570, I would have voted ''yea''.

PERSONAL EXPLANATION

HON. CHARLES A. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GONZALEZ. Madam Speaker, a personal matter prevented my presence in the House this past Thursday, December 03, 2009. Had I been present, I would have voted ''yea'' on final passage of the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009 (H.R. 4154).

PERSONAL EXPLANATION

HON. ADAM SMITH

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. SMITH of Washington. Madam Speaker, on Tuesday, December 8, 2009, I was unable to be present for recorded votes because I was attending the memorial service held in Tacoma, Washington for the four police officers of the Lakewood Police Department who were killed last week in the line of duty.

Had I been present, I would have voted: ''yes'' on rollcall vote No. 931 (on the motion to instruct conferees on H.R. 3288); ''yes'' on rollcall vote No. 932 (on the motion to suspend the rules and agree to H. Con. Res. 199, as amended); ''yes'' on rollcall vote No. 933 (on the motion to suspend the rules and agree to H. Con. Res. 206, as amended); ''yes'' on rollcall vote No. 934 (on the motion to suspend the rules and agree to H. Res. 940); ''yes'' on rollcall vote No. 935 (on the motion to suspend the rules and agree to H. Res. 845, as amended); ''yes'' on rollcall vote No. 936 (on the motion to suspend the rules and pass H.R. 2278, as amended); ''yes'' on rollcall vote No. 937 (on the motion to suspend the rules and agree to H. Res. 915); ''yes'' on rollcall vote No. 938 (on the motion to suspend the rules and agree to H. Res. 907).

HONORING WORLD WAR II VETERAN MAURICE GLENN BELL, SURVIVOR OF THE USS ''INDIANAPOLIS''

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BONNER. Madam Speaker, I rise to honor the memory of World War II veteran Maurice Glenn Bell of Mobile, Alabama, who passed away on December 4, 2009, at the age of 84.

Mr. Bell proudly embodied the qualities that our nation has associated with the ''Greatest Generation''—those Americans who were called to give everything for the defense of our freedom and the liberation of millions overseas. Mr. Bell was absolutely committed to serving his country in wartime, and after the war, he was a role model of character and courage in civilian life.

In 1943, when he was summoned to serve in the Second World War, Mr. Bell was already working as an electrician's helper in the Mobile shipyards. He joined the Navy and saw engagements in places we know well from our history books—including the allied invasions of Tarawa, Saipan, and the battle of the Philippine Sea.

But the World War II experience for which Mr. Bell is best remembered is uniquely linked to the vessel upon which he served—the historic USS *Indianapolis*. It was the *Indianapolis* that delivered the first atomic bomb to be dropped on Japan. And after the heavy cruiser was struck by two Japanese torpedoes in the middle of the night on July 30, 1945, Mr. Bell was among the 900 crew members who were able to get into the water in an attempt to save themselves.

Mr. Bell and his comrades spent four days in the unforgiving ocean awaiting rescue—an ordeal that subjected them to near constant shark attack and dehydration. Of the 1,196 men on board the *Indianapolis* before she went down, only 316 survived—including Maurice Bell.

Like many *Indianapolis* veterans, he had remained mostly silent about his experiences on those four fateful days in 1945. However, 62 years later, he was given a chance to tell his story before a national audience as part of the PBS World War II documentary, ''The War.'' The Ken Burns film interviewed a number of Mobile area veterans, including Mr. Bell.

Mr. Bell also captivated local audiences who would hear his stories about those long days and nights adrift in a seemingly dark and bottomless sea. He urged them never to give up.

It is ironic that this veteran of the war in the Pacific was buried on December 7, 2009—the 68th anniversary of the Japanese attack on Pearl Harbor.

Alabama is fortunate to have so many veterans like Maurice Bell who love their country and answered its call in time of need. We will always owe them a deep debt of gratitude.

I join this House in offering condolences to his wonderful wife of 65 years, Lois Bell, and their three children, Beverly Gros, Bonnie Hall and David Bell, and six grandchildren and 24 great grandchildren.

May they be comforted in knowing that they remain in our prayers during their time of loss.

RECOGNIZING ARIZONA'S GIFT OF THE 2009 CAPITOL CHRISTMAS TREE

HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. MITCHELL. Madam Speaker, I rise today to commemorate the State of Arizona's

gift to the U.S. Capitol and to the American people. The Capitol Christmas Tree has been a tradition at the United States Capitol since 1964. This is the first time that Arizona has gifted the Capitol Christmas tree, and it is also the tallest ever.

On December 8th, 2009, this majestic 85-foot Blue spruce, originally harvested from the Apache-Sitgreaves National Forests in Eastern Arizona, was unveiled on the west lawn of the United States Capitol. The Capitol Christmas Tree, also known as ''The People's Tree,'' is decorated with more than 6,000 holiday ornaments made by Arizona's school children. These ornaments were made from recycled materials and were made specially to survive the winter elements of this colder Washington climate.

The tree's journey to the United States Capitol began when it was cut down on November 7th, and embarked on a 10-day tour of Arizona, during which the tree stopped in 28 of our communities. The tree eventually travelled over 4,600 miles before arriving at its final destination in Washington, D.C., but before arriving, it stopped at cities across the nation so that thousands of Americans could marvel at the seven-story, 9,000-pound spruce. Moving such a large tree for so great a distance was a challenge, and was successful due to the efforts of Harry Baker and his crew from Southwest Industrial Rigging.

Madam Speaker, please join me in thanking the U.S. Forest Service, and especially the employees of the Apache-Sitgreaves National Forests, for their devotion to this wonderful project. These employees gave up their Thanksgiving holiday with their families to assist with the transportation of the tree to Washington, D.C. I would especially like to thank Rick Davalos, the District Manager of the Apache-Sitgreaves National Forests, and Jim Payne, the Forest Service's Public Affairs Officer, who headed up this extensive project. And lastly, I would like to commend the Steering Committee of the Capitol Christmas Tree 2009 Project, and the project's many volunteers, for their time and hard work.

TRIBUTE TO TERESEANN LYNCH

HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. LATHAM. Madam Speaker, I would like to take a moment to remember a woman from Iowa who personified the courage and spirit of a working mother and Member of the United States Military. TereseAnn Lynch was killed on November 11, 2009, due to an act of domestic violence. TereseAnn, 30, was a mother of an 8-month-old son. As a member of the Iowa Air National Guard for more than a decade, she served tours of duty in Iraq, Kuwait, and Saudi Arabia working as a weapons specialist. Most recently, TereseAnn served her country with honor providing aid in the Iraq War as a technical sergeant. She was also an active and committed employee at the Department of Human Services in Iowa where she provided help to young children and mothers trying to recover lost child support payments.

On behalf of my family, and the United States Congress, I would like to extend my condolences to her family, friends, and loved ones. TereseAnn embodied the character and values of a servicewoman and loving mother.

A tragedy like this is a painful reminder of the frequency of domestic violence cases. Domestic violence is a willful act of abuse that results in many reactions such as fear, anger, depression, and even death. In the U.S., an estimated 1.3 million women are victims of physical assault by an intimate partner each year. In Iowa over the past decade, domestic violence has affected nearly 6,000 women annually and 1,200 men. Structured to fight the battle against domestic violence, the Iowa Coalition Against Domestic Violence (ICADV) is an organization established to reach out and help Iowans with domestic violence issues. With 28 direct service programs across the state, the coalition offers counseling and community outreach. The ICADV institutes a 24-hour statewide hotline for those needing help. The phone number is 1–800–942–0333.

Domestic violence is a horrific act that no one should have to deal with, and it is my hope that the resources and help available will offer guidance and aid to those affected.

EARMARK DECLARATION

HON. ROBERT B. ADERHOLT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ADERHOLT. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of HR 3288, the Consolidated Appropriations Act, Fiscal Year 2010:

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, COPS Tech

Legal Name of Requesting Entity: City of Hartselle, AL

Address of Requesting Entity: 200 Sparkman St. N.W. Hartselle, AL 35640

Description of Request: Wireless Area Network $250,000

The funding would be used to purchase a Wireless Area Network. This funding will greatly improve the telecommunication access in the area.

The full amount of these funds will be used to purchase equipment.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: Alabama Department of Public Safety, Montgomery, AL

Address of Requesting Entity: P.O. Box 1511, Montgomery, AL 36102-1511

Description of Request: ''ADPS Child Sexual Predator Project, $150,000''

The funding would be used for Project targets arrest and prosecution of Child Sexual Predators in AL. ADPS received 2008 start-up funding from COPS Child Sexual Predator Program. ADPS needs federal assistance to maintain the current level of effective operation. This program continues efforts initiated nationwide under the ADAM WALSH ACT.

These funds will be used for the following areas: $50,000 equipment; $10,000 access to background data base repositories to locate absconded sex offenders; $70,000 salaries and benefits; and $20,000 enhancement of the department's ability to accept electronically transmitted sex offender information.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: The University of Alabama, Tuscaloosa, AL

Address of Requesting Entity: Box 870117, Tuscaloosa, AL 35487

Description of Request: Domestic Violence Law Clinic, $300,000

The funding would be used to provide free civil legal services to victims of domestic violence, stalking, and assault in the seven west Alabama counties of Bibb, Greene, Hale, Fayette, Pickens, Lamar and Tuscaloosa. The services provided by the DV Law Clinic further the national goal of crime prevention and victim assistance and support the important services set forth in the Violence Against Women Act and other federal laws.

These funds will be used for the following areas: $219,000 for salaries and benefits; and $81,000 will be used for facilities and administrative costs associated with the Clinic.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: Alabama District Attorneys Association, Montgomery, AL

Address of Requesting Entity: 515 South Perry Street Montgomery, Alabama 36104

Description of Request: Zerometh Drug Prevention Campaign, $1,000,000

The funding would be used by Zerometh to expose meth and its deadly consequences to teens and young adults. The goal is to stop a potential first-time user from ever trying the drug, while encouraging everyone to look for the warning signs and support treatment. Methamphetamine is a national epidemic and efforts to educate youth on its dangers and hopefully prevent the initial use of meth are needed.

$30,000 would be used for Program Administration, Project Evaluation, and Compliance, while $970,000 would be used for a year of demand reduction programs across the State of Alabama.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP–JJ

Legal Name of Requesting Entity: Alabama Institute for Deaf and Blind, Talladega, AL

Address of Requesting Entity: 205 E. South St, P.O. Box 698, Talladega, Alabama 35161

Description of Request: Overcoming Communication Barriers for AIDB At-Risk Youth, $15,000

The funding would be used to expand a preventive education program for at-risk disabled children impacted by communication barriers, increased incidence of dysfunctional families and a lack of appropriately trained personnel in rural areas and school systems. One in 10 US children is born with a disability, adding emotional and financial stress to families and rural school systems. Disabled teens are more likely to face abuse, pregnancy or suicide due to communication and other barriers, and this funding helps address this.

$110,000 for program development, $29,000 for parent education and training, $11,000 for program materials, supplies and support.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account or Provision: NASA, Cross Agency Support

Legal Name of Requesting Entity: The University of Alabama in Huntsville

Address of Requesting Entity: 301 Sparkman Avenue, Huntsville, AL 38152

Description of Request: Virtual Environment Simulation Laboratory $500,000.

The funding would be used for purchasing of equipment which provides UAH a new capability to support Marshall Space Flight Center (MSFC) missions by developing engineering and science applications of virtual environment simulation as well as enhancing student involvement in virtual environments. This would benefit NASA MSFC uses of the facility relevant to MSFC missions, including virtual examination of rocket engines while firing, virtual participation in spacecraft manufacturing and maintenance processes and virtual presence on the surface of the moon.

The full amount of these funds will be used to purchase equipment.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: NASA, Cross Agency Support

Legal Name of Requesting Entity: Southern Research Institute

Address of Requesting Entity: 757 Tom Martin Drive, Birmingham, AL 35211

Description of Request: Development of characterization techniques for advanced high temperature materials in space launch, $1,000,000.

The funding of $1 million for the ''Development of Characterization Techniques for Advanced High Temperature Materials in Space Launch Applications'' will enable research and developments of advanced modeling, testing and characterization techniques for advanced composite materials in extreme environments. SRI has identified several gaps in current NASA technology that if filled, will greatly assist analysts and designers to successfully utilize composites in advanced structural and thermal protection system applications and reduce overall program risk.

$350,000 to be spent on equipment and material purchases, $400,000 to be spent on materials research and analysis, $200,000 to be spent on testing, and $50,000 to be spent on program management.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account or Provision: NASA, Cross Agency Support

Legal Name of Requesting Entity: B.G. Smith & Associates, Inc.

Address of Requesting Entity: 555 Sparkman Drive, Suite 810, Huntsville, AL 35816

Description of Request: Product life-cycle management and advanced modeling and simulation methods, $1,000,000.

The program seeks to create an integrated and interoperable Product Lifecycle environment as it relates to engineering and manufacturing capabilities and to perform focused critical analyses on flight vehicle performance issues. To move MSFC in the direction leading to modernizing its systems, streamline operations, increase traceability, decrease costs, gain better insight, and increased aerospace manufacturing expertise.

The funding would be used for about 6 full time employees, to purchase some hardware and cost associated with PLM software.

HONORING DR. LAWRENCE B. SCHOOK

HON. TIMOTHY V. JOHNSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. JOHNSON of Illinois. Madam Speaker, I rise today to honor the achievements of Dr. Lawrence B. Schook, who recently led an international team in the sequencing of the swine genome. Dr. Schook is a distinguished Gutsgell Professor and Director of the Division of Biomedical Sciences at the University of Illinois at Urbana-Champaign where he has spent the past nine years researching genetic resistance to disease, regenerative medicine, and using genomics to create animal models for biomedical research.

The draft sequence will allow researchers to pinpoint genes that are useful to pork production or are involved in immunity or other important physiological processes in the pig. It will enhance breeding practices, offer insight into diseases that afflict pigs (and, sometimes, also humans) and will assist in efforts to preserve the global heritage of rare, endangered and wild pigs. It also will be important for the study of human health because pigs are very similar to humans in their physiology, behavior and nutritional needs.

With the growth of our world's population and subsequent rise in interaction between both domesticated and wild animals it is imperative that we continue to fund researchers such as Dr. Schook. The recent outbreak of H1N1 is a great reminder that the work of Dr. Schook and his colleagues is of upmost importance, not only to our world's food supply, but to our health as well.

I would ask that my colleagues join me in congratulating Dr. Schook, the University of Illinois at Urbana-Champaign, and all of the team members under Dr. Schook who made this discovery possible.

HONORING SCOTTS BLUFF NATIONAL MONUMENT ON ITS 90TH BIRTHDAY

HON. ADRIAN SMITH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. SMITH of Nebraska. Madam Speaker, I rise today to join in honoring the Scotts Bluff National Monument—which will be celebrating its 90th anniversary this Saturday.

On December 12th, 1919, President Woodrow Wilson signed a Presidential Proclamation, officially establishing Scotts Bluff National Monument on approximately 2,000 acres.

One of the highest points in Nebraska, Scotts Bluff played an important role in our country's westward expansion. A natural landmark, the formation served as a point of reference for travelers on the Oregon, California, Mormon, and Pony Express Trails.

Today, visitors to the monument can hike the Saddle Rock Trail, see a magnificent view from the summit, visit the Oregon Trail Museum and Visitor Center, and even relive life on the Oregon Trail during special ''Living History'' programs during the summer. The north face of the monument shows more geological history than any other formation in Nebraska, spanning a time period extending millions of years.

Having grown up in the shadow of the monument, I know full well just how important this monument has been for our country, for Nebraska, and for the local economy. It is with great pleasure I join with all Nebraskans to celebrate the 90th birthday of such an icon.

RECOGNIZING MR. ROY FOSTER AS A 2009 TOP 10 CNN HERO

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor a courageous veteran turned social activist, Mr. Roy Foster. Mr. Foster is the founder of Stand Down House, an organization in South Florida that has been providing veterans with life-changing assistance since 2000. His hard work and dedication has earned him the esteemed distinction of 2009 Top 10 CNN Hero. CNN Heroes is an annual awards ceremony that recognizes ''everyday people changing the world.'' Mr. Foster was one of ten CNN Heroes chosen by a blue-ribbon panel of distinguished leaders and humanitarians, including Retired General Colin Powell, Whoopi Goldberg, and Sir Elton John, from an initial pool of more than 9,000 viewer nominations.

Mr. Foster knows all too well how hard it is to find programs that help veterans deal with addiction and homelessness because he used to be one of them. Born in rural Georgia, Mr. Foster joined the Army right after high school. Throughout his six years in the military, he drank alcohol and experimented with drugs. By the time he left the Army in 1980, Mr. Foster was an alcoholic and his drug use had begun to escalate as he struggled to deal with life after the Army. Like many people dealing with addiction, Mr. Foster spent nights sleeping on the streets as he battled his disease for many years.

After starting a life of sobriety in the early 1990s, Mr. Foster used his experiences to become an effective substance abuse counselor. Acknowledging the problems that veterans dealing with substance abuse face, Mr. Foster and another veteran, the late Don Reed, established the non- profit Faith*Hope*Love*Charity, Inc. so that veterans would no longer fall through the cracks of an imperfect system.

After six years of work, Mr. Foster founded Stand Down House to help fellow veterans who are struggling and have lost their homes, dignity, and the ability to lead productive lives. Through referral by the Veterans Administration (VA) and with help from their funding, Stand Down House provides transitional housing and support services to 45 veterans in different stages of recovery. This support includes housing, clothing, counseling, life skills classes for up to two years, and transportation to the VA hospital for medical and mental health care. The goal is to not only assist veterans in their recovery process, but give them the tools to find employment or attend school after their recovery process is over.

At Stand Down House, veterans realize that they are not alone in their struggles after returning home, which allows for veterans of all

ages to become a support system for one another. This often leads to veterans becoming informal counselors to each other and making sure that one another stay on track. Many graduates of the program find the bond of friendship and support so beneficial that they return as volunteers to give back to others in need, especially with many veterans now returning home from Afghanistan and Iraq.

Madam Speaker, I truly admire the work that Mr. Roy Foster has done, and continues to do, for our nation's veterans each and every single day. After serving our country so valiantly, no veteran should ever have to face the future alone.

TRIBUTE TO DR. JAMES JOHNSON

HON. MARY FALLIN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. FALLIN. Madam Speaker, I am saddened to rise today to note the passing of Dr. James Johnson, an adoring husband, cherished father, and respected physician in my home state of Oklahoma.

A lifelong hemophiliac, Dr. J, as he was known to so many of his patients, dedicated his life to healing others. During his more than 25 years practicing medicine, Dr. J treated thousands of patients, and worked with researchers and insurance companies on finding new ways to treat and hopefully one day cure hemophilia.

Dr. J was particularly fond of reminding students to continually challenge their minds—because while their bodies may someday fail them, they could always count on their knowledge. No one lived this out better than he did. During his months in the hospital, I am told, he would consult on his own case and instruct med students performing basic procedures on him. Always gracious and ever the educator, Dr. J would kindly suggest, ''You know, son, if you do it this way, you won't hurt your patient so much.''

Dr. J owned his own practice for many years, and was most recently medical director for a company that performs house calls for the elderly and homebound. Over the years, he worked as an ER doctor, a prison doctor, and a primary care doctor. When off the job, Dr. J was also a die-hard Sooners fan, a Thunder season-ticket holder, an amateur pilot, and an active member of his local church. But the roles he cherished most were those of husband and father.

Dr. J was laid to rest Monday in Edmond. While we take comfort in knowing that he is at peace, the State of Oklahoma and particularly who know Dr. J grieve this loss. I believe I speak for the whole House when I say our thoughts and prayers go out to Dr. J's wife of 26 years, Becky, their daughter, Ashley, and the hundreds of family, friends, colleagues, and patients who knew and love him so dearly.

HONORING CORPORAL SYLVESTER WATTS (RETIRED)

HON. CORRINE BROWN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. CORRINE BROWN of Florida. Madam Speaker, this communication is forwarded on behalf of the constituents of Congressional District Three and myself as we pay tribute to the life of Corporal Sylvester Watts (Retired). We are all saddened that Sylvester is gone, but joyful that he has gone to be with his Heavenly Father.

Sylvester Watts was born October 8, 1947 in Chicago, Illinois to the late Pastor Van B. and Missionary Ruby Watts. He was the youngest of 11 children; his parents, three brothers and one sister, Rufus, Reverend Roosevelt, John and Otha, made their transition from life-mortal ahead of him. He transitioned to await the resurrection on November 29, 2009 at his home in Chicago, Illinois.

Sylvester accepted Christ as his personal Savior at an early age under the pastorate of his father at Greater Progressive Baptist Church, Chicago, Illinois where he served as an usher and a member of the Youth Choir.

Sylvester joined the United States Marine Corps May 1, 1967, was temporarily retired April 16, 1969 and honorably discharged on September 30, 1974. He served his country with dignity and honor and attained the rank of Corporal. During his Military Service, he earned the National Defense Service Medal, Viet Nam Service Medal, Good Conduct Medal, Viet Nam Campaign Medal with device and Marksman Rifle Badge.

Having been reared in a Christian home where the Word of God, the love and support of family were the guiding principles, Sylvester learned early in life that ''if a man doesn't work, he doesn't eat'', so in spite of the emotional and psychological issues he faced as a result of his tenure in Viet Nam, he was determined to survive.

Sylvester attended Elmhurst College where he majored in Business Administration. He was gainfully employed with Gerber Products Company, Watts Side Grocery (family owned) the Deputy Sheriffs Office, Strategic Services Unit, Daley Center, Chicago, Illinois, Sodexho Marriott, Trajo Enterprises and Rich Cake Enterprises.

Sylvester leaves to cherish precious memories: Missionary Janet Watts-DuPart, Reverend Lucille Watts-Watson, Reverend Van Watts, Jr. (Ruth), Benny Watts, Reverend Frank Watts, Evangelist Shirley Watts Kyles Green; Nephews: Calvin Andre, Van Blair, Vincent, Victor, Vaughn, Joseph Preston, Joseph B., Anthony, Troy, Torrence, Ivyl, Michael, Steven, Anthony; Nieces: Barbette, Janet, Loretta, Christiana, Angie, Janet, Jacquelene, Tina L., Cheryl Lynn, Donna Michelle, Lori Alva, Rubi and Kora; a special nephew, Pastor Alfonzo Cleveland and a special friend, Reverend Jeanne L. Edwards, who engaged him in intellectual spiritual conversations at the dinner table whenever family gathered.

We, the Watts family, continue to strive to keep ourselves in the love of God, looking for the mercy of our Lord Jesus Christ unto eternal life. He alone is able to keep us from falling and to present us faultless before the presence of his glory with exceeding joy. Jude v 21&24.

HONORING BEVERLY SCOTT

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to congratulate Beverly Scott as the outgoing President of the Yosemite Gateway Association of Realtors. Ms. Scott will be recognized at the annual installation luncheon for the Yosemite Gateway Association of Realtors on November 20, 2009 in Oakhurst, California.

The Yosemite Gateway Association of Realtors (YGAOR) first began as the Mountain Co-Op in 1998 with a group of eight volunteers. Today, the group has a paid professional staff and ownership of the Association's building. YGAOR was responsible for developing one of the first computerized Multiple Listing Systems, which continues to operate today with the latest technology. They work very closely with the California Association of Realtors by providing leadership at both the statewide and regional levels. YGAOR provides educational opportunities for its members, as well as fundraising activities that benefit local non-profit organizations and scholarship programs.

Ms. Beverly Scott is a fifth-generation native of Eastern Madera County. After graduating from Yosemite High School, she attended Bakersfield City College and earned her Bachelor's degree from California State University, Bakersfield. Ms. Scott has a very diverse history, including service in the United States Army, working as an editor, a photojournalist, a medical instructor, a realtor, a volunteer and a mother to four children: Skyler, Heavenly, Sierra and Raylynn. She is a true entrepreneur; the manager of Oakhurst Real Estate, and the general manager of National Computer Software, Inc.

With Ms. Scott's role at YGAOR, she has been a strong leader and provided a voice of optimism for local real estate. The 2009 Board Members worked closely with past Board Members to create a new strategic plan and to provide guidelines for defining a strategy, making decisions and allocating YGAOR resources. The new strategic plan brought an updated mission statement: ''The Yosemite Gateway Association of Realtors is committed to professional excellence for the success of its members in all aspects of the real estate industry.'' With this mission statement in mind, the 2009 Board, with the leadership of Ms. Scott, established four goals: Advocacy, Communication, Education and Organizational Excellence.

Ms. Scott is a leader in the real estate industry, as well as in the Oakhurst community. She has been a member of YGAOR since 2004, and has served on various committees over the past five years. Ms. Scott has been a member of the Board of Trustees for the Bass Lake Joint Union Elementary School District since 2006, serving as Vice President in 2009; the Eastern Madera County/Oakhurst Area Chamber of Commerce since 2001, serving as President in 2004, the Wild Wonderful King Vintage Museum since 2004, serving as an Officer and a Board Member, Local Water and Sewer Committees since 2002 and is a

Charter Member of the New Community United Methodist Church. She is a past-president of the Oakhurst Sierra Sunrise Rotary, past-president of the California State Society of American Medical Technologists, past-board member of the Madera County Workforce Investment Board, past-member of the Boys and Girls Club, and past-Chaplain for the Oakhurst Elks Lodge. For her service to the community, Ms. Scott was the Golden Apple Award Recipient for 2005/2006 and was named ''Oakhurst Town Mother'' in 2004 by Angels Among Us, Woman of the Year.

Madam Speaker, I rise today to commend and congratulate Beverly Scott on her achievements. I invite my colleagues to join me in wishing Ms. Scott and the Yosemite Gateway Association of Realtors many years of continued success.

RECOGNIZING THE HARRISON VALLEY VIEW ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD

HON. HARRY TEAGUE

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. TEAGUE. Madam Speaker, I want to congratulate Valley View Elementary School in Las Cruces, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Valley View Elementary School is working with its students to improving its academic standing and educational excellence.

Schools like Valley View Elementary earn the Blue Ribbon Schools Award because of the hard work and the tireless work of its educators and families. The students also worked hard to improve themselves and make sure that their hard work paid off. Valley View Elementary School exemplifies what it means for a school to help its students strive towards academic excellence.

I am honored to have Blue Ribbon Schools like Valley View Elementary School in my district. I commend their achievement and wish them luck in continuing their academic achievement.

MARIE HARRIS

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BERMAN. Madam Speaker, I rise today to pay respects to the passing of my friend Marie Harris. Let this congressional insert serve as a tribute to her memory and celebration of her meaningful life.

Marie Harris came to Pacoima in 1960 from Detroit where she successfully co-owned the Elite Boulevard House of Fashions and captured the ''Formal Award'' in a nationwide competition from the National Association of Fashion and Accessory Designers, Inc. Her professional success continued as she transferred her membership with this organization to the Los Angeles Chapter and served as Fashion Coordinator, spearheading the unforgettable Designers Showcase at the Beverly Hilton in 1963 and 1964. She began tireless efforts producing a series of Designers Showcase Fashion Shows to help raise funds to build a new edifice and educational unit of the Parks Chapel AME Church in Pacoima, and continued her work in the fashion world by becoming a columnist for the North East Valley Post writing two columns weekly, ''Fashions LTD'' and ''Kaleidoscope'' society scoop.

Marie was known for her spirit of volunteerism and unwavering dedication to public service. In 1980, Marie was appointed to the Mayor's Committee on the city's Bicentennial Celebration in the Sepulveda Basin, which motivated her to produce the Back to Pacoima Expo at the Hansen Dam Amphitheater to honor Pacoima's trailblazers. One of the many results of Marie's work in Pacoima was the naming of ''Plaza of the Stars,'' a major shopping center located at Glenoaks and Van Nuys Boulevards.

Marie has a history of community involvement and her invaluable service has made an indelible mark on the San Fernando Valley. She was on the Board of Directors for the Economic Alliance of the San Fernando Valley Vision 2020 and the Commissioner for the Children's Museum and Commission for the San Fernando Valley Fair. She was aptly recognized as Woman of the Year by Assemblyman Richard Katz, and later appointed as an Honorary Mayor of Pacoima by former City of Los Angeles Councilman Ernani Bernardi.

Marie was a devoted mother, and wife for the past fifty years to Alvin Harris, deceased in January 2001. She is survived by her three children Sidney Alvin, Rolene Marie, Alton Keith and five grandchildren.

I ask my colleagues to join me in celebrating the life of Marie Harris.

HONORING DOUG CARROLL

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mrs. CAPPS. Madam Speaker, today I rise to honor Doug Carroll of San Luis Obispo, CA. He is a valued member of the Central Coast Community and a valiant champion for all those living with Multiple Sclerosis. Since being diagnosed, ''Pastor Doug'' has maintained an active schedule, traveling to Sacramento and Washington, DC to lobby on behalf of all those affected by this horrible disease.

Back on the Central Coast, Pastor Doug managed to fit in MS fundraising and awareness events between a busy social calendar, multiple doctor and physical therapy appointments and his famous cooking classes at Spencer Market. He is a friend and inspiration to all who know him.

Though his health has deteriorated, his desire to educate others about MS has not. Countless people in my community have learned of the horrible effects this degenerative disease can have on an individual. Pastor Doug has handled these challenges with grace, good humor and humility. He is an example to us all and I am proud to represent him in Congress.

RECOGNIZING MELVIN FRIERSON ON HIS RETIREMENT AS A STAFF MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. COSTELLO. Madam Speaker, I rise today to ask my colleagues to join me in recognizing Melvin Frierson as he retires after 23 years of service to the U.S. House of Representatives.

Mel began his federal career as a staff member for Congressman Mel Price, in 1986. When Congressman Price passed away in 1988 and I was elected to fill the vacant seat, Mel remained as one of my senior staff members and he has served loyally and with distinction ever since.

In addition to his work as a member of my Congressional staff, Mel has long been involved in local politics and was a precinct committeeman in East St. Louis for over 30 years. Mel is a 33d degree Mason and has been involved in Freemasonry for 40 years. He was the Grand Master of the Most Worshipful Prince Hall Grand Lodge Free and Accepted Masons of the State of Illinois for 2 terms, from 1985 to 1986 and is currently Deputy of the Orient for the Scottish Rite, Masonry, Prince Hall Affiliation in the State of Illinois.

Mel's community and charitable involvement has been extensive. For years, he has delivered food to needy families during the holidays, often covering the cost himself. He has also participated in the Toys for Tots campaign as well as the Relay for Life which supports the American Cancer Society.

Mel's faith and his family have always been his cornerstones. He is a long-time member of the Mount Zion Missionary Baptist Church, in East St. Louis. Mel's family, including daughters, Ingrid and Kimberly, son Brett and grandchildren have been a source of great pride and will no doubt see a good deal more of their father and grandfather now that he is retiring.

Madam Speaker, I ask my colleagues to join me in an expression of recognition and appreciation for a loyal staff member and good friend.

HONORING MR. TIMOTHY WILL FOR HIS SERVICE TO THE PEOPLE OF WESTERN NORTH CAROLINA

HON. HEATH SHULER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. SHULER. Madam Speaker, I rise today to honor Mr. Timothy Will of Rutherfordton, North Carolina, for his exemplary service to the people of Western North Carolina. Mr. Will

recently received the $100,000 Purpose Prize for two local projects he has dedicated his time, energy and resources toward.

Mr. Will created FarmersFreshMarket.org, a Web site that connects local small farmers to chefs and consumers in metropolitan areas. Many of these farmers were previously unemployed after textile and furniture factory closings in the area. FarmersFreshMarket.org opens farmers to a new, lucrative market and helps those in urban areas take part in the local food movement and reconnect to the farm to serve local, fresh, and seasonal fare in their homes and restaurants.

Mr. Will also helped create the Foothills Connect Business and Technology Center to support local entrepreneurs and provide community Internet access to an area with few public computer terminals, and limited home and business access. With the help of grants, Foothills Connect wired Rutherford County's public schools with fiber optic connections. Foothills Connect also trained teachers how to use the technology, and instructed area residents on how to refurbish old computers to donate to low-income families.

By creating new business opportunities and providing vital community services to an area hit hard by unemployment, Mr. Will is a testament to the spirit of entrepreneurship and community giving. I am proud to honor Mr. Will today, and want to thank him for his invaluable contributions to Western North Carolina.

INTRODUCING THE FREE COMPETITION IN CURRENCY ACT

HON. RON PAUL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. PAUL. Madam Speaker, I rise to introduce the Free Competition in Currency Act of 2009. Currency, or money, is what allows civilization to flourish. In the absence of money, barter is the name of the game; if the farmer needs shoes, he must trade his eggs and milk to the cobbler and hope that the cobbler needs eggs and milk. Money makes the transaction process far easier. Rather than having to search for someone with reciprocal wants, the farmer can exchange his milk and eggs for an agreed-upon medium of exchange with which he can then purchase shoes.

This medium of exchange should satisfy certain properties: it should be durable, that is to say, it does not wear out easily; it should be portable, that is, easily carried; it should be divisible into units usable for everyday transactions; it should be recognizable and uniform, so that one unit of money has the same properties as every other unit; it should be scarce, in the economic sense, so that the extant supply does not satisfy the wants of everyone demanding it; it should be stable, so that the value of its purchasing power does not fluctuate wildly; and it should be reproducible, so that enough units of money can be created to satisfy the needs of exchange.

Over millennia of human history, gold and silver have been the two metals that have most often satisfied these conditions, survived the market process, and gained the trust of billions of people. Gold and silver are difficult to counterfeit, a property which ensures they will always be accepted in commerce. It is precisely for this reason that gold and silver are anathema to governments. A supply of gold and silver that is limited in supply by nature cannot be inflated, and thus serves as a check on the growth of government. Without the ability to inflate the currency, governments find themselves constrained in their actions, unable to carry on wars of aggression or to appease their overtaxed citizens with bread and circuses.

At this country's founding, there was no government controlled national currency. While the Constitution established the congressional power of minting coins, it was not until 1792 that the U.S. Mint was formally established. In the meantime, Americans made do with foreign silver and gold coins. Even after the Mint's operations got underway, foreign coins continued to circulate within the United States, and did so for several decades.

On the desk in my office I have a sign that says: ''Don't steal—the government hates competition.'' Indeed, any power a government arrogates to itself, it is loathe to give back to the people. Just as we have gone from a constitutionally instituted national defense consisting of a limited army and navy bolstered by militias and letters of marque and reprisal, we have moved from a system of competing currencies to a government-instituted banking cartel that monopolizes the issuance of currency. In order to reintroduce a system of competing currencies, there are three steps that must be taken to produce a legal climate favorable to competition.

The first step consists of eliminating legal tender laws. Article I Section 10 of the Constitution forbids the States from making anything but gold and silver a legal tender in payment of debts. States are not required to enact legal tender laws, but should they choose to, the only acceptable legal tender is gold and silver, the two precious metals that individuals throughout history and across cultures have used as currency. However, there is nothing in the Constitution that grants the Congress the power to enact legal tender laws. We, the Congress, have the power to coin money, regulate the value thereof, and of foreign coin, but not to declare a legal tender. Yet, there is a section of U.S. Code, 31 U.S.C. 5103, that purports to establish U.S. coins and currency, including Federal Reserve notes, as legal tender.

Historically, legal tender laws have been used by governments to force their citizens to accept debased and devalued currency. Gresham's Law describes this phenomenon, which can be summed up in one phrase: bad money drives out good money. An emperor, a king, or a dictator might mint coins with half an ounce of gold and force merchants, under pain of death, to accept them as though they contained one ounce of gold. Each ounce of the king's gold could now be minted into two coins instead of one, so the king now had twice as much ''money'' to spend on building castles and raising armies. As these legally overvalued coins circulated, the coins containing the full ounce of gold would be pulled out of circulation and hoarded. We saw this same phenomenon happen in the mid-1960s when the U.S. government began to mint subsidiary coinage out of copper and nickel rather than silver. The copper and nickel coins were legally overvalued, the silver coins undervalued in relation, and silver coins vanished from circulation.

These actions also give rise to the most pernicious effects of inflation. Most of the merchants and peasants who received this devalued currency felt the full effects of inflation, the rise in prices and the lowered standard of living, before they received any of the new currency. By the time they received the new currency, prices had long since doubled, and the new currency they received would give them no benefit.

In the absence of legal tender laws, Gresham's Law no longer holds. If people are free to reject debased currency, and instead demand sound money, sound money will gradually return to use in society. Merchants would have been free to reject the king's coin and accept only coins containing full metal weight.

The second step to reestablishing competing currencies is to eliminate laws that prohibit the operation of private mints. One private enterprise which attempted to popularize the use of precious metal coins was Liberty Services, the creators of the Liberty Dollar. Evidently the government felt threatened, as Liberty Dollars had all their precious metal coins seized by the FBI and Secret Service in November of 2007. Of course, not all of these coins were owned by Liberty Services, as many were held in trust as backing for silver and gold certificates which Liberty Services issued. None of this matters, of course, to the government, which hates competition. The responsibility to protect contracts is of no interest to the government.

The sections of U.S. Code which Liberty Services is accused of violating are erroneously considered to be anti-counterfeiting statutes, when in fact their purpose was to shut down private mints that had been operating in California. California was awash in gold in the aftermath of the 1849 gold rush, yet had no U.S. Mint to mint coinage. There was not enough foreign coinage circulating in California either, so private mints stepped into the breech to provide their own coins. As was to become the case in other industries during the Progressive era, the private mints were eventually accused of circulating debased (substandard) coinage, and with the supposed aim of providing government-sanctioned regulation and a government guarantee of purity, the 1864 Coinage Act was passed, which banned private mints from producing their own coins for circulation as currency.

The final step to ensuring competing currencies is to eliminate capital gains and sales taxes on gold and silver coins. Under current federal law, coins are considered collectibles, and are liable for capital gains taxes. Short-term capital gains rates are at income tax levels, up to 35 percent, while long-term capital gains taxes are assessed at the collectibles rate of 28 percent. Furthermore, these taxes actually tax monetary debasement. As the dollar weakens, the nominal dollar value of gold increases. The purchasing power of gold may remain relatively constant, but as the nominal dollar value increases, the Federal Government considers this an increase in wealth, and taxes accordingly. Thus, the more the dollar is debased, the more capital gains taxes must be paid on holdings of gold and other metals.

Just as pernicious are the sales and use taxes which are assessed on gold and silver at the state level in many States. Imagine having to pay sales tax at the bank every time you change a $10 bill for a roll of quarters to do laundry. Inflation is a pernicious tax on the

value of money, but even the official numbers, which are massaged downwards, are only on the order of 4 percent per year. Sales taxes in many states can take away 8 percent or more on every single transaction in which consumers wish to convert their Federal Reserve Notes into gold or silver.

In conclusion, Madam Speaker, allowing for competing currencies will allow market participants to choose a currency that suits their needs, rather than the needs of the government. The prospect of American citizens turning away from the dollar towards alternate currencies will provide the necessary impetus to the U.S. Government to regain control of the dollar and halt its downward spiral. Restoring soundness to the dollar will remove the government's ability and incentive to inflate the currency, and keep us from launching unconstitutional wars that burden our economy to excess. With a sound currency, everyone is better off, not just those who control the monetary system. I urge my colleagues to consider the redevelopment of a system of competing currencies and cosponsor the Free Competition in Currency Act.

OPPOSITION TO THE STUPAK AMENDMENT

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. SLAUGHTER. Madam Speaker, I have witnessed the horror of the choice between a back alley abortion and a forced marriage to avoid disgrace.

These were the realities women faced prior to 1973. My fear is that if this harmful Stupak/Pitts language is signed into law, we will revert back to those dark times.

Critical to this debate is to break down the facts. The opposition claims that the Stupak/Pitts amendment codifies current law. This is grossly incorrect.

Stupak-Pitts goes far beyond current law by placing unprecedented restrictions on individuals' use of their own private dollars. The Hyde amendment does not apply to private funding nor does it apply to administrative costs. It has only placed limits on direct Federal appropriations being used to fund abortion benefits. The Stupak amendment expands the Hyde prohibitions on the use of federal funds for an abortion benefit to include ''any part of the costs of any health plan that includes coverage of abortion.''

The opposition claims that this amendment will not change current insurance plans for women. This is blatantly wrong.

A report by health policy experts at the George Washington University School of Public Health concludes that the Stupak amendment ''will have an industry-wide effect, eliminating coverage of medically indicated abortions over time for all women, not only those whose coverage is derived through a health insurance exchange.''

The opposition claims that the segregation of funding under the House bill is an accounting sham. This is blatantly false.

In the Capps amendment, the segregation of funding piece is based on the current model the Federal Government uses to pay for abortions permitted in Medicaid.

I am afraid that we are driving young women, poor women, back to the dark alley, and I dread to see that day.

EXPRESSING CONGRATULATIONS TO GLENVILLE HIGH SCHOOL FOOTBALL TEAM ON HISTORIC 2009 SEASON

HON. MARCIA L. FUDGE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. FUDGE. Madam Speaker, I rise to congratulate the Glenville High School football team on its historic season. This Division I team became the first Cleveland Public School to compete for the state championship last Saturday.

While track icon Jesse Owens and the creators of Superman were products of Glenville, it has never had a state football champion.

This year's players are champions in every sense of the word. They play football at Glenville High School for the structure that football provides and the mentorship of their coach, Ted Ginn, Sr.

More than 100 of Ginn's players have earned athletic scholarships. Five play in the NFL.

Glenville played valiantly in the state championship, but lost by one point

Again, I congratulate the Glenville High football team, students, Coach Ginn, his assistant coaches, our supportive community, and Glenville Principal Jacqueline Bell on an amazing season. Next year they will bring home the trophy!

OUR UNCONSCIONABLE NATIONAL DEBT

HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. COFFMAN of Colorado. Madam Speaker, today our national debt is $12,091,292,877,094.86. We have increased the national debt $5,120,762,726.63 since just yesterday.

On January 6, 2009, the start of the 111th Congress, the national debt was $10,638,425,746,293.80.

This means the national debt has increased by $1,452,867,130,801.06 so far this year.

According to the nonpartisan Congressional Budget Office, the forecast deficit for this year is $1.6 trillion. That means that so far this year, we borrowed and spent $4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

EARMARK DECLARATION

HON. KEVIN BRADY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BRADY of Texas. Madam Speaker, pursuant to the Republican leadership standards on earmarks, I am submitting the following information regarding earmarks my district received as part of H.R. 3288—Consolidated Appropriations Act, 2010.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: 1–69 Texas Environmental Studies, TX

Account: Interstate Maintenance Discretionary, Federal Highway Administration

Requesting Entity: Alliance for I–69 Texas, Texas Department of Transportation

Address of Requesting Entity: 1200 Smith, Suite 700, Houston, TX 77002

The original I–69 project began in 1991 and involves long-planned upgrades of US 59, 277 and 281 to interstate standards to increase motorist safety and mobility in the Houston and East Texas region. It is, thankfully, no longer included in the ill-fated Trans Texas Corridor. The original project enjoys the support of a broad collaboration of mayors, county judges, economic development groups, chambers of commerce and transportation officials from dozens of Texas communities, including several in the Eighth Congressional District. The $500,000 I requested on behalf of the Texas leaders of the I–69 coalition will provide the Texas Department of Transportation funding to complete the necessary environmental studies to begin construction on these much needed upgrades.

This bill also credits me, four of my colleagues in the House and our two distinguished Senators as requesting an additional $1.5 million under the Interstate Maintenance Discretionary and the Surface Transportation Priorities accounts. I appreciate the support of my colleagues and the Committee for this important project. I know the additional funds are greatly needed. However, in all honesty, the other members deserve credit for these funds since I submitted only the original $500,000 funding for the environmental studies.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: The District Capital Cost of Contracting, Montgomery County, TX

Account: Buses and Bus Facilities, Federal Transit Administration

Requesting Entity: The Brazos Transit District (The District)

Address of Requesting Entity: 1759 N. Earl Rudder Freeway, Bryan, Texas 77803

This request helps provide an important transportation service to over 700,000 Montgomery County commuters each year through four Park-and-Ride facilities. It also helps provide regular van service for East Texas veterans to VA facilities in the region. Through these services, the funding also helps reduce congestion along Interstate 45 and helps the region meet its clear air goals.

The $1,000,000 included in this bill reduces the equipment costs of providing these transportation services.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: Pulmonary Hypertension Awareness Program

Account: Department of Health and Human Services, Centers for Disease Control and Prevention

Requesting Entity: Pulmonary Hypertension Association

Address of Requesting Entity: 801 Roeder Rd., Suite 400, Silver Spring, MD 20910

I have supported strengthening Pulmonary Hypertension (PH) education for over ten years; and for this reason and for the third year in a row, I have requested funding to strengthen and continue a successful partnership between the non-profit Pulmonary Hypertension Association and the Centers for Disease Control. PH is a serious and often fatal condition where the blood pressure in the lungs rises to dangerously high levels. In PH patients the walls of the arteries that take blood from the right side of the heart to the lungs thicken and constrict. As a result, the right side of the heart has to pump harder to move blood into the lungs, causing it to enlarge and ultimately fail.

This request will allow the partners to continue to develop a pulmonary hypertension awareness program to better educate the medical community and the public about the disease, and lead to earlier diagnosis and longer life spans.

The $250,000 included in this bill for this project will be allocated to continue two components in the fight against pulmonary hypertension: the PHA Online University, a curriculum-based website for medical professionals, and a significant expansion of PHAware, a grassroots media campaign.

I also appreciate the Committee's support through report language encouraging further collaboration and research efforts on pulmonary hypertension within government agencies. The efforts of these organizations on issues including lung transplantation, the establishment of a PH Clinical Research Network and the increase in pulmonary hypertension diagnoses related to the abuse of methamphetamine will further our understanding of this disease.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: SHSU Regional Crime Lab

Account: Office of Justice Programs, Byrne Discretionary Grants

Requesting Entity: Sam Houston State University

Address of Requesting Entity: 1803 Avenue I, Huntsville, TX 77341

Law enforcement agencies in rural communities experience long waits and backlogs when requesting services from major cities like Houston. This request allows Sam Houston State University—one of the nation's foremost criminal justice universities—to use its expertise in forensic science to begin operations of the Regional Crime Laboratory started with funding I previously secured. This lab will provide important forensics services to local law enforcement such as identification of controlled substances, toxicology screening and fingerprint matching. The lab will be able to service communities in a 75-mile wide area.

The $1,000,000 included in this bill for this project will be allocated to staff the SHSU Regional Crime Lab and make it operational for serving regional law enforcement agencies. Specific budget items include: capital outlays (54%); salaries and benefits for laboratory staff (37%); lab supplies (8%); and subcontracts for staff training (1%).

EARMARK DECLARATION

HON. ANDER CRENSHAW

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. CRENSHAW. Madam Speaker, I rise today to submit documentation consistent with the Republican earmark standards.

Requesting Member: Congressman ANDER CRENSHAW

Bill Number: H.R. 3288—Consolidated Appropriations Act of 2010

Account: Employment and Training Administration (ETA)—Training and Employment Services

Legal Name of Receiving Entity: Florida Manufacturing Extension Partnership (Florida MEP)

Address of Receiving Entity: 1180 Celebration Blvd., Suite 103, Celebration, FL 34747

Description of Request: I have secured $100,000 in funding in H.R. 3228, in the Employment and Training Administration (ETA)—Training and Employment Services account for Florida Manufacturing Extension Partnership in Celebration, FL.

The purpose of this funding is to deploy the proven Mobile Outreach Skills Training (M.O.S.T.) program in Florida. The program is a three-phase rapid training and job placement initiative in which nearly 100 percent of trainees who successfully complete the 2-week Phase I receive job offers from the participating manufacturers.

This is a valuable use of taxpayer funding because the program provides skills to veterans, the disadvantaged, and TANF families that lead to jobs and medical coverage, a capability that does not exist in current training programs.

There are no matching funds required or allowed for this project.

Requesting Member: Congressman ANDER CRENSHAW

Bill Number: H.R. 3288—Consolidated Appropriations Act of 2010

Account: HRSA—Health Facilities Construction and Equipment

Legal Name of Receiving Entity: Shands HealthCare

Address of Receiving Entity: 720 SW 2nd Avenue, Suite 360A, Gainesville, FL 32601

Description of Request: I have secured $100,000 in funding in H.R. 3228, in the Health Facilities Construction and Equipment account for the purchase of equipment.

The purpose of this funding is to purchase a biplane angiography system at Shands Jacksonville to continue to maintain the expert quality of care for its Level One trauma center and its JCAHO Accredited Stroke Service. This biplane angiography system will improve patient care, enhance operational efficiency, and replace outdated equipment.

This is a valuable use of taxpayer funding because funding will help purchase a biplane angiography system that will allow physicians to accurately visualize clots or other vascular abnormalities. This will reduce diagnostic and procedure time while helping to avoid more invasive procedures.

There are no matching funds required or allowed for this project.

HONORING ROBERT G. KIGGANS

HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BARRETT of South Carolina. Madam Speaker, I rise today to recognize Robert G. Kiggans of Mt. Pleasant, South Carolina, and fellow alumnus of the Citadel, for a lifetime of distinguished leadership and service to the citizens of our State and our country. From his early days as a cadet at the Citadel to his current position as chief operating officer and president of the South Carolina Research Authority's, SCRA, Federal Sector, Bob has led an exemplary life and maintained a steadfast work ethic. His contributions to South Carolina and the United States in the fields of advanced computer and data technologies, program and technical management, manufacturing technologies, and command and control systems is recognized internationally. He is the embodiment of what makes America strong.

After receiving his undergraduate degree from the Citadel—where he excelled in both academics and athletics, achieving All-Time Lettermen status as a member of the men's basketball team—Bob earned his master's degree from the Air Force Institute of Technology. Upon graduation, Bob served his country as a navigator on B–52 model aircraft with the United States Air Force, operating from bases in Southeast Asia. He also directed advanced computer technology programs for the Air Force Strategic Command, SAC, including the development of a multi-million dollar automated executive information system, as well as other assignments. Having served his country with distinction, Bob retired from the Air Force as a lieutenant colonel. After his military experience, Bob served as the deputy director of the Information Science and Technology Office at the Defense Advanced Research Projects Agency, DARPA, assistant for program integration with the Department of Defense Joint Program Management Office. In addition to the foregoing achievements, Bob was appointed by the Department of Commerce to serve as head of the U.S. Delegation to the international Intelligent Manufacturing Systems Steering Committee and worked as a research fellow with the National Institute of Standards and Technology.

After serving his country in both a uniform and civilian capacity, Bob entered the private sector where he has worked for a variety of companies and nonprofit corporations including Cincinnati Electronics and the first president of the Advanced Technology Institute, ATI, a world leader in distributed technology management and affiliate of his current employer, the South Carolina Research Authority. Since its establishment in 1983, SCRA has fostered entrepreneurial development, introduced technological advancements, and supported countless industry leaders and small businesses throughout South Carolina and the Nation.

Through hard work and dedication, Bob has made significant contributions to our country's information technology and manufacturing technologies. His distinguished leadership and service has been invaluable, and for this I applaud him. His dedication to his family, friends,

and colleagues should stand as an example of what we should all hope to be. I join Bob's colleagues at the South Carolina Research Authority, the citizens of our State, and his wife, Penny, his daughters and grandchildren in commending Robert G. Kiggans for his lifetime of service to South Carolina and this great Nation. May God bless them all.

EXPRESSING CONDOLENCES TO FAMILIES OF VICTIMS OF SOWELL MURDERS AND DECRYING VIOLENCE AGAINST WOMEN

HON. MARCIA L. FUDGE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. FUDGE. Madam Speaker, Anthony Sowell raped and murdered 11 women in my own Congressional District. I offer condolences to the families of these women, whose names are: Tonia Carmichael, Nancy Cobbs, Tishana Culver, Crystal Dozier, Telacia Fortson, Amelda Hunter, Leshanda Long, Michelle Mason, Kim Yvette Smith, Diane Turner, and Janice Webb.

In honor of the women he victimized, we must address the underlying issue of violence against women.

Consider that 1 in every 4 American women will experience domestic violence in her lifetime. However, only about half of domestic violence incidents are reported to police. Even though African-American women are more likely than others to report their victimization to police, intimate partner homicide is the leading cause of death for African-American women ages 15–45.

A report issued in 2000 found that 17.6 percent of women in the United States have survived rape or attempted rape. Of these, 21.6 percent were younger than age 12 when they were first raped, and 32.4 percent were between the ages of 12 and 17. About half of all rape victims are in the lowest third of our national income distribution.

In 2010, the Violence Against Women Act is scheduled for reauthorization. Since its enactment, this Act has saved the lives of numerous women by providing funding for life-saving shelters and services, and educating the public about the cycle of violence. Congress has a unique opportunity to strengthen these programs and raise the profile of violence against women. Our Nation's current response is insufficient.

As we move forward, we must act with outrage about how our nation responds to violence against women and girls. Education and prevention is the key to break this cycle of violence.

COMMEMORATING THE LIFE AND ACHIEVEMENTS OF ISIAH ''IKE'' JESSE WILLIAMS III

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. HASTINGS of Florida. Madam Speaker, I rise today to commemorate the life and achievements of my lifelong friend and widely respected community leader, Isiah ''Ike'' Jesse Williams III, who died on November 25, 2009, in Jacksonville, Florida, at the age of 78. Ike had been diagnosed with Alzheimer's disease 6 years prior to his death, and my thoughts and prayers go out to his wife, Marilyn Wilkerson-Williams; daughter, Helen Rogers; sons, Rodney Williams, Ira Marche, Isiah Williams IV, and Mark Benson; and the rest of his family and friends at this most difficult time. Ike was a community activist, scholar, lawyer, publisher, journalist, historian, and union organizer. Above all, however, he was a true inspiration to everyone who knew him.

Ike was born to Helen and Isiah Williams of Jacksonville on September 27, 1931. He attended Fessenden Academy, a small private school in Ocala, Florida, and graduated in 1949. A truly brilliant man, Ike went on to earn numerous degrees, including an associate's degree from Edward Waters College, a bachelor's Degree from Florida Memorial College, a Juris Doctor from Florida A & M University, and a master's degree from Brooklyn Law School in New York. He also studied at the New School for Social Research and Xavier Institute of Labor Relation in New York City. During his studies, Ike pledged Psi Beta Sigma, of which he was a dedicated member for more than 50 years.

A man of courage and excellence, Ike served with distinction in the U.S. Army and was a proud veteran of the Korean war. After his service, he moved to New York and successfully practiced law for 10 years. It was during those historic years of the civil rights movement that Ike was an attorney for the Black Panthers and became friends with powerful leaders such as Adam Clayton Powell and Malcolm X.

Back in his home State of Florida, Ike continued his fight for civil equality in the community. He was a true champion of the people and came to be known as a respected community leader in Jacksonville through the many important organizations where he held positions. Ike was a lifetime member of the National Association for the Advancement of Colored People (NAACP), a Mason, a founding member of the National Business League, and the founder of the Jacksonville Advocate, which was published weekly for 30 years. Furthermore, Ike also served as Publisher Emeritus of the People's Advocate. Both newspapers featured articles that highlighted accomplishments in the African American community. An early member of the Jacksonville Historic Landmarks Commission, Ike was a fitting keeper for the preservation of the history of the African American community and organized the Joseph E. Lee Library-Museum. In addition, he also helped form the Brotherhood of Black Firefighters.

Ike's hard work and dedication on behalf of all those who have been denied a voice earned him many awards. In 2005, he was awarded with the Onyx Award for Communications, a state honor that he dearly cherished. Most recently, he received the National Whitney M. Young Lifetime Achievement award presented by the Jacksonville Urban League.

Madam Speaker, Ike's legacy will live on for generations to come in the lives he has touched, and continues to touch. He was my dear friend and I am proud and fortunate to have known him.

HONORING VINCENT PETRUCCI

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Vincent Petrucci upon being honored with the ''Lifetime Achievement Award'' at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California, on Friday, November 20, 2009.

Mr. Vincent Petrucci was born on July 13, 1913, in California. He attended the University of California, Davis where he earned his bachelors of science degree in pomology in 1947 and his masters of science degree in horticulture in 1948. Upon completion of his masters, he was hired by Fresno State College, now California State University Fresno, as a faculty member with the task of organizing and developing the curriculum and facilities of the viticulture and enology program. Mr. Petrucci played an instrumental role in developing the Viticulture and Enology Research Center which opened in 1985 where he has served as director and is currently director emeritus. He taught classes in grape and wine production, raisin production and processing and numerous other classes encompassing the field of viticulture. After 45 years, Mr. Petrucci retired in 1993 from California State University, Fresno and was awarded an honorary doctorate of science degree on May 28, 1994.

Over the years, Mr. Petrucci has served as a consultant, offering advice to many European and South American countries as well as China and Australia. He has been active in several organizations including the International Office of Wine and Vine, the American Society of Horticulture Science, the California Grape Growers Coalition, the University of California Grape Research Committee, the American Vineyard Foundation, and the American Society for Enology and Viticulture. He has also published numerous papers, journal, rticles and written books on the subject of wine and grape growing. Mr. Petrucci's involvement has resulted in the international recognition of the viticulture program at CSU Fresno. For his accomplishments, Mr. Petrucci received the CSU Fresno ''Outstanding Professor Award'' in 1971, was named Wine and Vines ''Man of the Year'' in 1981, received the ''Founder Award'' for Enology in 1985, CSU Fresno ''Meritorious Performance and Professional Promise Award'' in 1986, the University of California, Davis ''Distinguished Achievement Award'' in 1995 and the American Vineyard ''Outstanding Service Award'' in 1996.

Madam Speaker, I rise today to commend and congratulate Vincent Petrucci upon being honored with the ''Lifetime Achievement Award.'' I invite my colleagues to join me in wishing Mr. Petrucci many years of continued success.

RECOGNIZING THE HARRISON SCHMITT ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD

HON. HARRY TEAGUE

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. TEAGUE. Madam Speaker, I want to congratulate Harrison Schmitt Elementary School in Silver City, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where the students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Harrison Schmitt Elementary School is striving to close the achievement gap.

Schools like Harrison Schmitt Elementary achieve such great distinctions because of the hard work and its dedicated educators and families. The students also deserve to be recognized for making the most of the opportunities afforded to them by the excellent staff. Harrison Schmitt Elementary School is a prime example for the academic progress other schools throughout the nation should strive to achieve.

I am honored to have Blue Ribbon Schools like Harrison Schmitt Elementary School in my district. I commend their achievement and wish them luck in the continuing their academic achievement.

PERMANENT ESTATE TAX RELIEF FOR FAMILIES, FARMERS, AND SMALL BUSINESSES ACT OF 2009

SPEECH OF

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 3, 2009

Ms. MCCOLLUM. Mr. Speaker, I rise today in support of H.R. 4154, the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009. This legislation is a necessary step in cleaning up the toxic fiscal legacy of the Bush administration.

The estate tax is set to expire completely in 2010 unless Congress acts. Under current estate tax parameters, an individual can inherit, tax-free, a trust fund worth $3.5 million—more than a middle class family making $70,000 a year earns in a lifetime. For couples, the exemption is $7 million. H.R. 4154 would permanently extend these generous parameters, ensuring that 99.8 percent of Americans never pay a dime in estate taxes.

This legislation helps put the Nation back on a path of fiscal sustainability. While it affects only a handful of the wealthiest Americans, the estate tax is an important source of Federal revenue. Eliminating this tax completely would expand the deficit by $662 billion and reduce funding available for schools, roads and other priority investments. The bill also includes a ''pay-as-you-go'' provision that mandates fiscally responsible spending, restoring a 1990s law that turned record deficits into surpluses.

Without congressional action, the estate tax will return in 2011 at a much higher rate. By permanently extending current levels, H.R. 4154 is a compromise between higher estate taxes in the next decade and a complete elimination of the tax.

Republican opposition to this compromise legislation is wrong-headed and hypocritical. By supporting nothing but a full repeal, Republicans are pushing for a policy that adds $662 billion to the deficit. This is extraordinarily irresponsible in a time of rising deficits and economic recession. With many middle-class families losing their jobs and their homes, it is difficult to justify a costly new tax cut for the Nation's wealthiest estates so they can pass on even larger inheritances tax-free. H.R. 4154 is a far more reasonable approach.

HONORING BAYSHORE ELEMENTARY SCHOOL

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. POE of Texas. Madam Speaker, the people of the Second District of Texas are proud to recognize the students, faculty, and staff of Bayshore Elementary School in La Porte, Texas. Bayshore Elementary has earned the prestigious rating of ''Exemplary'' from the Texas Education Agency. This honor is especially meaningful for the students, teachers, and administrators of Bayshore Elementary because of the challenges they faced in the aftermath of Hurricane Ike.

Despite being dispersed to five other neighboring campuses, the students of Bayshore still performed at the ''Exemplary'' level on the Texas Assessment of Knowledge and Skills test. In the tradition of the Americans and Texans that have gone before them, the students and staff of Bayshore Elementary were able to rise above a difficult situation and achieve excellence in the face of adversity. This award not only recognizes their resilience but their determination to overcome difficulty and that is extremely honorable.

The Second District of Texas is proud of Bayshore Elementary school and commends them for their ''Exemplary'' award.

CELEBRATING THE 60TH ANNIVERSARY OF THE VOICE OF AMERICA'S UKRAINIAN SERVICE

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. KAPTUR. Madam Speaker, I rise today on the special occasion of the 60th anniversary of the Voice of America's first Ukrainian-language broadcast. As Co-chair of the Ukrainian Caucus, it is my honor to recognize this day. In the darkest hours of the cold war, Ukrainians behind the Iron Curtain have received VOA broadcasts of accurate, balanced and comprehensive news and information. The VOA reports that Ukrainian dissidents imprisoned in Siberian camps and human rights activists who worked clandestinely to avoid arrest say they drew strength from its broadcasts.

As the Communist system began to fissure, VOA notes it continued to provide Ukrainians with the news and information that their own censored, government-controlled media would not provide. Through the decades VOA was there to tell Ukrainians stories about the Hungarian Revolution in 1956, the Prague Spring of 1968, the rise of the Solidarity movement in Poland in the 1980s, the cover up of the Chornobyl nuclear power plant explosion in 1986, the fall of the Berlin Wall in 1989, and the Ukrainian independence and democracy movement which played a key role in the collapse of the U.S.S.R. in 1991. Through Ukraine's struggles with independency, VOA was a vital source of accurate news and responsible commentary.

Today, VOA continues to reach millions of Ukrainians each week. The radio broadcasts that began in the early cold war period have been replaced with daily television broadcasts and reporting on VOA's web site. Ukrainians still look to VOA not only to hear about the Washington perspective on what is happening in Ukraine, but also to comprehend America's story—its foreign policy objectives, national politics, social challenges, culture, arts, educational opportunities, business successes and achievements in science, technology, and medicine. The United States continues to serve as an important example for Ukrainians on maintaining a vibrant, prosperous, pluralistic society. Through its strict adherence to journalistic excellence over the past 60 years, the Voice of America's Ukrainian Service has been a key institution in U.S. public diplomacy. Today, its mission remains critical as ever, and we proudly mark this milestone anniversary.

IN RECOGNITION OF DANE NOWELS

HON. DOUG LAMBORN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. LAMBORN. Madam Speaker, I rise today to recognize Dane Nowels, an American patriot who passed away on December 1, 2009. As a resident of Colorado Springs and Colorado, Nowels was a true servant to his nation and community. I rise today to honor his contribution to our community and country.

Born in Oakland California on October 18, 1947, Nowels graduated from The Ohio State University in 1969 with a degree in agricultural economics. As an agricultural enthusiast, Nowel was a four time National Champion in Tractor Pulling using the tractors that he built himself.

After service in the Army and a career as a commodities broker, Nowels moved to Colorado Springs, Colorado to provide heavy equipment to farmers and ranchers throughout southern Colorado for Ellen Equipment Company.

Nowels was a natural leader, and he used his talents to serve others in the El Paso County community. As President of the Pikes Peak Firearms Coalition and Vice-Chairman of the El Paso County Republican Party, Nowels accomplished much in El Paso County in defense of liberty. Nowels encouraged minorities, youth, young adults, and businesspeople to rally behind local and state candidates who

exhibit support for a strong national defense and limited government. He was an advocate for traditional American values based upon the U.S. Constitution and the Bill of Rights, especially the Second Amendment right to bear arms. In addition, Nowels was an active member of the Pikes Peak Economics Forum, often speaking to and debating area high school and college students about the free market system and the Constitutional rights of life, liberty, and the pursuit of happiness.

Throughout his life, Nowels was committed to serving this great country, whether in the Army or defending liberty in his community. I mourn his passing, and today ask that we honor the life of a true American hero.

COMMENDING THE SOLDIERS AND CIVILIAN PERSONNEL STATIONED AT FORT GORDON

SPEECH OF

HON. PAUL C. BROUN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 7, 2009

Mr. BROUN of Georgia. Mr. Speaker, I rise today to commend the soldiers, civilians, and military families stationed at Fort Gordon for their service and dedication to the United States, and to honor the lineage of Fort Gordon as an indispensable communications installation and training center in our Nation's history.

Fort Gordon was originally conceived as Camp Gordon on October 18, 1941, as an answer to America's fight in WWII Europe. Camp Gordon was home to three Army Divisions—the 4th Infantry Division, the 26th Infantry Division, and the 10th Armor Division. All served with distinction in the liberation of Europe from the Nazi tyranny. It was not until March 21, 1956, that Camp Gordon was given permanent status and renamed Fort Gordon.

Since that time, Fort Gordon's soldiers and civilians have continuously served with distinction in Vietnam, Operations Desert Shield and Desert Storm, and in current operations in Iraq and Afghanistan. All the while, the military family members were providing support while dealing with the hardship of long and often times multiple deployment separations.

In June 1986, the United States Army Signal Regiment was established and Fort Gordon was designated as the home base for the regiment. Fort Gordon is home not only to the Army's premier signal training center, but it is also home to deploying active and reserve Army units. The soldiers in these units take the lessons learned from the battlefield in order to incorporate the lessons into the signal training curriculum and in research and development. This functional and technical analysis has lead to the development of mobile subscriber equipment, the Army's communication architecture and information mission area, which include integration of automation, communications, and visual information.

Fort Gordon's role as a communications leader was not achieved through individuality but through a combined effort of the Army and the citizens of Augusta who together have fostered a strong community. Margret Mead said it best when referring to the strength of a community, ''never doubt that a small, group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.'' These committed Augusta citizens were and are an essential part of Fort Gordon's history that has led to a safer and secure America.

REIT ENERGY GRANTS

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. LINDA T. SÁNCHEZ of California. Madam Speaker, I rise today to introduce the ''Sustainable Property Grants Act of 2009,'' legislation that would allow real estate investment trusts (REITs) to fully benefit from the energy grants included in the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

Congress created REITs in 1960 to enable investors from all walks of life to own professionally managed, income-producing real estate. REITs combine the capital of many investors to benefit from a diversified portfolio of income-producing real estate, including apartments, health care facilities, hotels, offices and warehouses. REITs are required to distribute at least 90 percent of their taxable income. Most distribute their entire taxable income.

Buildings represent about 40 percent of all energy use and approximately 70 percent of all electricity consumption in the United States, but REITS, which own 6 billion square feet of commercial real estate, cannot currently access tax incentives designed to reduce their energy use. Providing incentives for REITs to engage in energy efficiency projects could significantly contribute to achieving our energy reduction goals.

That is why I am introducing legislation today to amend the Recovery Act to allow REITs to participate fully in the energy grants in lieu of tax credits program.

Section 1603 of the Recovery Act provides Energy Grants to companies that invest in qualifying renewable energy projects. These grants are intended to encourage qualifying investments by taxpayers whose tax liability is not sufficient to benefit from existing energy credits. In fact, the Recovery Act Energy Grants were designed as a substitute for energy credits during the current economic downturn since many taxpayers have inadequate tax liability to use the credits. Despite being designed for this purpose, the Energy Grants provision in the Recovery Act have been interpreted to benefit a REIT only to the extent it retains taxable income, which most do not.

This legislation would further existing Congressional policy and promote the greatest possible participation in efforts to increase the use of renewable energy. REITs would be afforded the same economic incentives as other property owners to make investments in renewable energy projects. With enough critical mass, these types of investments should help fuel the U.S. economy's growth, create additional jobs and, over time, reduce American reliance on foreign oil.

I hope that you will join me in supporting this legislation.

CONGRATULATING DAVID COHEN

HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ISRAEL. Madam Speaker, I rise today to offer my sincere congratulations to my constituent, David Cohen, upon being awarded the Dick Steinberg Good Guy Award. This honor is given to a Jewish individual who best demonstrates the good aspects of sportsmanship.

Like the award's namesake, David has earned the distinction in the sport of football. Dick Steinberg was the Vice-President and General Manager of the New York Jets for six years. He was widely regarded and was one of the most respected men in football. As Head Coach of the football team at Hofstra University, he has exemplified the behavior and character that the National Jewish Sports Hall of Fame and Museum believes deserves to be recognized.

I hope that he continues to act as a leader in our community and carry on the legacy of Dick Steinberg. Congratulations to David upon this receiving this great honor.

HONORING HENRY R. MUÑOZ III

HON. CHARLES A. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GONZALEZ. Madam Speaker, I rise today to honor Henry R. Muñoz III, a public servant who has dedicated his professional career and philanthropic efforts to serving others, on the special occasion of his 50th birthday.

Born in San Antonio on December 14, 1959, Henry Muñoz has honored us with his vision and leadership for decades, benefiting our cities, state and country. As a longtime friend, I know firsthand his track record of service to this nation and especially to the great State of Texas.

Throughout his life, Mr. Muñoz has engaged in a number of different professions: entrepreneur, artist, philanthropist, and activist. From his appointments to the Texas Department of Transportation, VIA Transit, Smithsonian National Board, John F. Kennedy Center for the Performing Arts, Cooper Hewitt National Design Museum, and many more, Mr. Muñoz has dedicated his passion and efforts to raising funds for these prestigious organizations. Mr. Muñoz has also raised over $5 million in student scholarships, allowing young leaders in our communities pursue their dreams through higher education.

Madam Speaker, I ask my colleagues to join me in honoring Henry Muñoz III as we celebrate his 50th birthday, a life highlighted by decades of community service, philanthropy, and leadership.

TRIBUTE TO MR. R. STEPHEN BEST

HON. J. RANDY FORBES

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. FORBES. Madam Speaker, I rise today to pay tribute to Mr. Steve Best, on the occasion of his retirement as Fire Chief of the Chesapeake Fire Department.

Chief Best's contributions to the safety and health of the City of Chesapeake's citizens cannot be overstated. Chief Best modernized and diversified Chesapeake's fire and emergency personnel services to meet the wide-ranging challenges of modern life.

Chief Best began his fire fighting career as a sixteen-year-old volunteer with the Deep Creek Volunteer Fire Department. That experience led to professional firefighting with the Chesapeake Fire Department upon graduating from high school in 1974.

Working his way up through the ranks, Best worked as Fire Inspector and Fire Marshal for Chesapeake. He was promoted to Assistant Fire Chief, then Deputy Fire Chief until April 1998 when he became Chesapeake's Fire Chief and Emergency Services Coordinator.

Chief Best has ensured the Chesapeake Fire Department is able to respond to specialized situations involving hazardous materials, technical rescues, marine incidents, and foam firefighting. He greatly assisted in equipping every Chesapeake fire engine and ambulance with Advanced Life Support Equipment to save precious time in beginning life saving procedures. Best's fire department embodies a sense of community by offering programs such as child safety seat installations, fire station tours, and fire extinguisher training.

During his professional career, Chief Best continued to pursue educational opportunities. In addition to an Associate's Degree in Fire Science, a Bachelor of Science Degree in Governmental Administration, and a Master's Degree in Business Administration, Chief Best graduated with a Juris Doctor Degree from the Regent University School of Law in May 2008.

At home, Chief Best and his wife Sheree reside in Chesapeake. They are the proud parents of two sons. Chief Best teaches Sunday School at Deep Creek United Methodist Church and has served in many leadership roles on the Church Council. He has also served as a board member of the Boys and Girls Club of Southeast Virginia, Chesapeake Division, the Chesapeake Public School Foundation, and the YMCA Board of Management.

Chief Best deserves the gratitude of all of Chesapeake's residents for his innumerous accomplishments that have improved the quality of life here. Madam Speaker, please join me and the citizens of Chesapeake in offering our sincere congratulations to Chief Best on his exemplary service and a retirement well deserved.

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

HON. BRUCE L. BRALEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-country derivatives markets, and for other purposes:

Mr. BRALEY of Iowa. Madam Chair, I strongly support the Wall Street Reform and Consumer Protection Act and urge my Colleagues to vote for this bill.

I'm proud to chair the Populist Caucus. One of our founding principles is to fight for America's working families. For the past eight years, our economic policies have put the interests of Wall Street ahead of Main Street. Wall Street and big bank executives exploited loopholes and gambled with our money, which last year led us into the worst financial crisis since the Great Depression. And while some big banks continue to accept excessive compensation and bonus packages, America's middle class families are still struggling.

The firms that received more than $350 billion in federal TARP funds increased executive compensation by an average of four percent last year. This is outrageous and unacceptable. This legislation will provide shareholders of public companies an annual vote on executive compensation and help reign in excessive executive compensation.

The Wall Street Reform and Consumer Protection Act will hold Wall Street and big banks accountable by ending the practice of ''too-big-to-fail,'' so that America's taxpayers and middle class families are never again forced to pay off Wall Street's gambling debts. It will manage financial crises by requiring banks and other financial institutions worth at least $50 billion in assets to foot the bill for any bailouts in the future.

As we rebuild our economy, we must implement common-sense rules so that big banks and Wall Street don't jeopardize this recovery at the expense of hard-working Iowa families. This bill protects consumers from predatory lending abuses and finally brings transparency and accountability to an out-of-control financial system. It is about time that we put Main Street ahead of Wall Street. Thank you for taking up this important legislation.

EARMARK DECLARATION

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. EHLERS. Madam Speaker, pursuant to Republican Leadership standards, I am submitting the following information regarding projects I received funding for as part of as part of the conference report to the Consolidated Appropriations Act (H.R. 3288), which were not included in House-passed appropriations bills:

Requesting Member: Congressman VERNON J. EHLERS

Bill Number: H.R. 3288

Agency: Department of Health & Human Services

Account: Health Resources and Services Administration (HRSA)—Health Facilities and Services.

Legal Name of Requesting Entity: Cherry Street Health Services

Address of Requesting Entity: 550 Cherry St., SE., Grand Rapids, MI 49503

Description of Request: The bill provides $400,000 for Cherry Street Health Services for facilities and equipment. Cherry Street (community health center), Touchstone Innovare (mental health services) and ProAction (substance abuse/mental health treatment) are developing an integrated care system in which patients in need of both mental health and physical health care will be involved in an integrated plan of treatment in which both medical and mental health professionals from different agencies work together in the same office space to complete a plan of treatment, a valuable use of taxpayer funds. In order to provide services to an increased number of patients, the three agencies are building a 92,000 sq. ft. building that will house the operations of the three organizations. The medical, dental and vision care equipment requested will be used in the operation of a federally qualified health center for the treatment of low- income patients most of whom would otherwise not have access to primary health care services.

Requesting Member: Congressman VERNON J. EHLERS

Bill Number: H.R. 3288

Agency: Federal Transit Administration

Account: Buses and Bus Facilities

Legal Name of Requesting Entity: The Rapid

Address of Requesting Entity: 300 Ellsworth Ave., SW., Grand Rapids, Michigan, 49503

Description of Request: The bill provides $1,948,000 for the Rapid's Wealthy Operations Center Expansion in Grand Rapids, Michigan. The funding was requested by the Rapid. This project is a valuable use of taxpayer funds because it will allow the Rapid, the region's largest public transportation service, to expand to accommodate growth needs over the next 30 years.

HONORING MS. EDNA FRADY FOR HER DECADES OF SERVICE TO THE CITY OF FALLS CHURCH, VIRGINIA

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MORAN of Virginia. Madam Speaker, I rise today to honor Ms. Edna Frady for her decades of service to the City of Falls Church, Virginia and its people. Moving to Falls Church at an early age, Edna has spent virtually her entire life in the community she has known and loved for over six decades. Through her charitable work and civic involvement, Edna, or ''Boss'' as she is known by many, has left an indelible mark on the City.

A tireless community activist, leader, friend, and role model, Edna Frady has made a lifelong commitment to improving the lives of others. The list of organizations she has served

over the years is extensive. The Citizens for a Better City, Village Preservation and Improvement Society, League of Women Voters, Women's Club of Falls Church, Falls Church Lions Club, Falls Church Education Foundation, Falls Church Arts Council, and Falls Church Cable Access, have all benefitted from her membership and constant support. Ms. Frady was also an active member of the Falls Church Chamber of Commerce, where she served as a member of the Executive Committee, and in 2000, was awarded the Chamber's ''Pillar of the Community'' award. In recognition of her lifetime of achievement, the Mayor and City Council of Falls Church are planning to proclaim December 14, 2009, ''Edna Frady Day.''

As heavily involved as Ms. Frady was with non-profit community service organizations, she matched that effort as a stalwart force in the Democratic Party. For two decades, she helped lead the Falls Church Democratic Committee, serving on both the 8th Congressional District Committee, and the Democratic State Central Committee. In honor of her commitment, Ms. Frady received the Democratic State Central Committee's ''Grass Roots Award.'' In 2006, she was awarded the Falls Church Democratic Committee's ''Marian Driver Award for Outstanding Service.''

It's a true honor to recognize someone who so selflessly worked for the betterment of her community and fellow citizens. I know that even in retirement, Edna will continue to find ever more fulfilling challenges to assist those around her.

TRIBUTE TO STEVEN AND JULIE KARBER

HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LATHAM. Madam Speaker, I rise today to recognize and congratulate Steven and Julie Karber of Jefferson, Iowa, on being named the winners of the ''Gary Wergin Good Farm Neighbor Award.'' This award recognizes Iowa livestock farmers who dedicate themselves not only to their professions and their community, but also to caring for the environment.

The state of Iowa is celebrating the Karber's achievements, but I feel that we in the U.S. House of Representatives should also recognize and commend the valuable professional and social contributions of Iowa's livestock farmers. Steve and Julie raise sheep in the Jefferson area of my district, but Steve is also an M.D. with an active practice. When the Karbers aren't promoting the sheep industry or handling the day to day demands of being a physician, they are actively supporting the local 4–H and are involved in other community organizations.

I commend Steve and Julie for their many years of loyalty and service to Iowa and to our country. It is an immense honor to represent them in Congress, and I know they will continue to serve as role models of the values of community service in this Country.

TAX EXTENDERS ACT OF 2009–

SPEECH OF

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. HOLT. Mr. Speaker, I rise today in support of legislation that will extend tax relief to millions of Americans, the Tax Extenders Act of 2009. This bill will extend 40 tax cuts which are due to expire at the end of this year, many of which are important to businesses and families in Central New Jersey.

New Jersey has the highest property taxes in the country. While property taxes are assessed on a local basis to fund local services and schools, I have attempted at the federal level to provide some relief to homeowners. Earlier this year, I reintroduced the Universal Homeowner Tax Relief Act (H.R. 2725) which would extend the property tax deduction for American homeowners who don't itemize on their federal returns. I helped write this initiative to create an additional standard deduction of $500 for single filers and $1,000 for joint filers for local real property taxes paid. I am pleased that the bill before us today extends this deduction for the 2010 tax year and provides needed relief to the 30 million homeowners nationwide and an estimated 600,000 New Jerseyans who are due to lose this benefit this year.

H.R. 4213 also includes $17 billion in tax cuts that would help American businesses create and preserve jobs during these difficult economic times. It would extend the low-income housing tax credit exchange program which has invested more than $3.7 billion in the construction of more than 49,000 low-income housing units nationwide. It will also invest $3 billion to encourage economic development in economically distressed communities.

I especially support that H.R. 4213 would extend the research and development tax credit for an additional year. This tax credit is crucial in spurring private research and driving technological innovation and will support R&D at 11,000 American companies this year. This credit stimulates American made innovation and preserves and creates new high paying jobs in research and development. As important as the R&D tax credit has been, it has never been a permanent part of the tax code and has been allowed to expire several times, most notably in 2007. Congress should work to make this tax credit permanent in order strengthen the incentive for businesses to invest in long-term research by giving corporate leaders certainty that their research investments will be rewarded year after year.

The Tax Extenders Act of 2009 also would extend the above-the-line deduction for qualified tuition and related expenses. This tax cut of up to $4,000 helps parents offset the rising cost of higher education and keeps a college degree within reach of many middle class families. H.R. 4213 also would extend the teacher tax credit that allows teachers to deduct up to $250 for purchasing classroom supplies for their students. More than 3.4 million teachers benefited from this tax credit this year.

The Tax Extenders Act ensures that these tax cuts do not increase the deficit by providing the U.S. Treasury Department with significant new tools to find and prosecute U.S. individuals that hide assets overseas from the Internal Revenue Service.

I am always looking to extend tax relief to New Jersey families. This bill does that in a fiscally responsible way.

EARMARK DECLARATION

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. ROGERS of Kentucky. Madam Speaker, pursuant to the House Republican standards on congressionally-directed funding, I am submitting the following information regarding funding included in H.R. 3288, the Consolidated Appropriations Act of 2010.

Requesting Member: Congressman HAROLD ROGERS

Bill Number: H.R. 3288

Account: Housing and Urban Development—Economic Development Initiatives (EDI)

Legal Name of Recipient: Appalachia Service Project

Address of Recipient: 216 Green Hill Drive, Chavies, KY 41727

Description of Request: Provides directed funding of $460,000 to the Appalachia Service Project (ASP) in Chavies, Ky. ASP is a volunteer-based organization that works to build and repair homes for underprivileged people in the Appalachian region. In rural counties of Kentucky, significant poverty often prevents families from maintaining access to basic services like water and sewer and performing regular home maintenance. Since 1969, ASP has provided critical repairs to 13,000 homes in Central Appalachia and life-changing volunteer experiences to over 240,000 people. In 2008, the economic impact of ASP's activities across Kentucky was $3.15 million, and ASP will combine this FY10 funding with private contributions to provide emergency home repairs for disadvantaged families in rural Kentucky.

CONGRATULATING ALIVIANE, INC.'S 40TH ANNIVERSARY

HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. REYES. Madam Speaker, I rise today to congratulate Aliviane, Inc., as they celebrate their 40th anniversary. Based in my congressional district of El Paso, Texas, Aliviane is the largest and oldest drug abuse prevention, intervention, and treatment provider in the West Texas region.

Established in 1969, Aliviane provides a critical service to our community. Over the past 40 years, the organization has grown and now operates several licensed facilities that assist clients and their families with intensive residential treatment and supportive outpatient services. Aliviane's use of cutting-edge services and techniques has allowed the organization to meet the unique needs of its clients. Today, in large part because of Aliviane's pioneering efforts and commitment, behavioral health has become an essential part of primary health care in our country.

Aliviane has developed programs that have become national and international models and

have been used to further advance the behavioral health field. In the 1980s, Aliviane created the first nationally recognized program designed to keep a mother and her child together during treatment. This program has been recognized as a national model by the Office of National Drug Control Policy. In addition, Aliviane has developed the only behavioral health trauma unit in West Texas.

I commend Aliviane for their continued leadership in the behavioral health field and their dedication to further improving the national and international standards for behavioral health care. The hard working employees of Aliviane provide invaluable services within our community and it is with deep gratitude that I applaud their accomplishments.

RECOGNIZING LOUISE JOHNSON

HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LATHAM. Madam Speaker, I rise today to celebrate and congratulate Louise Johnson on the occasion of her 100th birthday on December 24th, 2009.

Louise was born in Esmund, South Dakota in 1909. While growing up in South Dakota, she met and married Lars Vierson Teigland, and the two moved to Iowa in 1939, happily raising two sons, Lowell and Owen, who later served in the U.S. Army. After Lars passed away she married Haakin Johnson, who she also spent many happy years with.

Louise has lived on and managed the family farm in Emmetsburg, Iowa for forty-four years until November of this year when she moved to Lakeside Nursing Home. She's enjoyed being a member of the Emmetsburg flower club, collecting dolls, making corn husk dolls and being passionate about politics.

There have been many changes that have occurred during the past one hundred years. Since Louise's birth we have revolutionized air travel and walked on the moon. We have invented the television and the Internet. We have fought in wars overseas, seen the rise and fall of Soviet communism and the birth of new democracies. Louise has also seen the leadership of eighteen United States Presidents and twenty-three Governors of Iowa. In her lifetime the population of the United States has more than tripled.

I congratulate Louise Johnson for reaching this milestone of a birthday. I am extremely honored to represent Louise in Congress and I wish her happiness and health in her future years.

EARMARK DECLARATION

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. CASTLE. Madam Speaker, pursuant to the House Republican standards on earmarks, I am submitting the following information regarding funding for Delaware included as part of the Consolidated Appropriations Act, 2010, H.R. 3288.

DIVISION A—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Name of Project: C & D Canal Trail Improvements

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Federal Lands (Public Lands Highways)

Legal Name of Requesting Entity: U.S. Army Corps of Engineers

Address of Requesting Entity: Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107

Description of Request: $1,000,000 to transform over 13 miles of existing Army Corps service road on the north side of the Chesapeake and Delaware Canal—from Delaware City to Chesapeake City—into a multi-purpose recreation trail with associated amenities (trail heads, signage, and self-composting restroom facilities, and security). Creating a multi-purpose recreation trail on the existing service road would ensure a safer area for the residents of Delaware City (one of the fastest growing areas in the state of Delaware), Chesapeake City, and everywhere in between, to continue to enjoy the Canal.

Name of Project: Turnpike Improvement Project: SR–1 & I–95

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Interstate Maintenance Discretionary

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: $2,018,000 to improve the safety and efficiency of two major routes along the Northeast Corridor. It consists of three phases designed to improve the movement and safety of interstate, regional and local traffic through this heavily traveled intersection. The three phases include: a redesign of the I–95/SR–1 interchange, adding a fifth lane to I–95, and reconfiguring the I–95 toll plaza in Newark, DE, to incorporate Highway Speed E–ZPass toll lanes. This project is anticipated to reduce traffic congestion and improve overall safety.

Name of Project: Indian River Inlet Bridge

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: $779,200 for the construction of a new bridge along State Route 1 over the Indian River Inlet. The replacement bridge will alleviate the safety risk caused by the present scour conditions at the foundations. The new structure will completely span the inlet with all foundation members constructed on dry land. The proposed alignment will be west of the existing bridge at a critical evacuation route in the event of natural disasters.

Name of Project: 40′ Fixed Route Transit Buses

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Buses & Bus Facilities

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: $974,000 to replace fixed route transit coaches which were purchased in 1996. This is part of a comprehensive bus replacement schedule to ensure safe and efficient transportation equipment is used for fixed route services. The project will enable the Delaware Transit Corporation to continue to provide a high level of service to Delaware residents. DTC provides 10 million passenger trips annually with 14.9 million service miles and serves all three counties.

Name of Project: Automotive-Based Fuel Cell Hybrid Bus Program

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Buses & Bus Facilities

Legal Name of Requesting Entity: University of Delaware

Address of Requesting Entity: Hullihen Hall, Newark, DE 19716

Description of Request: $487,000 for a program to research, build and demonstrate fuel cell hybrid buses on the UD campus and in the state of Delaware. The objective is for the project's efficient and uniquely low-cost design of fuel cell transit buses to spur commercialization of this technology which will help reduce our nation's dependence on foreign oil and enable the U.S. to meet its goal of greenhouse gases reductions.

Name of Project: Wilmington to Newark Commuter Rail Improvement Program

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Capital Investment Grants

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: $3,000,000 to install a third commuter rail track along the northeast corridor, build a new Newark Rail Station, and purchase four commuter rail cars. This program expands capacity to permit expansion of commuter rail services and increases reliability of intercity and commuter rail services. It will also assist in significantly reducing traffic congestion along the northeast corridor.

Name of Project: Remediation and Reuse of Reclaimed Port Land

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Legal Name of Requesting Entity: Diamond State Port Corporation

Address of Requesting Entity: 1 Hausel Rd, Wilmington, DE 19801

Description of Request: $730,500 for the excavation and removal of decaying organic material and other debris left by a previous industrial activity, backfilling, surcharging and paving this 5 acre site for future cargo operations. Approximately 5 acres of Port land in close proximity to the wharf area is currently unavailable for cargo operations as a result of unstable substrate conditions that preclude working with heavy marine cargo in this area.

Name of Project: Delaware Children's Museum

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Economic Development Initiatives

Legal Name of Requesting Entity: The Delaware Children's Museum, Inc.

Address of Requesting Entity: 110 South Poplar Street, Suite 103, Wilmington, DE 19801

Description of Request: $194,800 for renovations to the existing buildings in Wilmington and the construction of exhibits to create Delaware's first children's museum. This will assist in revitalizing the Christina Riverfront area.

Name of Project: First Steps Primeros Pasos

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Economic Development Initiatives

Legal Name of Requesting Entity: First Steps Primeros Pasos

Address of Requesting Entity: P.O. Box 1003, Georgetown, DE 19947

Description of Request: $194,800 to support the construction and start-up costs for a bilingual early care facility designed to help children of non-English speaking families develop the language and skills needed to be successful when they reach kindergarten. This will benefit Georgetown, Delaware, and its growing Hispanic community. Upon opening, the center will serve 60 children.

Name of Project: Ministry of Caring

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Economic Development Initiatives

Legal Name of Requesting Entity: Ministry of Caring

Address of Requesting Entity: 506 N. Church Street, Wilmington, DE 19801

Description of Request: $194,800 to renovate the Josephine Bakhita House to serve as residence for young adults committed to social responsibility and giving back to the community through one or two years of volunteer service of working within the Ministry of Caring's network of 18 programs to serve the poor and the homeless. This is an invaluable way to gain job experience. This project not only promotes volunteerism, but will also assist those in need in Delaware.

Name of Project: Food Bank of Delaware

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Economic Development Initiatives

Legal Name of Requesting Entity: Food Bank of Delaware

Address of Requesting Entity: 14 Garfield Way, Newark, DE 19713

Description of Request: $194,800 to expand the Milford facility to meet the needs of Kent and Sussex Counties. Expansion will include a full service kitchen to serve hot meals to those in need, a volunteer room for recruiting and meetings, a culinary school to provide job training for the unemployed, and more office space so that more jobs can be created.

DIVISION B—COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

Name of Project: Carvel State Building Video Surveillance Project

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: Delaware Capitol Police

Address of Requesting Entity: 150 William Penn Street, Dover, DE 19901

Description of Request: $75,000 to purchase and install digital video cameras and head end capturing and recording equipment at the Carvel State Building that houses the Governor's office, Lt. Governor's office, General Assembly offices, Supreme Court, Attorney General's office and numerous other state agencies. The purpose of this project is to enhance the Capitol Police ability to monitor, capture and retrieve video surveillance of the state facility to protect its occupants.

Name of Project: Chesapeake Bay Interpretive Buoy System

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: NOAA—National Weather Service Operations, Research and Facilities

Legal Name of Requesting Entity: National Oceanic and Atmospheric Administration (NOAA) Chesapeake Bay Office

Address of Requesting Entity: 410 Severn Avenue, Annapolis, MD 21403

Description of Request: $500,000 to be used by NOAA to purchase, deploy, and operate a buoy and sensors on the Nanticoke River in Delaware, which is the largest Chesapeake Bay tributary on the Delmarva Peninsula, and is identified by NOAA as a priority location for the Chesapeake Bay Interpretive Buoy System (CBIBS). The purpose of this project is to provide real-time data and interpretation to further protect, restore, and manage the Chesapeake Bay.

Name of Project: Delaware River Enhanced Flood Warning System

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: NOAA—National Weather Service Operations, Research and Facilities

Legal Name of Requesting Entity: Delaware River Basin Commission

Address of Requesting Entity: 125 State Police Drive, Trenton, NJ 08628

Description of Request: $200,000 for enhancements to the Delaware River Basin's flood warning system, including: (1) upgrades to the existing precipitation and stream gage network, (2) improvement of flash flood forecasting capabilities, (3) flood warning education and outreach, and (4) support of flood coordination. Following three Delaware River main stem floods, the continued development of an enhanced basinwide flood warning system is critical for ensuring that the existing flood warning system is adequately maintained and that technological advancements are continued.

Name of Project: Functional Family Therapy for At-Risk Youth (DE Girls Wraparound)

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—OJP—Juvenile Justice

Legal Name of Requesting Entity: Children and Families First Delaware

Address of Requesting Entity: 2005 Baynard Blvd., Wilmington, DE 19802

Description of Request: $350,000 for supplies and salaries needed to provide intensive community-based counseling and case management to youth ages 10–18 and their families in all three counties in Delaware. The purpose of the project is to improve family relationships, increases parent engagement, improves school attendance, and reduces involvement in the juvenile justice system and recidivism so that youth succeed.

Name of Project: In-Car Camera System for Delaware State Policy Patrol Cars

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ–COPS Technology

Legal Name of Requesting Entity: Delaware State Police

Address of Requesting Entity: 1441 N. DuPont Highway Dover, DE 19903

Description of Request: $1,500,000 to purchase 350 digital in-car cameras for patrol fleet and centralized digital storage devices. The purpose of this project is to provide valuable evidentiary information in both criminal and civil processes.

Name of Project: Jobs for Delaware Graduates, Expand Available Services

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—OJP—Juvenile Justice

Legal Name of Requesting Entity: Jobs for Delaware's Graduates, Inc.

Address of Requesting Entity: 381 W. North Street Dover, DE 19904

Description of Request: $1,000,000 to expand Jobs for Delaware Graduates (JDG) programs to 1,320 additional ''at-risk'' students in Middle School and High School for the purpose of increasing school graduation rates.

Name of Project: Mentoring Initiatives for At-Risk Children and Youth

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—OJP—Juvenile Justice

Legal Name of Requesting Entity: Delaware Mentoring Council

Address of Requesting Entity: Delaware Mentoring Council, University of Delaware, Newark, DE 19716

Description of Request: $750,000 to create stable mentoring programs in at least four school districts and ten schools throughout Delaware, with at least five schools in the city of Wilmington. The purpose of the project is to provide stability in the lives of at-risk youth, those living in poverty, and those facing substance abuse in their family, incarcerated parents, or even homelessness.

Name of Project: New Castle County Courthouse Capitol Police Command Center and Lobby Surveillance Project

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: State of Delaware Capitol Police

Address of Requesting Entity: 150 William Penn Street, Dover, DE 19901

Description of Request: $130,000 to be used to upgrade surveillance and purchase a system to coordinate dispatch operations within the Capitol Police Command Center of the New Castle County Courthouse to protect the 1 million people per year that pass through the courthouse.

Name of Project: Police Weapons Range Improvements

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: Wilmington Department of Police

Address of Requesting Entity: 300 N. Walnut Street, Wilmington, DE 19801–3973

Description of Request: $400,000 for mandatory improvements to the weapons range due to safety and environmental concerns, so that it can continue to be utilized for firearms training by multiple local, state, and federal agencies.

Name of Project: Survival Equipment for Delaware State Police

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: Delaware State Police

Address of Requesting Entity: 1441 N. DuPont Highway Dover, DE 19903

Description of Request: $125,000 to purchase equipment (30 shotguns, 30 handguns, and 150 vests) for the purpose of ensuring the safety and effectiveness of the officers providing law enforcement and the citizens they protect.

DIVISION C—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2010

Name of Project: University of Delaware, Newark, DE, for the Delaware Small Business and Technology Development Center

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Small Business Administration—Salaries and Expenses

Legal Name of Requesting Entity: University of Delaware

Address of Requesting Entity: University of Delaware, Hullihen Hall, Newark, DE 19716

Description of Request: $350,000 to be used for training and consulting at the Delaware Small Business Development Center to enhance technology-based economic development in Delaware.

Name of Project: World Trade Center Institute Delaware, for the export assistance webinar series for business education, Wilmington, DE

Requesting Member: Congressman MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Small Business Administration—Salaries and Expenses

Legal Name of Requesting Entity: World Trade Center Institute of Delaware

Address of Requesting Entity: 702 West Street Wilmington, DE 19801

Description of Request: $50,000 to produce webinars, or live web streaming of business seminars, at the World Trade Center Institute of Delaware. The purpose of the project is to make the information available to broad ranges of businesses and individuals.

DIVISION D—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Name of Project: Beebe Medical Center, Lewes, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Beebe Medical Center

Address of Requesting Entity: 424 Savannah Rd., Lewes, DE 19958

Description of Request: $100,000 to construct a new 2-story School of Nursing building. The purpose of the project is to double Beebe's nursing enrollment to 120 students and train an additional 60 nurses to care for patients in Delaware and Delmarva.

Name of Project: Delaware Department of Education, Dover, DE for a school leadership initiative

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Delaware Department of Education

Address of Requesting Entity: 401 Federal Street, Suite 2, Dover, DE 19901

Description of Request: $250,000 to train, mentor, and coach superintendents, principals, and other leaders within the Vision 2015 Network to sharpen their focus on data and realign their time and resources to maximize student achievement.

Name of Project: Delaware Department of Technology and Information, Dover, DE to improve Internet access to Delaware schools, including the purchase of equipment

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Delaware Department of Technology and Information

Address of Requesting Entity: Department of Technology and Information

Description of Request: $100,000 for the purchase of equipment as well as the purchase of ancillary devices needed for computing operations in nearly 200 public school buildings throughout Delaware.

Name of Project: East Side Community Learning Center Foundation, Wilmington, DE, to support supplemental education and enrichment programs for high-need students

Requesting Member: MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: EastSide Community Learning Center Foundation

Address of Requesting Entity: 3000 N. Claymont Street, Wilmington, DE 19806

Description of Request: $100,000 for supplemental educational and enrichment programs at East Side Charter School to ensure their students succeed in school, work, and society.

Name of Project: FAME, Inc., Wilmington, DE, to prepare minority students for college and encourage them to pursue careers in science, engineering, and math

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Forum to Advance Minorities in Engineering, Inc. (FAME, Inc.)

Address of Requesting Entity: 100 W. 10th Street, Suite 409, Wilmington, DE 19801

Description of Request: $125,000 to prepare minority students for college—concentrating in STEM and business education.

Name of Project: Nanticoke Senior Center, Seaford, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Nanticoke Senior Center

Address of Requesting Entity: 301 N. Virginia Avenue, Seaford, DE 19973

Description of Request: $100,000 for the construction of new, 11,053 square foot Senior Services Center in the heart of Seaford, Delaware. The purpose of this project is to help provide a new approach to serving older adults through the expansion of services.

Name of Project: Nemours/Alfred I. duPont Hospital for Children, Wilmington, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Nemours/Alfred I. duPont Hospital for Children

Address of Requesting Entity: 1600 Rockland Road, P.O. Box 269, Wilmington, DE 19899

Description of Request: $350,000 for capital improvements by Nemours/Alfred I. duPont Hospital for Children. The purpose of this project is to upgrade and expand the only children's hospital in Delaware, which also serves children from all over the U.S. and world who seek highly specialized services, in order to strengthen its ability to continue providing outstanding patient care.

Name of Project: Rodel Foundation of Delaware, Wilmington, DE, for the Delaware Parent Leadership Institute

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Rodel Foundation of Delaware

Address of Requesting Entity: 100 W. 10th Street, Suite 704, Wilmington, DE 19801

Description of Request: $150,000 to expand leadership training for parents of Delaware public school students on how to advocate effectively for their children's education and partner effectively with their children's schools.

Name of Project: St. Francis Hospital Foundation, Wilmington, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: St. Francis Hospital Foundation

Address of Requesting Entity: 701 North Clayton Street, Wilmington, DE 19805

Description of Request: $175,000 to make urgently needed capital infrastructure improvements to St. Francis Hospital. The purpose of this project is to help St. Francis in its continued care of the community's uninsured.

Name of Project: Wesley College, Dover, DE, for renovation and equipping of the nursing school

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Wesley College–

Address of Requesting Entity: 120 North State Street, Dover, DE 19901

Description of Request: $200,000 to construct a 22,000 square-foot nursing facility or renovate an existing building. The purpose of this project is to enable Wesley College to increase the number of qualified nursing graduates to address the national, regional and statewide shortage of nurses.

DIVISION E—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Name of Project: C–5 Cargo Aircraft Maintenance Training Facility, Phase 1

Requesting Member: MICHAEL N. CASTLE–

Bill Number: H.R. 3288

Account: Air Force
Legal Name of Requesting Entity: Dover Air Force Base
Address of Requesting Entity: Dover, DE
Description of Request: $5,300,000 to provide new training facility with tools and classrooms to furnish specialized hands-on instruction for C–17 and C–5M engine maintenance.
Name of Project: Consolidated Communications Facility
Requesting Member: MICHAEL N. CASTLE–
Bill Number: H.R. 3288
Account: Air Force
Legal Name of Requesting Entity: Dover Air Force Base
Address of Requesting Entity: Dover, DE
Description of Request: $12,100,000 to construct a consolidated communications facility at Dover AFB. Currently, a comprehensive, integrated communications system is impeded by the fragmented location of related communications functions. Consolidating these functions into one hardened facility will improve manpower efficiency by approximately 25 percent. Consolidation and demolition of the old facilities will result in approximately $17,000 in annual energy savings.
Name of Project: Chapel Center
Requesting Member: MICHAEL N. CASTLE–
Bill Number: H.R. 3288
Account: Air Force
Legal Name of Requesting Entity: Dover Air Force Base
Address of Requesting Entity: Dover, DE
Description of Request: $7,500,000 to construct a new chapel center at Dover AFB. The current Dover AFB chapel center is an undersized, structurally substandard facility. A chapel is needed in proximity of dormitory residents because many single Airmen do not own transportation and the other base chapel is 20 minutes from the main base by foot. Airmen who work at the Port Mortuary would also utilize the new facility. An improved chapel is required to host families who come to the base to receive our fallen heroes. A new chapel center is needed to meet diverse worship, fellowship, and counseling needs of Dover AFB.

SUPPORT OUR BORDER COMMUNITIES

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. FILNER. Madam Speaker, I rise today to introduce H.R. 4251, legislation to include certain Department of Homeland Security facilities, such as ports of entry, under the Payments in Lieu of Taxes (PILT) program.

Since 1976, communities have received payments from the Interior Department's PILT program to help offset losses in property taxes due to nontaxable Federal lands administered by the BLM, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest service.

However, all along our Border, communities are not reimbursed for land that the Department of Homeland Security uses for ports of entry. The community often provides resources and services to these facilities without reimbursement from the government. My bill, H.R. 4251 provides support for these communities.

H.R. 4251 amends existing law to include certain Department of Homeland Security facilities, such as ports of entry, under the PILT program. Providing access to these payments will help these communities with the important work they provide along our borders.

EARMARK DECLARATION

HON. CHARLES W. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. DENT. Madam Speaker, pursuant to the House Republican Leadership standards on earmarks, I am submitting the following information regarding projects that are listed in H.R. 3288, the Consolidated Appropriations Act, FY2010:

Bill Number: H.R. 3288, the Consolidated Appropriations Act, FY2010
Account: Division B—Commerce, Justice, Science and Related Agencies—NASA, CAS
Title: Nanomaterials Research
Legal Name of Requesting Entity: Lehigh University
Address of Requesting Entity: 5 East Packer Avenue, Bethlehem, PA 18015
Description of Request: This funding will be used to advance the partnership between Lehigh University, the NASA Goddard Space Flight Center (GSFC), U.S. Army ARDEC, and industry partners in Pennsylvania, Maryland, New Jersey, and Delaware. The purpose of the partnership is the development, characterization, and application of engineered nanomaterials and devices for NASA space missions and aeronautical applications.
Bill Number: H.R. 3288, the Consolidated Appropriations Act, FY2010
Account: Division D—Departments of Labor, Health and Human Services, and Education, and Related Agencies—Department of Education, Higher Education (FIPSE)
Title: Civic Engagement and Service Learning Program
Legal Name of Requesting Entity: Muhlenberg College
Address of Requesting Entity: 2400 W. Chew Street, Allentown, PA 18104
Description of Request: This funding will be used to expand civic engagement and undergraduate service learning by leveraging Muhlenberg College resources to address issues related to health, housing, economic development and urban education to serve approximately 700 local residents.

EARMARK DECLARATION

HON. J. RANDY FORBES

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. FORBES. Madam Speaker, I am submitting the following information regarding an earmark I received as part of H.R. 3288, Consolidated Appropriations Act, 2010.

Requesting Member: J. RANDY FORBES
Bill Number: H.R. 3288
Account: Commerce—Justice—Science
Legal Name of Requesting Entity: City of Suffolk Police Department
Address of Requesting Entity: 120 Henley Place, Suffolk, VA 23434
Description of Request: Provides $70,000 for the Suffolk Police Department Technology Enhancement Initiative within the COPS Technology Program.

HONORING THE FIRST UNITED METHODIST CHURCH OF PEORIA

HON. AARON SCHOCK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. SCHOCK. Madam Speaker, I rise today to honor the First United Methodist Church of Peoria. For 17 years First United Methodist has partnered with Irving Primary School to present a variety of services to students from low income families. Bear Buddy Ministry volunteers provide reading and tutoring services to Irving 250 students in second, third, fourth and fifth grade. Bear Buddy Ministry volunteers visit Irving weekly and serve over half of the 353 students who attend Irving.

First United Methodist sponsors a Fine Arts Ministry which partners Irving students with artists from Bradley University and the Peoria Art Guild so Irving students can have a chance to participate in artistic opportunities using visual arts, pottery, writing and photography resources.

The Community Ministry also supports a children's choir which has grown to 52 members in recent years. First United Methodist transports the young vocalists to all of their concerts and civic engagements, including performances at Peoria City Council meetings.

First United Methodist proudly backs a soccer program in Morton, Illinois for Irving students which lasts six to eight weeks. The soccer program gives students proper exercise and shows them the importance of teamwork. First United Methodist members have also built two Habitat for Humanity homes for families of Irving School students. These successes have led First United Methodist to explore future partnerships with Lincoln Middle School and the Peoria Alternative High School. The First United Methodist Church-Irving Primary School partnership is a model relationship which works together to provide a better future for the children of Peoria District 150. I congratulate First United Methodist Church of Peoria for 17 years of quality ministry to the students and families of Irving Primary School. I look forward to many more years of this great partnership which furthers the education of our students. Thank you and I yield back the balance of my time.

A TRIBUTE TO GRETCHEN PUSCH

HON. EDOLPHUS TOWNS–

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Gretchen Pusch.

Flutist Gretchen Pusch made her Carnegie Recital Hall debut as winner of the Artist International Competition. She has appeared frequently in recitals and as concerto soloist in North America, Europe and Asia. A member of the Dorian Wind Quintet, she has also collaborated in chamber music concerts with Peter

Schickele, Anthony Newman, Maxence Larrieu and Paula Robison, among others. Ms. Pusch has performed with the American Symphony, American Composers Orchestra, Brooklyn Philharmonic, New Jersey Symphony and Philharmonia Virtuosi.

Ms. Pusch has been heard on radio, television and recordings for Composers Recording Inc., Panasonic, Summit, Innova, Mode and Windham Hill. Formerly on the faculty of Rutgers University, Ms. Pusch currently serves on the flute faculty of the Juilliard School's Music Advancement Program and the International Festival Institute at Round Top and is a teaching artist for The Academy (a joint program of Carnegie Hall, the Juillard School and the Weill Music Institute). She is a graduate of Boston University and studied with Julius Baker, James Pappoutsakis and Keith Underwood.

Madam Speaker, I urge my colleagues to join me in recognizing Gretchen Pusch.

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

HON. CHAKA FATTAH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. FATTAH. Madam Chair, I rise in strong support of H.R. 4173, the Wall Street and Consumer Protect Act of 2009. The bill proposes to address the financial crisis brought on by the financial industry by crafting a comprehensive set of measures that will modernize America's financial regulations and hold Wall Street accountable. A myriad of issues, from predatory lending to unregulated derivatives, are contained in the bill to prevent conditions that led to last year's financial meltdown.

The legislation being considered today outlaws many of the egregious industry practices that marked the subprime lending boom, and it would ensure that mortgage lenders make loans that benefit the consumer. H.R. 4173 establishes a simple standard for all home loans, mandating that institutions must ensure borrowers have the ability to the loans they are sold. In addition, the bill prohibits the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans, including the bonuses known as ''yield spread premiums,'' which lenders pay to brokers to inflate the cost of loans. Many homeowners in the current mortgage crisis received were steered into more expensive loans than they qualified for. The bill limits the prepayment penalties charged to borrowers who wish to get out of their loans and refinance on more affordable terms.

Implementing laws to correct the failures that led to the economic conditions that created the worse financial crisis since the Great Depression is important in ensuring the ensuing calamity that transpired after the collapse of the financial markets. Nevertheless, the Chairman's inclusion of a mortgage foreclosure assistance provision in the Chairman's Manager's Amendment brings to light one of the least discussed causalities of the financial disaster. Many homeowners now find they are unable to meet their financial obligations due to the severe recession caused by the unbridled greed and recklessness of many financial services institutions.

On numerous occasions, President Obama declared the road to recovery must begin with correcting the damaged housing market by providing people the tools necessary to keep their homes and prevent foreclosure. According to a recently released report by RealtyTrac, a realty company that maintains a comprehensive national database of pre-foreclosure and foreclosure properties, nearly 400,000 properties received foreclosure filing in August 2009. Though number of filings decreased less than one percent from the previous month, the overall number of foreclosure filings is nearly 18 percent higher than the previous year. More strikingly, the report also indicates 1 in every 357 properties used for housing are under threat of foreclosure.

Although not all homes in the foreclosure process will end in a foreclosure completion, an increase in the number of loans in the foreclosure process is generally accompanied by an increase in the number of homes on which a foreclosure is completed. According to the Mortgage Bankers Association, about 1 percent of all home loans were in the foreclosure process in the second quarter of 2006. By the second quarter of 2009, the rate had quadrupled to over 4 percent.

Traditionally, housing is considered a relatively safe investment that allows for the possibility for a high rate of return. Rapidly rising home prices reinforced supported this view. During the rapid of expansion of housing in the early part of this decade, many people decided to buy homes or take out second mortgages in order to access their increasing home equity. Furthermore, rising home prices and low interest rates contributed to a sharp increase in people refinancing their mortgages. For example, between 2000 and 2003, the number of refinanced mortgage loans jumped from 2.5 million to over 15 million. In 2006 and 2007, the value of housing dropped precipitously, which triggered an unexpected increase in the number of homeowners that were delinquent on their mortgages payments and facing foreclosure.

Mortgage foreclosures are very costly to both the foreclosed homeowner and the mortgage lender. Lenders suffer revenue losses from uncollected interest on delinquent loans, as well as unrecoverable origination costs and fees. Though loans that are insured under the Federal Housing Act mitigates losses to lenders to a certain extent, foreclosures cost the lending industry approximately $32,000 for every home that is in foreclosure proceedings since foreclosed properties are often sold below market value.

Losing a home to foreclosure can have a number of negative effects on a household. For many families, losing a home means losing the household's largest store of wealth. Furthermore, foreclosure can negatively impact a borrower's creditworthiness, making it more difficult for him or her to buy a home in the future. Finally, losing a home to foreclosure can also mean that a household loses many of the less tangible benefits of owning a home. Research has shown that these benefits include increased civic engagement that results from having a stake in the community, and better health, school, and behavioral outcomes for children.

In addition, many homeowners experience difficulty finding a place to live after losing their home to foreclosure. Many will become renters. Nevertheless, some landlords may be unwilling to rent to families whose credit has been damaged by a foreclosure, limiting the options open to these families. There can also be spillover effects from foreclosure on current renters. Renters living in units facing foreclosure may be required to move, even if they are current on their rent payments. As more homeowners become renters and as more current renters are displaced when their landlords face foreclosure, pressure on local rental markets may increase, and more families may have difficulty finding affordable rental housing. Some observers have also raised the concern that a large increase in foreclosures could increase homelessness, either because families who lost their homes have trouble finding new places to live or because the increased demand for rental housing makes it more difficult for families to find adequate, affordable units.

A concentration of foreclosures will negatively impacts communities, not just homeowners facing foreclosure. Many foreclosures in a single neighborhood may depress surrounding home values. If foreclosed homes stand vacant for long periods of time, they can attract crime and blight, especially if they are not well-maintained. Concentrated foreclosures also place pressure on local governments, which can lose property tax revenue and may have to step in to maintain vacant foreclosed properties.

Unforeseen events can happen to all people, in all communities. Unexpected medical expenses, sudden unemployment, and divorce are only some of the myriad of unforeseen circumstances that can create financial instability for hardworking homeowners. Such hardships are frequently cited as significant contributing factors that hinder a homeowner's ability to maintain timely mortgage payments, ultimately resulting in dramatically higher rates of mortgage foreclosure. Homeowners in America face the added pressure of simultaneously handling the financial burdens of unforeseen events and their mortgage obligations.

Making Home Affordable, the new Obama plan which requires lenders to modify mortgages, is a good idea that is off to a slow start as lenders have yet to gear up for or aggressively seek modifications to those eligible. Foreclosures caused by unemployment are becoming a greater and greater portion of the foreclosure problem. Estimates are that 5.5 million homes will enter foreclosure in 2009 and 2010.

In Pennsylvania, a major state initiative to combat family-devastating foreclosures has been operating with success for more than a quarter-century, enacted in the wake of the severe recession of 1983. The Homeowners Emergency Mortgage Assistance Program (HEMAP) has provided loans to over 43,000 homeowners since 1984 at a cost to the Keystone State of $236 million. Assisted homeowners have repaid $246 million to date which works out to a $10 million profit for the state after 25 years of helping families keep their homes.

The Pennsylvania model will work nationally, and that is why I introduced H.R. 3142, the Homeowners Emergency Mortgage Assistance (HEMA) Act, which is pending before the House Financial Services Committee. HEMA establishes an emergency mortgage assistance program for qualifying homeowners who are temporarily unable to meet their obligations due to financial hardship beyond their control. Under HEMA, homeowners would have the opportunity to regain financial stability without the immediate pressure of foreclosure. With the support of Chairman BARNEY FRANK of the Committee on Financial Services and Subcommittee Chairwoman MAXINE WATERS, the HEMA proposal was incorporated into H.R. 3766, the Main Street TARP Act. The Main Street TARP Act proposes to use unspent TARP funds to provide relief for distressed homeowners who are unable to meet their mortgage obligations due to financial hardship, as well as providing assistance to renters seeking affordable housing.

A national HEMA program offers a workable complement to President Obama's new Making Home Affordable program. Making Home Affordable has allocated $75 billion in TARP funds to provide financial incentives to encourage participation by mortgage servicers and homeowners. Although the Treasury Department is taking steps to increase the effectiveness of Making Home Affordable by pressing mortgage servicers to put additional resources and staff into providing loan modifications that make mortgages affordable for homeowners, the scale of the problem is huge and the ability and willingness of servicers to do the work necessary is in question. The loss of six million US jobs since the start of the recession complicates the crisis as many jobless won't even have enough income for a loan modification to be effective.

A HEMA-style loan program could use TARP funds already allocated for foreclosure prevention to directly cure mortgage defaults for the unemployed. As the economy recovers most jobless workers will get back to work and be able to resume their mortgage payments. Even a portion of the $75 billion set aside for Making Home Affordable could pay a lot of mortgage payments to bring homeowners current and not have them at the mercy of a mortgage servicer who is poorly equipped to offer them help.

Such a program could be run much more efficiently than the time consuming loan modification program. A homeowner who indicated that he or she was unemployed would provide verification of unemployment compensation to the servicer and automatically be approved for a loan that would pay any mortgage above 31 percent of their income (the target amount in Making Home Affordable modifications). The Treasury could make payments for the homeowner who is then current on the mortgage. It would cut through the disorder of the loan modification program and slow the numbers of foreclosed properties on the market.

The success of HEMAP is evident in the program's results. Since its inception, 42,700 families were saved from foreclosure by providing over $442 million in loans to at-risk homeowners. The average loan to a distressed homeowner is $10,500, which is much less than the $35,000 it costs to complete most foreclosure actions. Additionally, this estimated average foreclosure cost does not consider the impact of foreclosures on families, neighborhoods and communities.

We have tried everything else. The Treasury has already allocated far more than $2 billion to prevent foreclosures. It seems likely that many of those dollars will not be spent in a timely manner by mortgage servicers modifying loans. It's time to get people's mortgages paid directly and to slow the pace of home losses that are destroying families and crippling our overall economy. It's time to think outside the box about foreclosures—and way past time to keep Americans inside their homes.

IN MEMORY OF LT. COL. GEORGE WITHERS STIER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. SKELTON. Madam Speaker, it is with sadness that I inform the House of the death of my dear friend Lieutenant Colonel George Withers Stier of Lexington, Missouri.

Stier was born in December of 1919 to Earle Taggart Stier and Grace King Stier. After graduating from Wentworth Military Academy with ROTC training, he volunteered for the Army Reserves and applied for Active Duty in 1941.

During World War II, Stier showed his unyielding courage and love of country while flying the B–17 Flying Fortress. During the last of his 16 bombing missions over Germany, he and his crew were shot down and became prisoners of war at Stalag Luft III. Surviving a 50-mile forced march, Stier and his fellow airmen spent over a year as prisoners of war. On April 20, 1945, he was liberated by General George Patton and his 3rd Army's 14th Tank Battalion.

In 1948, Stier married his lovely wife Kathleen Miller Trumbull. The two returned to his hometown of Lexington, Missouri, where they operated Stier's Clothing Store, a family operation since 1906. A dedicated public servant, he served on the City Council and was president of the local Chamber of Commerce. He maintained his connection to Wentworth Military Academy by teaching business courses to our future servicemen and women.

Preceded in death by his wife Kathleen who sadly passed away in 2004, he is survived by his children, Sheila and George.

Madam Speaker, Lt. Col. George Stier was a courageous airman, a loving husband and father, and a dear friend. I trust that my fellow Members of the House will join me in extending their heartfelt condolences to his two children, family, and friends.

IN HONOR OF MAURICE A. SCHWARTZ

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. WOOLSEY. Madam Speaker, I rise today to honor Maurice A. Schwartz of Stinson Beach, California, who will be retiring next month as Executive Director of the Audubon Canyon Ranch (ACR). Skip Schwartz—everyone calls him Skip—a man known for his rare combination of a strong work ethic, empathy, kindness and humor, has been at the helm of ACR for thirty-four years, a time of great growth and accomplishments for the ranch.

Audubon Canyon Ranch was founded in 1962 to preserve a thickly wooded nesting place for great blue herons and great egrets on the shores of Bolinas Lagoon. Skip first saw the ranch as a visitor in the early 70s and later he and his wife became docents. In 1975 he so impressed the ACR's trustees that they hired him as Executive Director. With his commitment, boundless enthusiasm and practical know-how, Skip tackled the tough problems of a young non-profit and succeeded far beyond anyone's expectations.

Today ACR is a financially solid organization with 24 employees and 800 volunteers with exciting environmental education and research programs and preserve holdings in two counties totaling over 2,000 acres, and will be a beneficiary of a gift of another 1,700 acres in the future. ACR now includes the 1,000 acre Bolinas Lagoon Preserve near Stinson Beach; the 535-acre Bouverie Preserve near Glen Ellen in Sonoma County, the Cypress Grove Research Center on Tomales Bay and several other properties in West Marin. Recently an access agreement was signed with Jim and Shirley Modini, whose 1,725–acre Modoni Ranch in Sonoma County has been willed to ACR.

Due largely to Skip's democratic leadership skills, ACR was named this year by the North Bay Business Journal as one of the five best places to work in the North Bay. Employees—whose average length of employment is 11 years—gave Audubon Canyon Ranch the highest marks of the five firms honored. Employees cited ACR's family focus and its commitment to ''walking the talk'' by making every effort to make the workplace green, including establishing mileage reimbursement for bicycle use during work hours.

Under Skip's leadership, ACR scientific contributions also literally helped put Bolinas Lagoon on the map as a United Nations RAMSAR site of international significance. ACR's conservation science programs have grown to include a Research and Habitat Preservation and Restoration component.

Skip has overseen the creation of a nationally recognized elementary school environmental education program that serves schools throughout the Bay Area at no charge to them or their students. Each year, between 6,000 and 7,000 students from ethnically and economically diverse neighborhoods in four counties participate in ACR's ''hands on'' environmental education program.

Skip Schwartz, who has been the public face of Audubon Canyon Ranch for over three decades, will step down as Executive Director in January, but he will continue to work part time as a consultant with the organization. It appears that the Directors of Audubon Canyon Ranch know just how big Skip's shoes will be to fill. He leaves a legacy of accomplishment, but at least for some time ACR's Directors, staff and many friends will continue to benefit from his knowledge, enjoy his humor and kindness, and be inspired by his practical idealism.

THE APPROPRIATIONS PACKAGE AND AMTRAK

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. THOMPSON of Mississippi. Madam Speaker, today, the House will consider the end of year appropriations package. In that package, is a one-page provision that risk undermining nearly a decade of rail security efforts by Amtrak. It requires Amtrak to allow passengers at stations that accept checked baggage to check their guns.

There are those who argue that this is a reasonable provision which would simply grant rail travelers the same opportunities as aviation travelers. These people fundamentally miss the point.

The challenges of securing rail are very different than securing aviation. Airports are controlled environments with screeners, checkpoints and multiple law enforcement agencies, rail stations are not. Airline passengers are watch listed, rail passengers are not. Guns that are checked on planes are stored away from passengers. Under this provision, guns could be ''checked'' in the same car as the passenger. This provision is bad security of policy and puts Amtrak passengers and staff and anyone else in rail stations at risk.

A TRIBUTE TO REDLANDS CITY CLERK LORRIE POYZER FOR 33 YEARS OF PUBLIC SERVICE

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LEWIS of California. Madam Speaker, I would like to pay tribute to Redlands City Clerk Lorrie Poyzer, who over the past three decades has established herself as the institutional memory of this Southern California city.

A true native of this San Bernardino County city, Lorrie Poyzer is a Redlands High School graduate and the daughter of Marion H. Poyzer, who was the city's elected Treasurer from 1960 to 1975. Her grandfather and his sister were the first recorded twins born in the city around 1900.

After graduation from Redlands High School and then San Bernardino Valley College, Louie Poyzer worked for seven years as office manager for the Redlands Teachers Association, and seven more as the assistant manager's secretary of the Bank of America Redlands branch.

She went to work in the City Clerk's office in February 1976, shortly after her father retired as city Treasurer. In those days before computers, she had to retype minutes of the City Council meetings three or four times as changes were made. She was appointed deputy clerk within a year.

Her expertise and years of service led to the City Council appointing Lorrie Poyzer acting City Clerk in January 1983, and she was elected to the first of seven consecutive terms in November 2003.

Madam Speaker, as with many growing cities, Redlands has seen its share of changes in leadership. Ms. Poyzer has served with 10 mayors, 29 City Council members and 11 City Managers. She has overseen the accurate recording of minutes for more than 1,000 council meetings.

Under her leadership, Redlands has become known for its incredibly accurate recordkeeping. The office has ensured that all former paper records have been transferred to computers, and she is proud to say that her office can find any document—even dating back to the city founding in 1888—within 10 minutes.

As City Clerk, Ms. Poyzer has overseen numerous municipal elections and has a long-established reputation for fair and impartial handling of candidates. Her duties have ranged from administering oaths and affirmations to helping organize the city's Centennial celebration in 1988. She has even taken charge of selling tickets to the annual Fourth of July celebration at the University of Redlands.

Over the years, Lorrie Poyzer has become known as the person who knows everything about the city and community of Redlands. She handles all requests for help and information cheerfully and efficiently.

Madam Speaker, after serving as the elected city clerk for 26 years, Lorrie Poyzer is retiring this month. We will all miss her vast knowledge of our city and its history, but we wish her success and happiness on her retirement. Please join me in commending her for a fabulous life of public service.

A TRIBUTE TO DAWN MONIQUE ADAMS-FULTON

HON. EDOLPHUS TOWNS–

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Dawn Monique Adams-Fulton.

Mrs. Adams-Fulton is a Rehabilitation Counselor for New York City Health and Hospitals Corporation. She presently provided services to the chemical dependency population at Cumberland Diagnostic and Treatment Center. She has provided this population with support and guidance for the last ten years. She has demonstrated a high level of dedication to the clients she services by ensuring that they have the tools they need to become and remain productive members of society.

She has been employed at Steinway Child & Family Services for 14 years as a Director Child Care worker. In this role, she is responsible for assisting children with problem solving, life skills and conflict resolution.

Prior to joining the New York City Health and Hospitals Corporation, Mrs. Adams-Fulton worked in the foster care system for eight years through a host agency, the Richard Allen Center on Life and Sheltering Arms Foster Care Agency. In both positions she was dedicated to making and ensuring children were protected and provided with a happy and safe beginning.

Her leadership, dedication and communication skills have been recognized through receiving many certificates of appreciation.

She obtained her Bachelor's of Science Degree from College of Human Services (presently known as Metropolitan College). Mrs. Adams-Fulton continued her education by attending Long Island University and received her Master's of Science Degree in Counseling and Family Education. Mrs. Adams-Fulton also possesses her certification in the field of addiction (CASAC) and has a License in Mental Health Counseling (LMHC). In addition to her education, she has a credential in Family Development from Cornell University.

She is also a member of Dewitt Headstart Parent Involvement Committee. In this role she is responsible for encouraging and supporting parents and promoting their involvement in their children's education and future.

Mrs. Adams-Fulton enjoys spending her free time with her family and her circle of friends. Her role models are her grandmothers, Marion L. Adams and Emma Campbell. They instilled in her the importance of family and being responsible. In addition, she has a host of leaders that have provided guidance and encouragement in her professional growth.

Madam Speaker, I urge my colleagues to join me in recognizing Dawn Monique Adams-Fulton.

REMEMBERING SENATOR PAULA HAWKINS

HON. DEBBIE WASSERMAN SCHULTZ

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. WASSERMAN SCHULTZ. Madam Speaker, I rise today to remember an historic figure in Florida politics, United States Senator Paula Hawkins, who died at the age of 82 on Friday, December 4, 2009.

Senator Hawkins was the first woman from any State elected to a full U.S. Senate term who was not the wife or daughter of a politician.

Senator Hawkins was a champion of children's issues and issues relating to single women.

She was instrumental in passing The Missing Children's Act of 1982, which established a national clearinghouse for information about missing children.

Senator Hawkins fought to help women enter the job market after divorce or widowhood, for equalizing pension benefits for women by taking into account their years spent at home raising children, for day care for the children of Senate employees and for tax breaks on child care expenses.

But probably her most courageous act took place in 1984 when she publicly disclosed that she was sexually molested as a child.

We should all be grateful to Senator Hawkins, Madam Speaker, for opening the door for so many others.

EARMARK DECLARATION

HON. ZACH WAMP

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. WAMP. Madam Speaker, as a leader on earmark reform among House Republicans, I am committed to honoring House Republican rules that provide for greater transparency. H.R. 3288, the Fiscal Year 2010 Consolidated Appropriations Act, contains the following funding that I requested:

Requesting Member: Rep. ZACH WAMP
Account: Army
Legal Name Requesting Entity: Fort Campbell, Kentucky
Address: 39 Normandy Avenue, Fort Campbell, Kentucky 42223
Description of Request: There is inadequate chapel space at Ft. Campbell. The current facilities are scattered across the entire installation in several substandard World War II buildings that are in disrepair. The construction of a chapel complex will provide every Fort Campbell soldier, their family members and retirees a quality facility in which to worship and practice their religious faith. As overseas deployments remain high, an increasing number of soldiers and families will rely on the chapel to support their spiritual needs. The local Clarksville Chamber of Commerce has strongly advocated for a new chapel on Ft. Campbell. Fort Campbell receives $14.4 million for this project.
Distribution of funding:
Chapel 72%
Antiterrorism/Force Protection Measures 1%
Infrastructure (electric, water) 11%
Supervision, Inspection & Overhead 16%
Requesting Member: Rep. ZACH WAMP
Account: Defense Wide
Legal Name Requesting Entity: Fort Campbell, Kentucky
Address: 39 Normandy Avenue, Fort Campbell, Kentucky 42223
Description of Request: Proficiency of foreign language skills is needed to maintain unit and individual soldier readiness. Each Special Forces soldier is required to practice linguistic skills two-hours per day to maintain skill level. Currently, students conduct language training in a World War II-era facility. The space is inadequate for the number of special operation soldiers receiving language training especially during periods of high attendance. An average student load of 212 students is anticipated. Fort Campbell receives $6.8 million for this project.
Distribution of funding:
Special Ops Language Training Facility 70%
Antiterrorism/Force Protection Measures 1%
Infrastructure (electric, water) 16%
Supervision, Inspection & Overhead 13%
Requesting Member: Rep. ZACH WAMP
Account: Surface Transportation Priorities
Legal Name Requesting Entity: City of Chattanooga's Enterprise Center
Address: 1250 Market Street, Suite 3020, Chattanooga, TN 37402
Description of Request: The City of Chattanooga's Enterprise Center requested funding to complete a feasibility study approved by Congress for a high speed maglev train between Atlanta, Chattanooga and Nashville. Atlanta's Hartsfield-Jackson Airport is the nation's busiest airport. A maglev train will relieve tremendous congestion in the Atlanta metro area and serve as part of a long needed ''intermodal mass transit system'' for the United States. Federal funding is needed for additional engineering work and development of a detailed financial plan, to include the number of riders and expected profits. The corridor is recommended by the State of Georgia's Joint Study Committee on Transportation Funding. The City of Chattanooga's Enterprise Center receives $750,000 to complete this study.
Distribution of funding:
Salaries, wages, benefits and taxes 23.85%
Professional Fee/Contractors 56%
Office Supplies and maintenance 4.65%
Travel/Conferences and Meetings 9.07%
Indirect Costs 6.43%
Requesting Member: Rep. ZACH WAMP
Account: Interstate Maintenance Discretionary
Legal Name Requesting Entity: City of Cleveland
Address: 190 Church Street NE, Cleveland, TN 37311
Description of Request: The Cleveland Mayor and City Council requested funding to redesign and construct Exit 20 on Interstate 75 to eliminate a dangerous bottleneck of traffic and widen a narrow bridge. This exit is the gateway to the Tri-State Exhibition Center, the Ocoee Recreation Region and the Cherokee National Forest, and is often excessively congested and unsafe for vehicles. A new exit and widened bridge will improve safety for travelers, truck drivers and community residents. The redesign will also facilitate new industrial and commercial growth in the area. The Mayor and City of Cleveland receives $1.2 million for this project.
Distribution of funding:
Right of way and utilities 100%
Requesting Member: Rep. ZACH WAMP
Account: Transportation Planning, Research and Development
Legal Name Requesting Entity: Oak Ridge National Laboratory
Address: 2360 Cherahala Boulevard, Knoxville, TN 37932
Description of Request: The National Transportation Research Center at Oak Ridge National Laboratory requested funding to examine how cutting edge technologies can be used to define real world driving conditions for advanced power train systems research. Building on past investments by the Oak Ridge National Laboratory and the University of Tennessee, this study will support existing research to increase automobile efficiency and safety and introduce new capabilities for advanced transportation for universities, the government and industry. Using these cutting edge technologies to test various combinations of engine components before building a prototype vehicle will save time and money in developing our nation's next generation of trucks, buses, military vehicles and passenger cars. Oak Ridge National Laboratory's National Transportation Research Center receives $250,000 for this research.
Distribution of funding:
Data Analysis 50%
Model Development and Use 40%
Program Management & Reporting 10%
Requesting Member: Rep. ZACH WAMP
Account: Economic Development Initiative
Legal Name Requesting Entity: Claiborne County Industrial Development Board
Address: 1732 Main Street, Suite 1, Tazewell, TN 37879
Description of Request: The Claiborne County Center for Higher Education provides educational growth opportunities not available in Claiborne, Hancock, Grainger, and Union counties. Rural counties need access to advanced education. Career skills are necessary for the jobs of the future. The Claiborne County Industrial Development Board purchased an unused facility to provide job training for residents in this underserved area. The Claiborne County Industrial Development Board receives $189,000 for renovations to the building.
Distribution of funding:
Fire Alarm 30.2%
ADA Compliance 31.8%
Window Replacement 33.8%
Architectural Design 4.2%
Requesting Member: Rep. ZACH WAMP
Account: Department of Education—Fund for the Improvement of Postsecondary Education (FIPSE)
Legal Name Requesting Entity: University of Tennessee at Chattanooga
Address: 615 McCallie Avenue, Chattanooga, Tennessee 37403
Description of Request: The University of Tennessee at Chattanooga requested funding to create a Center for Leadership in Science, Technology, Engineering and Mathematics (STEM) Education. Federal funding is needed to help establish the Center and assist in teacher recruitment, training and support. As the competition for technical innovations increases, improved education in these fields is critical to maintaining economic competitiveness in the region. The University of Tennessee at Chattanooga receives $770,000 to establish its STEM Center.
Distribution of funding:
Center Implementation & Capacity Building 25%
Teacher Recruitment and Preparation 25%
Educator STEM Training & Support 25%
STEM Career Training for Adult Learners 25%
Requesting Member: Rep. ZACH WAMP
Account: Small Business Administration—Salaries and Expenses
Legal Name Requesting Entity: University of Memphis
Address: 303 FedEx Institute, Memphis, Tennessee 38152
Description of Request: The University of Memphis requested funding for an entrepreneurial training program to promote new business growth targeting science and technology-based and minority-owned businesses. Federal funding is needed for University of Memphis experts and students to develop business plans, evaluate new technologies and provide legal expertise to small businesses and entrepreneurs. The program will have a significant impact on the economy and encourage investment and jobs in the Memphis metropolitan area and the mid-south region. The University of Memphis receives $685,000 for the entrepreneurial training program.
Distribution of funding:
Salaries and Center Administration 20%
Equipment 13%
Business and Legal Services and Training 47%
Education and Conferences 20%
Requesting Member: Rep. ZACH WAMP
Account: COPS-Methamphetamine Enforcement and Clean-up Grants
Legal Name Requesting Entity: Tennessee Bureau of Investigation-Tennessee Methamphetamine Task Force
Address: 901 R.S. Gass Blvd., Nashville, TN 37216–2369 c/o 1110 Market Street, Suite 332, Chattanooga, TN 37402
Description of Request: The Tennessee Bureau of Investigation and the Tennessee Methamphetamine Task Force requested funding to train and equip local law enforcement officers throughout the State of Tennessee in a cooperative effort to combat the manufacture, distribution and use of methamphetamine, both domestic and foreign, in Tennessee. Twenty-

four hour response will be provided to state and local law enforcement agencies fighting the epidemic. The Tennessee Bureau of Investigations and the Tennessee Meth Task Force receives $2 million to supplement the lack of funding for preventing illegal methamphetamine use.

Distribution of funding:
Personnel 8%
Benefits 3%
Travel 8%
Equipment 16%
Supplies 25%
Contract law enforcement officers 31%
Training 9%

Requesting Member: Rep. ZACH WAMP

Account: Department of Justice Byrne Discretionary Grant Program

Legal Name Requesting Entity: City of Chattanooga

Address: 101 East 11th Street, Chattanooga, TN 37402

Description of Request: The Mayor and City Council of Chattanooga have requested funding to move and equip a law enforcement firing range. In 2003, President Bush signed legislation establishing the Moccasin Bend National Archeological District at the location where the current range has been used for police training for decades. The formation of the national park and the planned visitor center requires that the firing range be moved to another site. The Mayor and City of Chattanooga receives $500,000 to offset part of the expense associated with the relocation.

Distribution of funding:
Facility renovation 30%
Equipment 50%
Technology 20%

A TRIBUTE TO DAVID CALLAWAY

HON. EDOLPHUS TOWNS–

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of David Callaway, a clarinetist who has been described as nothing short of exhilarating. Mr. Callaway has captivated audiences throughout the U.S., England, France, Germany, Luxembourg, Switzerland, and Taiwan with this masterful virtuosity, expressiveness and musical inventiveness.

As an active educator, Mr. Callaway believes in the nurturing of young musicians, and has inspired future generations of music students through his teaching and mentoring. He is a former Fulbright Scholar to Taiwan, and specializes in the traditional Beiguan music of Taiwan.

Mr. Callaway has appeared with the Atlanta Opera Orchestra, Orlando Symphony, New York Philomusica, New Jersey Philharmonic, New Haven Opera, Sinfonia Celestis, Manhattan Virtuosi, Conductor's Institute Orchestra, and various ensembles at the Spoleto festival In Charleston, South Carolina. He has performed under the batons of such conductors as Kurt Masur, Jerzy Semkow, William Schuman, Julius Rudel, William Fred Scott, Zdenek Macal and David Gilbert. In addition, Mr. Callaway has worked with prominent composers John Corigliano, Donald Martino, Jacob Druckman, Ned Rorem and Karel Husa.

Equally accomplished as a recitalist and chamber musician, Mr. Callaway has performed at Weill Recital Hall at Carnegie Hall, Alice Tully Hall, Merkin Concert Hall, Miller Theater at Columbia University and the Great Hall at Cooper Union. He is also an avid proponent of new music, and has performed the music of John Corigliano, Elloitt Carter, Edison Denisov, Luciano Berio, Steve Reich, Donald Martino, Joan Tower, Chou Wen-chung and Huang-Long Pan.

As a recipient of the William J. Fulbright Scholarship award, David Callaway traveled to Taiwan to research the traditional Beiguan Music of Taiwan and genealogy of the double-reed suona. He served on the Fulbright Committee, was a frequent advisor and mentor to Taiwanese Fulbright grantees, and appeared on the Central Broadcasting Station's radio show ''Life Unusual''.

David Callaway has most recently served on the clarinet faculty of the Juilliard School's Music Advancement Program in New York City, and has taught at Vassar and Bard Colleges, the Manhattan School of Music, and as guest teacher at Emory University.

He received his Doctor of Music Arts and Master of Music degrees from the Manhattan School of Music, and his Bachelor of Music degree from the University of South Carolina. His major teachers have included Ricardo Morales, David Krakauer, Doug Graham and Laura Ardan.

Madam Speaker, I urge my colleagues to join me in recognizing David Callaway.

60TH ANNIVERSARY OF VOICE OF AMERICA'S SERVICE TO UKRAINE

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LEVIN. Madam Speaker, I rise today to recognize the 60th anniversary of Voice of America's service to Ukraine.

Created in the early days of the Cold War, Voice of America provides comprehensive, uncensored information to Ukrainians about world events and reinforces the importance of free speech, expression, and a free press. As the Soviet Union fell and Ukraine struggled to shake off the reins of communism, Voice of America continued to serve as a trustworthy, pro-democratic source of news. Its commentary and analysis were highly valued during the Orange Revolution of 2004, and remain so as the country prepares for its first presidential election since ushering in a new era of democratic governance.

Today, Voice of America reaches almost five million viewers across Ukraine each week with its television programming and maintains a Ukrainian-language website with up-to-date news reports. Ukrainians continue to rely on these services for accurate information about national and international events, as well as to learn more about American politics and culture.

Madam Speaker, Voice of America will celebrate its many contributions to Ukraine on December 11, 2009. I ask my colleagues to join me in congratulating Voice of America, and its dedicated staff, for its six decades of service to Ukraine.

IN HONOR OF DOUGLAS J. FOLEY

HON. JOHN H. ADLER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. ADLER of New Jersey. Madam Speaker, I am pleased to have this opportunity to express my gratitude to Mr. Douglas J. Foley for his dedicated and tireless service with the East Dover Fire Company in Toms River, NJ.

Mr. Foley has selflessly and bravely served the people of Toms River throughout his career and is retiring in January after a lifetime of service. After serving as vice-president of the company for the past eight years, he has made important improvements to the Fire Company and the safety of the town and its people.

I would like to thank Mr. Foley for his exemplary service. Thank you for all you have done and I wish you a Happy Retirement.

HONORING GRIFFIN HOSPITAL AS IT CELEBRATES ITS CENTENNIAL ANNIVERSARY

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. DELAURO. Madam Speaker, it gives me great pleasure to rise today to join all of those gathered to celebrate the centennial anniversary of Griffin Hospital. On December 9, 1909, Ralph Colonna, a worker at Ansonia Brass was the first patient admitted to Griffin Hospital and thus began its distinguished history of providing quality health services to the communities of the Lower Naugatuck Valley.

When Griffin Hospital first opened its doors, it held just twenty-four beds. Today, Griffin Hospital has grown into one of the most respected health institutions in the country. Its facilities cover hundreds of thousands of square feet and include the Griffin Imaging and Diagnostics Center, the Hewitt Ambulatory Pavilion, the Center for Cancer Care, the Yale Griffin Prevention Research Center, Childbirth Center, as well as the only hospital based hospice service in Connecticut. From Charles E. Clark, the hospital's first president, to today's President and Chief Executive Officer, Patrick Charmel, the unique vision of its strong leadership has allowed Griffin to expand its services to meet the changing needs of its patients and the community. In fact, in 2005, much in part because of Griffin's growing industry leadership position, Pat was appointed by the U.S. Secretary of Health and Human Services to the National Advisory Council for the Agency for Healthcare Research and Quality.

Perhaps most important is the culture of care that surrounds Griffin Hospital. In 1992, Griffin adopted the Planetree patient-centered care philosophy—promoting the development and implementation of innovative models of healthcare that focus on health and nurturing body, mind, and soul. Just last year, Griffin became a ''Designated Planetree Patient-Centered Hospital'' which is the formal recognition of the hospital's achievement and innovation in fostering an organizational culture that prioritizes patient comfort, dignity, empowerment, and well-being. In following this patient-

centered care philosophy, Griffin has also created an extraordinary work environment for all Griffin employees—reflected in its recent celebration of its tenth consecutive year on FORTUNE Magazine's ''100 Best Companies to Work For'' list.

Griffin Hospital not only provides outstanding care to its patients but also devotes programs and resources to benefit the greater community as well. The Valley Parish Nurse Program, which today serves thirty-five churches throughout the Lower Naugatuck Valley, provides health education, screening and referral services to a total of thirty-five thousand parishioners with a primary focus on outreach efforts to the underserved, minority, and low-income populations. Griffin also founded and sponsored the Healthy Valley project—the goal of which is to make the Valley a better place in which to live, work, raise a family, and enjoy life by measurably improving the quality of life and health of the community and its residents. Healthy Valley also focused on enhancing regional economic development by making the community a better place for businesses to relocate and expand as well as for their employees to live.

An industry leader in providing quality patient-centered care and understanding that their involvement is fundamental to the continued growth and prosperity of its surrounding communities, there are innumerable ways in which Griffin Hospital has made a difference. I am proud to stand today to congratulate the Board of Directors, administrators, and staff alike as they celebrate this very special occasion. Today, as they mark their centennial anniversary, they not only celebrate their past accomplishments but, as they have for the last one hundred years, they look to the future—to ensure that they continue to provide the best possible care to their patients and meet the ever-changing needs of our community. I wish them all the best for another century of success.

HONORING JOHN HARRIS

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate John Harris upon being awarded the ''Distinguished Citizen Award'' by the Sequoia Council, Boy Scouts of America. Mr. Harris will be honored on Tuesday, November 24, 2009 at a special luncheon at Harris Ranch.

Mr. John Harris was born and raised in Coalinga, California in the heart of the San Joaquin Valley. Mr. Harris attended and graduated from the University of California, Davis in 1965 with a Bachelors of Science degree in Agricultural Production/Agricultural Economics. While attending UC Davis, he was commissioned into the United States Army through the ROTC program.

Upon returning to the San Joaquin Valley, Mr. Harris began working on the family farm and ranch, Harris Farms. Harris Farms was founded in 1937 by Mr. Harris' parents, Jack and Teresa Harris. Over the years, the family business has grown to become one of the largest integrated farming operations in the Central San Joaquin Valley. The company produces over a dozen crops including almonds, citrus, tomatoes, lettuce, wine grapes and pistachios. The farm has also expanded to include Harris Ranch Beef Company, which is one of California's largest fed cattle processors, producing nearly two million pounds of beef per year.

In 1966, Mr. Harris and his father decided to devote a substantial part of the Harris Ranch farming and cattle operation to raising and training of Thoroughbred racehorses. The company provides six hundred acres to the Thoroughbreds and has bred and raced several of California's championship horses. In addition to the farm, the cattle ranch and the Thoroughbred Division, the Harris Company also has multiple restaurants and an inn. Today, with Mr. Harris serving as the Chairman of the Board for Harris Farms, the companies in total employ over fifteen hundred people and have gross sales exceeding three hundred million dollars.

Outside of operating Harris Farms, Mr. Harriss is involved with numerous organizations. He is a member of the board for the Water Growers Association and serves as Chair of the Water Committee. Mr. Harris also serves on the Board of Trustees of the Pacific Legal Foundation and is currently serving as Chair of Cattle PAC for the board of California Cattlemen's Association. He has been involved with the California Horse Racing Board since 2001 and is currently serving as Chairman of the board. Mr. Harris also serves on the boards of several agricultural related companies; including Sunny Cove Citrus, Los Gatos Tomato Products, Harris Woolf Almonds and California Thoroughbred Breeders Association.

Mr. Harris has worked with the Sequoia Council, Boy Scouts of America for almost twenty years, hosting an annual luncheon to benefit the chapter. The lunch supports the Scouting programs in western Fresno County and Kings County. His concern and dedication to the youth of our area and his love of Scouting has kept him working with the Sequoia Council, Boy Scouts of America and the growth of Scouting here in the San Joaquin Valley.

Madam Speaker, I rise today to commend and congratulate John Harris upon being awarded the ''Distinguished Citizen Award.'' I invite my colleagues to join me in wishing Mr. Harris many years of continued success.

PERSONAL EXPLANATION

HON. JOHN R. CARTER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. CARTER. Madam Speaker, on December 9, 2009, I was unable to be present for several rollcall votes. If present, I would have voted accordingly on the following rollcall votes:

Roll No. 942—''nay.''

Roll No. 943—''nay.''

Roll No. 944—''yea.''

A TRIBUTE TO WESTON SPROTT

HON. EDOLPHUS TOWNS–

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Mr. Weston Sprott who was appointed second trombone of the Metropolitan Opera Orchestra in the Spring of 2005.

Mr. Sprott attended Indiana University before completing his Bachelor of Music degree at The Curtis Institute of Music in Philadelphia. While a student at Curtis, Mr. Sprott held the positions of principal trombone in the Pennsylvania Ballet Orchestra (Philadelphia) and the Deleware Symphony Orchestra. He was the founding member of the Texas Trombone Octet, a group that won the Emory Remington competition and was featured in concert at the International Trombone Festival in Helsinki, Finland.

Mr. Sprott has worked under the baton of many of the world's great conductors including Sir Simon Rattle, James Levine, Kurt Masur, Lorin Maazel, Christoph Eschenbach, Andre Previn and numerous others. Mr. Sprott was recently featured in the documentary film ''A Wayfarer's Journey: Listening to Mahler'' with actor Richard Dreyfuss and actress Kathleen Chalfant. He was also a performer in the film ''Rittenhouse Square,'' a documentary under the direction of Robert Downey that played in major film festivals throughout the United States to critical acclaim. In September 2007, Mr. Sprott made his Carnegie Hall solo debut performing Lars Erik-Larsson's concertino in Weill Recital Hall at the invitation of the Bulgarian Consulate. Other engagements have led to performances with gospel and jazz artists such as Branford Marsalis, Take 6 and Donnie McClurkin. Mr. Sprott's performances and interviews have been seen and heard on various TV and radio shows such as: PBS' Great Performances, NPR's Performance Today, and Sirius Satellite Radio.

In demand as a soloist and master class clinician, Mr. Sprott has been a featured guest artist at several of America's leading conservatories and universities. He is currently on the faculty at the Purchase College Conservatory and Julliard's Music Advancement Program, and he previously served on the faculty of The New School University, a division of the Mannes School of Music in New York City. Weston Sprott is an artist/clinician for the Edwards Instrument Company and Music. He performs exclusively on Edwards's trombones and Greg Black mouthpieces.

Madam Speaker, I urge my colleagues to join me in recognizing Mr. Weston Sprott.

PERSONAL EXPLANATION

HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately, I missed the following recorded votes on the House floor on Tuesday, December 1, 2009 and Wednesday, December 2, 2009.

For Tuesday, December 1, 2009, had I been present I would have voted ''aye'' on rollcall vote No. 911, on motion to suspend the

rules and agree to H.R. 3029; ''aye'' on rollcall vote No. 912, on motion to suspend the rules and agree to H. Res. 727; ''no'' on rollcall vote No. 913, on motion to suspend the rules and agree to H.R. 3667.

For Wednesday, December 2, 2009, had I been present I would have voted ''aye'' on rollcall vote No. 914, on motion to suspend the rules and agree to H. Res. 494; ''aye'' on rollcall vote No. 915, on motion to suspend the rules and agree to H. Con. Res. 129; ''aye'' on rollcall vote No. 916, on motion to suspend the rules and agree to H. Res. 861; ''aye'' on rollcall vote No. 917, on motion to suspend the rules and agree to H. Res. 897; ''aye'' on rollcall vote No. 918, on motion to suspend the rules and agree to H.R. 3634; ''no'' on rollcall vote No. 919, on motion to suspend the rules and agree to H.R. 515; ''aye'' on rollcall vote No. 920, on motion to suspend the rules and agree to H. Con. Res. 197; ''aye'' on rollcall vote No. 921, on motion to suspend the rules and agree to H.R. 1242; ''aye'' on rollcall vote No. 922, on motion to suspend the rules and agree to H.R. 3980.

20TH ANNIVERSARY OF THE CONGRESSIONAL SPORTSMEN CAUCUS AND CONGRESSIONAL SPORTSMEN FOUNDATION

HON. DAN BOREN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BOREN. Madam Speaker, as House Co-Chair of the Congressional Sportsmen's Caucus and lifelong sportsman, I hereby recognize the 20th Anniversary of the founding of the Congressional Sportsmen's Caucus and the Congressional Sportsmen's Foundation. The Foundation was officially incorporated 20 years ago this week on December 7, 1989.

On behalf of the Congressional Sportsmen's Caucus and the millions of hunters and anglers across the country, congratulations to the Congressional Sportsmen's Foundation on 20 years of successfully supporting the Caucus in advancing pro-sportsmen hunting, fishing, and conservation issues in the United States Congress.

The Congressional Sportsmen's Foundation is the most trusted organization focused on issues of importance to this nation's sporting heritage and serves as the most critical link between sportsmen and women and the Congressional Sportsmen's Caucus. The sportsmen and women of America can be proud of the long standing partnership between the Caucus and Foundation in accomplishing many legislative victories on their behalf.

Since its inception, the bipartisan Congressional Sportsmen's Caucus has grown into one of the largest and most effective caucuses in the United States Congress with nearly 300 members representing almost all 50 states. With bipartisan leadership in both the House and the Senate, the Caucus is the sportsmen's ally and first line of defense in Washington promoting and protecting the rights of hunters, trappers and anglers.

With the success of the CSC/CSF partnership, the Congressional Sportsmen's Foundation created a network of state legislative sportsmen's caucuses modeled after the Congressional Sportsmen's Caucus in 2004, launching the National Assembly of Sportsmen's Caucuses (NASC). Currently with 38 state legislative sportsmen's caucuses and nearly 2,000 legislators, the NASC facilitates the interaction and idea exchange among state caucus leaders and the outdoor community.

Earlier this year the Congressional Sportsmen's Foundation launched the Governors Sportsmen's Caucus to facilitate communication and information exchange among a bipartisan team of state chief executives in support of legislation and regulations that promote and protect hunting and fishing. Guided by a bipartisan leadership team of governors and staffed through the Congressional Sportsmen's Foundation, the GSC further enhances the Congressional Sportsmen's Caucus and the National Assembly of Sportsmen's Caucuses.

The combination of the Congressional Sportsmen's Caucus, the National Assembly of Sportsmen's Caucuses, and the Governor's Sportsmen's Caucus, working side-by-side with the Congressional Sportsmen's Foundation, serves as an unprecedented network of pro-sportsmen elected officials that promote and protect the agenda of America's hunters and anglers.

The Congressional Sportsmen's Caucus and Congressional Sportsmen's Foundation looks back fondly on the accomplishments of the last 20 years and now looks forward to continuing the work of protecting America's hunters and anglers in the future.

HONORING DR. FLOYD E. ''JACK'' BOWLING

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. DUNCAN. Madam Speaker, today I wish to pay tribute and celebrate the long and successful life of one of my District's most devoted community leaders and academics.

Dr. Floyd E. ''Jack'' Bowling recently passed away at the age of 98. Dr. Bowling was beloved in Athens, Tennessee, one of the finest communities in the State. For the past 50 years, he called Athens home and fullheartedly devoted his time to bettering his beloved Tennessee Wesleyan College.

Dr. Bowling served Tennessee Wesleyan College not only as a teacher and administrator but also as its most important fundraiser and benefactor.

His impact on the college is evident as one strolls its beautiful campus. He had a special passion for athletics, and through Dr. Bowling's own donations and fundraising, he was almost solely responsible for Tennessee Wesleyan College's new baseball field and stadium, which rightfully bears his name.

He was also greatly responsible for the school's tennis complex and gym bleachers and used his own money to create the college's first computer lab.

Everyone had the deepest admiration and respect for Dr. Bowling. Great communities and institutions of higher education around the Nation are made so only by selfless and devoted persons like Dr. Bowling.

The current President of Tennessee Wesleyan College, Steve Condon, recently told the Daily Post Athenian Newspaper, ''Virtually everything he touched, every person he engaged, every project he attempted and every colleague and student he mentored was better off because of his light. He was a gift from God to all of us.''

We can all only strive to be remembered in such a way.

Dr. Bowling's service was not confined to Tennessee Wesleyan College's campus. He has long been a supporter of the McMinn Living Heritage Museum and United Way of McMinn and Meigs Counties. He also served as president of the Kiwanis Club, where he was a longtime member.

Madam Speaker, the passing of Dr. Floyd E. ''Jack'' Bowling is a tremendous loss for the Athens community, Tennessee Wesleyan College, his family and many friends, and the multiple causes he has championed over the years. I call his service to the attention of my colleagues and other readers of the RECORD and thank him for being an example to us all.

A TRIBUTE TO GILLEYAN J. HARGROVE

HON. EDOLPHUS TOWNS–

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Gilleyan J. Hargrove.

Gilleyan was born and raised in Brooklyn, NY. She received her early education at the public schools of Brooklyn, New York. Her education continued at Syracuse University, where she received a Bachelor of Arts in Sociology and African American Studies in 1989. Gilleyan then attended graduate school at Binghamton University of New York, receiving a Master's of Science in Education in 1991. She received her administration and supervision license from the College of Saint Rose in 2002.

Gilleyan has always had a love for school and learning new things. She has been an educator for 18 years beginning her work as an elementary school teacher at Community School 21 in Brooklyn and then as an assistant principal at the Program for Pregnant Students in Brooklyn. Gilleyan currently serves as principal at the Granville T. Woods Middle School for Science and Technology in Crown Heights, Brooklyn, where providing students with access to a quality education and a safe environment remains a priority. Gilleyan believes as an educator she has a charge to keep and a God to glorify.

Gilleyan also is a proud lifetime member of Delta Sigma Theta Sorority, Inc. She is married to Eric M. Hargrove and they have two children, a daughter, Brianne Ashley and son, Tyler Robert.

Following in the spiritual foundation set before her by her late grandmother Mary Rose Blowe Couch and mother, Elaine Couch Hinds, Gilleyan has served God for 30 years as a member of Wayside Baptist Church, where her spiritual father and mentor, the late Pastor Joe L. Parker, taught her how to love the Lord. Currently, Gilleyan is a member of Bethlehem Baptist Church where her Pastor is Reverend Larry W. Camp.

Madam Speaker, I urge my colleagues to join me in recognizing Gilleyan J. Hargrove.

EARMARK DECLARATION

HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. SIMPSON. Madam Speaker, in accordance with the policies and standards put forth by the House Appropriations Committee and the GOP Leadership, I place in the RECORD a listing of the congressionally-directed projects I requested in my home State of Idaho that are contained in the Conference Report accompanying H.R. 3288, the FY2010 Consolidated Appropriations Act.

DIVISION A—FY2010 TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT

Project Name: Buses and Bus Facilities, Idaho Transit Coalition

Amount Received: $1,000,000

Account: FTA/Buses and Bus Facilities

Recipient: Community Transportation Association of Idaho

Recipient's Street Address: 10480 Garverdale Court, Bldg. 4, Ste. 804A, Boise, ID 83704

Description: Funding for this project will be used to support essential transit systems in rural and urban areas of the State of Idaho. This project meets the criteria of the FTA's Section 5209 Capital Program and has been funded by the Committee since FY 2002.

Project Name: Custer County Economic Development Initiative in Custer County, ID

Amount Received: $500,000

Account: HUD/EDI

Recipient: Custer County, ID

Recipient's Street Address: 802 Main Street, Challis, ID 83226

Description: At almost 5,000 square miles, Custer County is larger than three states, and it has just over 4,000 people. Unfortunately, it is burdened with a high proportion of public lands with over 95 percent of the county's 3.4 million acres administered by federal agencies. The county's tax base, or more specifically the lack thereof, is inadequate to support the services required for such an expansive county. This grossly disproportionate public ownership causes a severe strain on their resources. Funding would be used to construct a community center which would serve a number of purposes for the county.

Project Name: I–84, Broadway to Gowen Road Widening, Boise, ID

Amount Received: $400,000

Account: FHWA/Interstate Maintenance Discretionary

Recipient: Idaho Transportation Department

Recipient's Street Address: 3311 West State Street, Boise, ID 83707

Description: This project will add a third east and westbound lane to I–84 between Broadway Avenue and Gowen Road on I–84. The FY10 earmark will fund the design of this project. The project will be ready for construction in FY11 in conjunction with the Connecting Idaho—GARVEE, bonding—projects in this area. This project is required to alleviate congestion and safety issues caused by the continued fast growth in the Treasure Valley. This project is included in the I–84 Boise Corridor Study adopted by the Idaho Transportation and Community Planning Association of Southwest Idaho, COMPASS, Boards in October of 2001 and part of the COMPASS Regional 2030 Long Range Transportation Plan, approved in 2006.

Project Name: Trail Creek Highway/Forest Highway 66 Reconstruction, Mackay, ID

Amount Received: $3,750,000

Account: FHWA/Public Lands Highways

Recipient: Lost River Highway District

Recipient's Street Address: 213 South McCaleb, Mackay, ID 83251

Description: Trail Creek Highway/Forest Highway 66 runs through the Salmon-Challis National Forest from U.S. Highway 93 west to Sun Valley, Idaho. The road is maintained entirely by the Lost River Highway District and includes 17 miles of unpaved road that is used extensively for commerce and recreational purposes by tourists and homeowners. The high traffic volume—500 cars per day and expected to grow—and poor road conditions cause safety concerns for those traveling along the highway. Funds would be used to complete study and design work and upgrade the road by paving 5.5 miles of gravel road from the end of existing pavement near the West Bartlett Point Road—MP 11.750—to the Copper Basin Turn-off, MP 17.250.

DIVISION B—FY2010 COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

Project Name: Boise Center Aerospace Laboratory, BCAL, Watershed Modeling Utilizing LiDAR at Idaho State University

Amount Requested: $500,000

Account: Department of Commerce NOAA

Recipient: Idaho State University

Recipient's Street Address: 921 South 8th Avenue Stop 8007, Pocatello, Idaho 83209

Description: ISU's Department of Geosciences has developed free spatial analysis tools available to the public for remote sensing and geographic information sciences, GIS. The remote sensing tools include a downloadable toolbox for analyzing light detection and ranging, LiDAR, data. LiDAR is an imaging method using a laser mounted on an aircraft to determine precise vertical information, topography, of the earth's surface—15 cm precision. Commonly, this information is translated into high-resolution digital elevation models, DEMs. LiDAR can provide both a bare earth surface and the vegetated—or built—surface. LiDAR can also provide topographic data below water. Specifically to the concern of NOAA and the State of Idaho, LiDAR can provide up to date and precise flood plain maps for rivers with built environments—such as the Boise River—to guide decisions on flood insurance coverage and land use restrictions. These predictive maps can also aid in evacuation of people and livestock during an impending flood. This project will leverage existing infrastructure and expertise at ISU to develop state-of-the-art watershed modeling tools for NOAA and other federal agencies. These tools will enable better management of watersheds through improved topographic analyses for prediction of runoff, floods, and water storage capacity. Hyperspectral analysis—soils and vegetation—will be coupled with the LiDAR data for a full characterization, spectrally and spatially of the landscape. These analyses will allow for studies of vegetation structure, dependence of vegetation, soils, and earth processes, e.g. fire, erosion, on topology—slope and aspect, drainages, surface roughness. The goal of this research and its resulting algorithms and tools is to significantly benefit NOAA in its ability to convert LiDAR data into usable derivative datasets for environmental and safety applications in Idaho and elsewhere.

Project Name: Idaho Meth Project

Amount Requested: $1,000,000

Account: Department of Justice COPS Meth

Recipient: Idaho Meth Project

Recipient's Street Address: 304 N. 8th Street, Room 446, Boise, Idaho 83702

Description: Methamphetamine trafficking and abuse in Idaho has been on the rise over the past few years and, as a result, meth is having a devastating impact in many communities throughout Idaho. Meth is the number one illegal drug of choice in Idaho and the State's leading drug problem. The financial and social consequences of meth abuse in Idaho are devastating. It is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever increasing prison populations and adversely impacts families. The Idaho Meth Project is a large-scale, statewide prevention and public awareness program designed to reduce the prevalence of first-time methamphetamine abuse in Idaho by influencing attitudes through high-impact advertising. The Idaho Meth Project is focused solely upon prevention and, to achieve this goal, is active in three areas: public service messaging, community action and public policy. This includes a pervasive media campaign reaching the target population through TV, radio, billboards, print, and the Internet.

Project Name: Idaho State Police to participate in the Criminal Information Sharing Affiance Network, CISAnet

Amount Requested: $500,000

Account: Department of Justice COPS Law Enforcement Technology

Recipient: Idaho State Police

Recipient's Street Address: 700 South Stratford, Meridian, Idaho 83642

Description: In 2006, the Idaho State Police, ISP, developed and deployed, on a limited basis, a web-based Case Investigative System, CIS. This tool allows investigators to collect, use and share critical law enforcement information across the state. CISAnet provides a bi-directional information-sharing network within and between state and local law enforcement agencies. CISAnet provides ISP and law enforcement across Idaho with real time access to criminal intelligence information shared by law enforcement partner agencies within the states of Alabama, Arizona, California, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma and Texas. This ten state area is regarded as one of the most vulnerable to our Nation's security—a ''soft spot'' through which illegal Mexican immigrants filter, illegal drug trafficking passes and terrorists move freely. It is believed that securing this porous border with Mexico is an effective way to protect American citizens. The CISAnet system provides an effective means for law enforcement agencies to share information across state lines on known or suspected criminal activity. Together, access to CISAnet, Idaho's Fusion Center and remote access to CIS will ensure that Idaho state and local law enforcement officers have the best information available in a timely manner. In today's environment, these systems are an effective way to monitor illegal drug and terrorist activity and identify, target and locate potential terrorists. These systems are important components of an overall prevention strategy and are crucial to protecting the citizens of Idaho and the United States' homeland security. The Criminal Information Sharing Alliance network, CISAnet, FY2010

federal funding will be used to continue the integration of CIS into the CISAnet infrastructure, to expand its capabilities by adding a Geo coding module and by integrating CIS, RMS and CISAnet into Idaho's Criminal Intelligence Center.

Project Name: NCOMS Medical and Mental Health Sharing Software Development

Amount Requested: $500,000

Account: Department of Justice Byrne Discretionary Grants

Recipient: Idaho Department of Corrections

Recipient's Street Address: 1299 North Orchard, Suite 110, Boise, Idaho 83706.

Description: States are legally mandated to provide appropriate medical care to incarcerated individuals. These funds will be used to create, modularize and implement the medical/mental health module for the National Consortium of Offender Management Systems, NCOMS. This technology will allow public safety organizations that house offenders to track and record the medical information to ensure that offenders receive proper medical treatment.

DIVISION C—FY2010 FINANCIAL SERVICES AND GENERAL GOVERNMENT

Project Name: Proof of Concept Center

Amount Received: $285,000

Account: Small Business Administration Salaries and Expenses

Recipient: Idaho TechConnect Inc.

Recipient's Street Address: 5465 E. Terra Linda Way, Nampa, ID 83687

Description: Idaho TechConnect was created as a state-wide private-public cooperation that would bridge the gaps in the state's innovation pipeline. The Idaho TechConnect Proof of Concept Center will manage innovations from early stage projects to the launch of a viable start-up business or to license the product or service to an existing business. The Proof of Concept Center will work with new and existing businesses as well as the state's colleges and universities and the INL to create new commercial products, goods and services. Concepts will be vetted to ensure significant and efficient marketability and commercialization. These concepts will then be relegated to teams/existing businesses to build or expand successful and profitable businesses. The Center will provide assistance with business models, intellectual property strategy, and access to capital, resulting in more ideas becoming products, creating jobs and companies. During these challenging economic times, this funding will assist businesses and public entities in their efforts to mature their innovative ideas into market-ready products and services to strengthen the economy of Idaho and the region.

Project Name: Research and Economic Development and Entrepreneurial Initiative

Amount Received: $400,000

Account: Small Business Administration Salaries and Expenses

Recipient: Boise State University

Recipient's Street Address: 1910 University Drive, Boise, ID 83725–1135.

Description: Boise State University will establish research partnerships with business and governmental agencies to aid and assist businesses in an effort to preserve free market enterprise and to maintain and strengthen the local and regional economy. The federal funds being requested will be used to match private and public sector dollars and in-kind contributions to conduct collaborative research that spurs intellectual innovation, creates jobs, and ultimately leads to the benefit and growth of the business community. The funds will also be used to develop the necessary infrastructure to mine, protect, and assess the commercialization potential of the intellectual property that is developed as a result of these efforts. A healthy businesses climate is critical to the economic strength of the state of Idaho, the region and the nation. The innovation and entrepreneurial spirit that originates from this sector will help the United States compete in today's global marketplace.

DIVISION D—FY 2010 LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES

Project Name: Bear Lake Memorial Hospital Addition and Remodel

Amount Received: $300,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Bear Lake Memorial Hospital

Recipient's Address: 164 South 5th Street, Montpelier, Idaho 83254

Description: The Bear Lake Memorial Hospital is a key service provider to all individuals and plays a vital role in the community, as well as provides services to the popular Bear Lake recreation area. The current Emergency Department lacks sufficient space for a waiting room for emergency room patrons. It also fails to meet HIPPA compliance because of a lack of privacy for patients due to a high-use public hallway dissecting the two emergency room locations. In addition, the current diagnostic imaging facilities are scattered throughout the hospital, which makes it more difficult to provide timely and efficient care. By consolidating the services into one wing, the hospital will be able to provide improved patient care and increase overall staff efficiency. Funding provided would be used for the design and construction of a new addition as well as a renovation of the existing facilities in the Emergency Department and Diagnostic Imaging Department.

Project Name: College of Southern Idaho's Pro-Tech Training Program

Amount Received: $200,000

Account: Department of Education Higher Education

Recipient: College of Southern Idaho

Recipient's Address: 315 Falls Avenue, Twin Falls, ID 83303–1238

Description: This program will enable the College to partner with other agencies to identify training needs and to identify potential candidates for employment. Data provided by Region IV of the State of Idaho Economic Development Agency indicate that manufacturing will be a leading employment area in the Magic Valley and the state of Idaho with over 250 new jobs expected over the next two years. Current trends in manufacturing development necessitate the need for in-depth training in the technological aspects of the design, fabrication, and manufacturing phases of production. CSI is participating in a joint educational venture with Twin Falls High School and local industry that creates a pre-engineering academy at the high school and a Computerized Numeric Controls, CNC/Industrial Networking Program at the college campus. The Pro-Tech program involves students from grade levels 10–14, and allows the students to move from high school into a two-year program at CSI or into an engineering program at one of Idaho's four-year institutions. At the secondary school level, students learn the basics of computer-assisted design, design physics, and fabrication, with each course offering alighted to the program at CSI through either tech prep or dual credit affiliation. At the post-secondary level students will receive industry-standard training in CNC, automated logic, and industrial networking. This program will train students to meet the educational requirements needed to enable them to enter the high demand fields of the hi-tech manufacturing and engineering sectors.

Project Name: Custer County Purchase of Medical Equipment

Amount Received: $400,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Custer County

Recipient's Address: 801 East Main Avenue, Challis, ID 83226

Description: At almost 5,000 square miles, Custer County is larger than three states yet has just over 4,000 people. Unfortunately, it is burdened with a high proportion of public lands with over 95 percent of the county's 3.4 million acres administered by federal agencies. The county's tax base, or more specifically the lack thereof, is inadequate to support the services required for such an expansive county. This grossly disproportionate public ownership causes a severe strain on their resources, including their ability to provide access to health services. The influx of tourism and visitors due to the nearby U.S. Forest Service, BLM, recreation and wilderness areas leads to an increased rate of trauma and accidents, placing a large burden on the county. The EMT services and health clinics in the County are in need of renovation and modernization of equipment. This funding would be used to purchase the much needed equipment and technology for the clinics and EMT services in Custer County.

Project Name: Idaho Caring Foundation for Children for dental services for low-income children

Amount Received: $300,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Idaho Caring Foundation for Children

Recipient's Address: 1211 W. Myrtle, Suite 110, Boise, ID 83702

Description: According to the 2000 U.S. Surgeon General's report, ''Oral Health in America'', tooth decay is the single most common chronic childhood disease. As a dentist, I understand the importance of proper dental hygiene at a very young age. Poor oral health can affect a child's self-esteem, ability to eat, appearance and ability to communicate. School attendance can also be negatively impacted. Over 35 percent of Idaho children lack dental insurance, which serves as a major deterrent in accessing and receiving needed dental care. According to Idaho Department of Health and Welfare 2005 Smile Survey, 27 percent of Idaho children in grades K–6 had untreated decay. Low-income, uninsured children suffer the greatest incidence of dental decay because their families lack the financial resources to receive regular dental care. The Idaho Caring Foundation will provide access to needed dental services for 600 low-income, uninsured Idaho children. These services will be provided by our network of 140 Idaho dentists from across the state. Eligible children will be identified by working in partnership with Idaho schools, Head Start programs, and

other children's programs, such as the YMCA and the Boys & Girls Clubs.

Project Name: Idaho Early Literacy Project

Amount Received: $350,000

Account: Department of Education Elementary and Secondary Education

Recipient: Lee Pesky Learning Center

Recipient's Address: 3324 Elder Street, Boise, ID 83705.

Description: The aim of the Idaho Early Literacy Project is to ensure that all children in Idaho are ready to read when they enter school. Stage III includes utilization of the research-based booklets, ''Every Child Ready to Read and Every Child Ready for Math'', an integrated approach to reading and mathematical literacy, the training of child care providers statewide, both live and on-line, and a direct intervention with parents and children. The training of child care providers includes a face-to-face approach in larger population centers and an on-line approach for remote rural locations. Stage III builds on early literacy training models implemented in 2008–2010 by unifying reading and mathematical literacy and by strengthening the intervention with parents and children. As such, the project assures that pre-school children will receive direct literacy education from child care providers and in special workshops with their parents, creating the ''language rich'' upbringing necessary to success in school.

Project Name: Idaho SySTEMic Solution

Amount Received: $400,000

Account: Department of Education Elementary and Secondary Education

Recipient: Boise State University

Recipient's Address: 1910 University Drive, Boise, ID 83725–1135

Description: Idaho SySTEMic Solution is a nationally relevant, hands-on, project-based STEM learning system (science, technology, engineering, & math) designed to spur achievement and confidence among elementary-age learners and their teachers. Proven methods show that long-term student achievement and interest in STEM can be dramatically improved by introducing systemic, contiguous, and engaging hands-on activities at an elementary level before children develop misconceptions, gender bias, math anxiety, or become distracted by cultural influences prevalent at puberty. In 2010 the project will extend into middle school grades where the need for hands-on activities is even greater. Key project components include a comprehensive, continuing teacher training model that includes a one-week summer institute and ongoing site-based follow-up training to boost the ability and confidence of elementary and middle school teachers; implementation into demographically diverse schools of curriculum-aligned learning lab systems that have been shown to improve student scores in math, science, and technology; and research and evaluation of results in accordance with Idaho and national assessment standards.

Project Name: Madison County Memorial Hospital Renovation

Amount Received: $350,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Madison County Memorial Hospital

Recipient's Address: 450 East Main, Rexburg, ID 83440

Description: Madison Memorial Hospital will initiate the implementation of the Electronic Medical Record, EMR, System into Physician Clinics that feed into Madison Memorial Hospital. Information from the EMR helps the clinician make informed decisions. As the patient status is entered into this EMR, the information increases staff efficiencies through faster transcription times, nursing notes, lab results, radiology and other electronic sources. This system will make it easier for physicians and clinicians to comply with all regulations by enabling them to keep their records up to date. Patient safety will be increased by developing a paperless electronic medical record environment where clinical information can be readily shared via electronic transactions with all entities within the Madison Memorial Hospital network.

Project Name: Purchase of Biochemistry and Microbiology Laboratory Equipment

Amount Received: $400,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Idaho State University

Recipient's Address: 921 South 8th Avenue, Stop 8007, Pocatello, ID 83209–8007

Description: Modern instrumentation is essential to improving both the Biochemistry and Microbiology programs at Idaho State University, ISU. This request will enable the purchase of the required instrumentation needed for courses in biochemistry courses, chemistry laboratories, and microbiology and biology courses. More than 400 students per year would gain access to state of the art instrumentation through this request, improving both the quality of their educational experience and the quality of research in these scientific fields that can be pursued.

Project Name: St. Luke's Regional Medical Center's Children Health Services Expansion

Amount Received: $350,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: St. Luke's Regional Medical Center Ltd

Recipient's Address: 190 E. Bannock Street, Boise, ID 83712

Description: St. Luke's Health System is home to the only Children's Hospital in Idaho, providing unique full-service tertiary pediatric services between Salt Lake City, Utah, and Portland, Oregon, both more than 350 miles from Boise, Idaho. St. Luke's delivers over 25 percent of the babies born in the State. The Children's Health Services Expansion project provides an essential increase in capacity for Pediatric Medical/Surgical, Pediatric Intensive Care, Neonatal Intensive Care, Pediatric Oncology, and Pediatric Surgical Suites and support area, to meet the needs of the rapidly growing population in the hospital's service area. Prior to the beginning of this multi-year project, each area was frequently full, requiring children to be placed in adult units or diverted to other and often very distant hospitals. The federal funding provided for the expansion project has resulted in expanding all units with state-of-the-art facilities and equipment. Funding received will assist with the purchase of equipment, including electronic medical record hardware and software programs and patient monitor technology for patient support and EMR connectivity to be used in the Medical/Surgical Pediatrics, Pediatric and Neonatal Intensive Care, Oncology, Surgical Suites and support areas. The hospital is spending millions on the expansion and federal funds will represent only a small portion of the project's total costs.

Project Name: Twin Falls Library Modernization Project

Amount Received: $100,000

Account: Museums and Libraries in the Institute of Museums and Library Services

Recipient: City of Twin Falls

Recipient's Address: 201 Fourth Avenue East, Twin Falls, ID 83301

Description: The Twin Falls Public Library seeks to obtain a fully searchable database for it local historical newspapers. The Library has on 709 reels of microfilm of local newspapers from 1904 to the present. It is difficult to use the microfilm because of its deteriorating physical condition and outdated format. There is no index; if an exact date is not known, patrons must browse through the microfilm by hand, which is very inefficient. These funds will be used to digitize and index 709 reels of microfilm of the local newspaper dating from 1904 through 2008. The searchable database will replace the deteriorating microfilm with a searchable format allowing patrons to search articles, pictures, and advertisements by keyword; view information in its historical context; preserve the look and feel of the original format; and print or email articles, photos, or ads of interest. The reference staff will be able to serve the community more effectively, both on-site and remotely, by digitizing and indexing the microfilm. This newspaper database will be an historical asset to library patrons and will provide an accessible and unique service to the community.

DIVISION E—FY2010 MILITARY CONSTRUCTION AND VETERANS AFFAIRS

Project Name: Civil Engineer Maintenance Complex at Mountain Home Air Force Base

Amount Received: $690,000

Account: Air Force Military Construction Account

Recipient: 366th Wing, Mountain Home Air Force Base, Idaho

Recipient's Street Address: 366 Gunfighter Avenue, Ste 107, Mountain Home Air Force Base, Idaho 83648

Description: The civil engineer functions are currently dispersed among 10 WWII-era wood-frame and Korean War-era facilities. Wood frame facilities have a RAC 2 due to failing roof structures and cracked and spreading concrete foundations that have contributed to failing floors and trusses, presenting risk to squadron members who work in the facilities. Currently, employees must evacuate during heavy snowfall or high winds. The fire safety deficiencies are endemic to all buildings, the patchwork electric wiring is maxed out, which increases fire risk, and the HVAC systems can't keep buildings heated and cooled. The dispersed locations and failing conditions of existing facilities adversely affects all daily Civil Engineering operations and negatively impacts the Wing's mission. This funding will be used for planning and design.

Project Name: Logistics Readiness Center

Amount Received: $20,000,000

Account: Air Force Military Construction Account

Recipient: 366th Wing, Mountain Home Air Force Base, Idaho

Recipient's Street Address: 366 Gunfighter Avenue, Ste 107, Mountain Home Air Force Base, Idaho 83648

Description: The existing Logistics Supply is a condemned 53-year-old wooden structure beyond economical repair. The roof is held up with temporary structural supports. The building is evacuated and now 60 percent of base

supply functions operate from temporary spaces across base, creating significant delays in troop/equipment mobilization. This negatively impacts the Wing's ability to demolish and relocate from other substandard facilities on base. When funded, the Logistics Readiness Center will provide command and control for all materials in-bound and outbound, including freight processing, packing, crating, pallet buildup shop, and provide bulk and bin storage. The facility will also support secure storage, an armory, and have administrative areas.

I appreciate the opportunity to provide a list of congressionally-directed projects in my district that have received funding in the Conference Report accompanying H.R. 3288, the FY2010 Consolidated Appropriations Act and provide an explanation of my support for them.

COMMEMORATING THE 60TH ANNIVERSARY OF VOICE OF AMERICA IN UKRAINE

HON. ROBERT WEXLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. WEXLER. Madam Speaker, I rise today to recognize the 60th anniversary of Voice of America's Ukrainian Service, which is on December 11, 2009.

As members of Congress know, Voice of America is the largest U.S. international broadcaster and plays a critically important role globally, broadcasting 1,500 hours a week of programming through various media forms spanning news, information, and educational and cultural topics, and reaching an audience of over 130 million people worldwide. Since 1942, Voice of America has filled a critical gap in regions of the world where freedom of the press is limited or does not exist.

Today, Voice of America facilitates the free-flow of information globally. It is particularly important in Ukraine, where Voice of America will be celebrating its 60 years of service.

Voice of America has been essential to advancing democratic freedoms through the free-flow of information and supporting the development of democratic institutions in Eastern Europe, including Ukraine. On the front lines of international broadcasting, VOA has provided a critical outlet for the dissemination of free, uncensored news and information throughout Ukraine in multiple languages and formats. Today close to five million Ukrainians access Voice of America's services each week. VOA's Ukrainian broadcasts have also provided valuable information to the Ukrainian people as they continue their political, economic, and democratic reform efforts and build a stronger civil society.

Today there are still many countries that do not enjoy freedom of the Press, which is an essential component of a functioning and successful democracy. Unconscionably there are governments that continue to deny their populations this basic liberty, creating conditions in which media and members of the press face censorship, intimidation, persecution, or far worse.

Voice of America is essential to American and international efforts to change the dynamics of press freedom and human rights. To that end, I want to praise VOA and its dedicated staff that have worked diligently in Ukraine, and around the globe, to promote and facilitate the free and unfettered flow of information, opinions, and ideas.

Once again, I commend Voice of America on its 60 years of promoting freedom of information in Ukraine. I also want to congratulate VOA Ukrainian Service for its efforts and leadership in successfully fulfilling VOA's core mission to "promote freedom and democracy and to enhance understanding through multimedia communication of accurate, objective, balanced news, information, and other programming about America and the world to audiences overseas."

A TRIBUTE TO HERO K. TAMAKLOE

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Hero K. Tamakloe who emigrated from Togo in 1988. Mr. Tamakloe has held many jobs in New York. He's worked as a cab driver, and interned with Woodhull Hospital after working on behalf of the Togo Embassy at the United Nations. Finally, after attending York College, majoring in economics, Mr. Tamakloe decided to apply for work as a teacher with the Department of Education.

Tamakloe was assigned to P.S. 95 Q in Hollis as a substitute teacher, where he worked for two years before taking over YMCA of Greater New York's "Virtual Y" program which serves over 300 students in an after school program. Currently, Mr. Tamakloe is a YMCA of Greater New York employee and is assigned to DYCD (Department of Youth & Community Development) at New York City Housing Authority Beacon Satellite at Bushwick-Hylan and Sumner Community centers in the North Brooklyn area.

Mr. Tamakloe is regarded as one of the strongest off-site YMCA after school Directors in New York City, a reputation complimented by the awards he received. Mr. Tamakloe credits the staff, parents, teachers, mentors and volunteers who helped him to keep the After School and Beacon Programs running smoothly.

Madam Speaker, I urge my colleagues to join me in recognizing the aptly named Hero K. Tamakloe.

IN PRAISE OF THE TRANSATLANTIC LEGISLATORS' DIALOGUE MEETINGS HELD LAST WEEKEND IN NEW YORK CITY

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BERMAN. Madam Speaker, I would like to call the attention of my colleagues in the Congress to a successful meeting of the Transatlantic Legislators' Dialogue, TLD, in New York City from December 4–7, 2009. Chairwoman SHELLEY BERKLEY led a strong bipartisan delegation, which included Vice-Chairman CLIFF STEARNS, Vice-Chairman JIM COSTA, GARY ACKERMAN, XAVIER BECERRA, DENNIS CARDOZA, JOHN DUNCAN, Jr., ELIOT ENGEL, VIRGINIA FOXX, BART GORDON, JAY INSLEE, SHEILA JACKSON-LEE, RON KLEIN and LORETTA SANCHEZ. I wish to recognize these members for their thoughtful contributions to an informed and productive exchange of views with Members of the European Parliament.

The Transatlantic Legislators' Dialogue serves as the formal response of the European Parliament and the U.S. Congress to the commitment in the New Transatlantic Agenda of 1995 to enhance legislative ties between the European Union and the United States. The TLD involves biannual meetings between American and European legislators in order to foster transatlantic discourse and exchange views on topics of mutual interest. Given the recent adoption of the Lisbon Treaty and the additional powers it provides to the European Parliament, it is even more important that legislators engage in this dialogue in order to seek joint solutions to the pressing issues facing citizens on both sides of the Atlantic.

Participants at the New York meeting held extensive discussions about the financial crisis and international trade. The debate was informed by presentations from the Obama administration, including Michael Froman, Deputy National Security Adviser for International Economic Affairs, and Mark Sobel, Acting Assistant Secretary for International Affairs at Treasury. The TLD emphasized the need for a strong and coordinated transatlantic policy response, while reiterating the importance of the Transatlantic Economic Council, TEC, as a framework for cooperation.

Considerable attention was paid to foreign policy issues. TLD participants engaged in vigorous debate about the Middle East, hearing the administration's perspective from Jeffrey Feltman, Assistant Secretary for Near Eastern Affairs. Other foreign policy debates focused on Afghanistan and Pakistan, the Iranian nuclear threat, relations with Russia, and the Balkans. These deliberations were further enhanced by the delegation's meetings on the final day of the TLD at the United Nations with Ambassador Susan Rice and Under-Secretary-General for Political Affairs B. Lynn Pascoe.

In addition, the delegates talked about the challenge of climate change and energy security with Jon Wellinghoff, Chairman of the Federal Energy Regulatory Commission. They also discussed a range of civil liberties issues, including American travel regulations and President Obama's efforts to close Guantanamo.

In conclusion, I submit the joint statement that was agreed upon by American and European legislators at the 67th TLD meeting held in New York. This document emphasizes the importance of continued transatlantic dialogue and cooperation in jointly addressing current financial and foreign policy challenges

TRANSATLANTIC LEGISLATORS' DIALOGUE, 67TH MEETING OF DELEGATIONS FROM THE EUROPEAN PARLIAMENT AND THE UNITED STATES CONGRESS, JOINT STATEMENT

(By Shelley Berkley, Cliff Stearns, Jim Costa, Elmar Brok, Sarah Ludford, and Niki Tzavela)

We, the Members of the European Parliament and the United States House of Representatives, held our 67th Interparliamentary meeting (Transatlantic Legislators' Dialogue) in New York City, from 4–7 December 2009.

Building on the joint statement issued following our last meeting in Prague on 18–20 April 2009, we reasserted the importance of regular dialogue on the pressing political, social and economic challenges that affect citizens on both sides of the Atlantic. We agreed to report back to our parent bodies on the content and outcome of our discussions in New York, with an emphasis on the areas where joint efforts are likely to produce positive outcomes.

The Transatlantic Legislators' Dialogue appreciated the Lisbon treaty's entry into force, with its enhancement of the powers and competences of the European Parliament in areas such as International Trade and Justice and Home Affairs, as well as the appointment of an EU President and High Representative. We expressed our desire to continue building on the political momentum created by the election of new administrations in Europe and the United States in order to further strengthen the transatlantic relationship.

We called for continued collaboration between legislators in the U.S. Congress and the European Parliament on legislation and issues of common concern, formalising lines of communication and information-sharing between EU and U.S. legislators to promote compatible legislation reflecting transatlantic cooperation through the work of the committees, in full respect for each side's sovereignty.

We discussed a wide array of international political questions such as the situations in the Middle East, Afghanistan/Pakistan, the Balkans, Russia and Iran's nuclear programme.

We also examined a wide array of issues of common interest, including global concerns relating to Energy and Climate Change, Financial Services and International Trade. We examined how the United States and the European Union could best cooperate in matters of Civil Liberties and Justice and Home Affairs.

Our conclusions are as follows:

INTERNATIONAL POLITICAL ISSUES

(a) Peace in the Middle East requires a durable ceasefire, an immediate and unconditional end to terrorist attacks on Israel, a functioning and effective government in the Palestinian Territories and the resumption of the obligations under the roadmap, including an end to incitement and a solution for the question of settlements. The goal is a secure Jewish state of Israel and a viable Palestinian state, living side by side.

(b) We held a strong debate exchanging a wide array of views between and within the delegations on the strategy for Afghanistan/Pakistan announced by President Obama on 1 December 2009, which provided a new impetus for renewed international commitment to confronting the ongoing challenges of security, terrorism, governance, corruption and socio-economic reconstruction. We look forward to the international conference on Afghanistan that will be held on 28 January 2010 under the auspices of the UN. The EU and the U.S. should enhance their cooperation and support, foster burden-sharing, work to improve the coordination and effectiveness of Provincial Reconstruction Teams (PRTs), and seek to help build critical infrastructure across Afghanistan. Maintaining the stability and cooperation of Pakistan is equally important as well.

(c) On Iran, the dialogue noted the recent, troubling moves by the Iranian Government regarding its nuclear programme, affirmed that a nuclear armed Iran is unacceptable and expressed its concern about the human rights situation in the country. We urge the leaders on both sides of the Atlantic to develop a common policy and unite the international community to meet this threat, including strong sanctions, if it continues to fail to comply with its international obligations in the nuclear area.

(d) Relations with Russia should involve constructive cooperation on challenges and threats, including security matters, disarmament and non-proliferation, along with respect for democratic principles including human rights standards, and adherence to international law. The dialogue expressed concerns about Russia's continued failure to comply with the 2008 ceasefire agreements with Georgia negotiated by French President Sarkozy, as well as the potential for another energy dispute with Ukraine this winter. We also cited the need to enhance mutual trust between the transatlantic partners and Russia. We welcome the ongoing U.S.-Russia negotiations on arms reduction and look forward to Russia's membership in the WTO, once those negotiations are satisfactorily completed, with all its legal obligations.

(e) Challenges remain in our efforts to integrate the Western Balkans into a united Europe. Cooperation between the United States and the European Union remains the most effective way to encourage political and economic development in Kosovo as well as to facilitate constitutional reform in Bosnia, and ensure respect for the rule of law, including cooperation with the International Criminal Tribunal for Yugoslavia, throughout the region.

ENERGY AND CLIMATE CHANGE

We agreed that the Copenhagen Conference is one of the biggest challenges for international cooperation. We welcomed the announcement of President Obama's personal involvement in the COP-15 Summit in Copenhagen.

We discussed the common goal to provide the necessary stimulus for sustainable economic growth, promoting green technologies and creating new jobs.

We discussed how the EU and the U.S. could work together to reach an international agreement to reduce greenhouse gas emissions by setting ambitious reduction targets for industrialised countries and identifiable actions by developing countries. We discussed cap-and-trade systems and the need to avoid incompatible emission trading systems to pave the way to a transatlantic, and ultimately a global carbon market. We noted the link between tackling climate change and addressing energy security and economic growth, recognizing that the fight against climate change could also be an opportunity to create new jobs and sustain economic growth.

We welcomed the creation of a new EU-U.S. Energy Council at the last EU-U.S. Summit in order to strengthen the dialogue on strategic energy issues of mutual interest, foster cooperation on energy policies and further improve research collaboration on sustainable and clean energy technologies. We look forward to the Energy Council deliberations feeding the TEC process and we consider this as another area where the TLD can develop further.

FINANCIAL CRISIS

We examined the consequences of the global economic and financial turmoil. We agreed that the crisis requires a strong and coordinated policy response by the U.S. and the EU. Recovery plans currently being adopted are critical in mitigating the effects of the crisis: approaches chosen should be compatible, strengthen financial supervision to ensure confidence in the system, avoid protectionist measures, and avoid distortions of competition in the transatlantic marketplace.

We discussed the role of international cooperation in financial regulation and supervision, including better crisis prevention and management, and agreed that the EU and U.S. should cooperate on the reform of international financial institutions.

We are pleased that the G–20 leaders have decided to give the emerging countries, within the International Monetary Fund, a position commensurate with their weight in today's global economy so as to ensure support for the developing world and to achieve the Millennium Development Goals.

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

We welcomed the ''Washington Declaration'' on 28 October 2009 on enhancing transatlantic cooperation in the area of Justice, Freedom and Security within a context of respect for human rights and civil liberties. We expressed the hope that it will provide a framework to replace the ad hoc approach of the last decade on data collection and sharing arrangements (PNR, SWIFT, MoUs linked to visa waiver, etc.) with a more strategic approach of law enforcement and judicial cooperation through the Mutual Legal Assistance and Extradition Agreements and through developing an agreement on data protection.

We discussed President Obama's desire to close the Guantanamo detention facility within a year, taking note of the offer by several European countries to accept Guantanamo inmates and encouraging the U.S. and the EU to continue seeking joint solutions to combat terrorism.

The dialogue also discussed the EU-U.S. negotiations to extend the Visa Waiver Programme to the remaining EU member states. We hope that the U.S. visa waiver programme will be extended to all EU citizens as soon as possible, when the criteria have been met. An exchange of views took place on the recent adoption of the U.S. Travel Promotion Act.

In light of the concerns about the Safe Port Act raised by port operators and the trade community, in particular with respect to the cost/benefit ratio of the scanning requirement's possible negative effects on competitiveness and on transatlantic trade flows, we were of the view that the U.S. Administration should re-examine this legislation.

INTERNATIONAL TRADE AND WTO NEGOTIATIONS

We agreed that trade is as central to the EU-U.S. relationship as it is to world recovery. We call upon the European Commission and the United States to redouble their efforts to bring the Doha Round of world trade talks to a successful conclusion.

We believe that international trade can make a contribution to the restoration of world economic growth and that work to integrate and harmonise EU and U.S. trade practices will lead to a global improvement in living standards and will help secure quality jobs in both the European Union and in the United States.

We believe that participation by Congress and the European Parliament in the Parliamentary Conference of the WTO and in its Steering Committee would enhance cooperation at a global level. We, therefore, call on the leadership of both bodies to take appropriate steps in order to allow us to collaborate in this context.

DEVELOPMENT OF TRANSATLANTIC ECONOMIC COUNCIL

We reiterated our commitment to the Transatlantic Economic Council (TEC), stressing its utility as a framework to achieve a barrier-free market and for macroeconomic cooperation between both partners. We welcomed the results of the meeting held on 27 October, particularly the extended dialogue between the Administrations with legislators that identified past challenges

and future opportunities. We discussed progress made over the past year in promoting transatlantic economic integration, including investment, accounting standards, regulatory issues, the safety of imported products, and the enforcement of intellectual property rights.

As we told our Administrations during the recent TEC meeting, transatlantic economic cooperation must be more accountable and transparent. In order to help achieve this objective, the schedules of TEC meetings, agendas, roadmaps and progress reports should be agreed upon between the core stakeholders as early as possible and then made public. Such measures are crucial to developing a clear and transparent process for setting the agenda of the TEC, extending the TEC to new sectors, and establishing a roadmap. We continued to encourage the EU and U.S. executive branches to facilitate more active participation by members of the U.S. Congress and the European Parliament in the TEC process, in particular via the TLD, especially for a pre-legislative dialogue between the respective committees of Congress and the European Parliament. TLD members should be full partners in the Transatlantic Economic and Energy Councils.

We note that on the European side, responsibility for coordinating the TEC will pass from the European Commission's Directorate-General for Enterprise and Industry to its Directorate-General for Trade. We believe that this can provide a new impetus toward removing barriers to trade and investment and on fostering competitiveness in the transatlantic market.

STRENGTHENING THE TLD

We agreed that a working group should come up as soon as possible with a list of concrete proposals for the further work of the TLD. We noted the recent document written by the Atlantic Council of the United States along with several other policy think tanks, entitled ''Shoulder to Shoulder: Forging a Strategic U.S.-EU Partnership.'' We supported several of the recommendations in the document and will use them as a starting point. For example:

U.S. Members of the TLD should be drawn from both House and Senate. U.S. House members should be appointed by the Speaker of the House.

The U.S. Congress should open an office in Brussels. The office would service the TLD and monitor legislation affecting U.S. interests. We noted the European Parliament is opening an office in Washington in January 2010.

The TLD should convene a joint consultative committee on the extraterritorial implications of domestic legislation; and focus regular exchanges on upstream regulatory legislation.

The TLD should hold joint hearings and conduct joint study tours to areas of common concern, for instance to the Middle East.

The U.S. Congress and the European Parliament should ensure regular contacts between appropriate staff, not simply in foreign affairs-related work but across the board in key areas of mutual engagement.

The TLD should spearhead a new generation of internships in Congressional and European Parliament offices. Each Congressional office should offer to host one intern from the EU; each European Parliament office should offer to host one intern from the United States.

In conclusion, we reaffirmed our commitment to strengthening the transatlantic relationship and working in partnership to solve common challenges. We pledged to continue improving the effectiveness of our dialogue in order to realize the full potential of our invaluable interparliamentary relationship, as well as to ensure the relevance of the TLD's work to the European Parliament and the United States Congress.

RECOGNIZING BETTY SALTER FOR RECEIVING THE HABITAT FOR HUMANITY INTERNATIONAL LIFETIME ACHIEVEMENT AWARD

HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MILLER of Florida. Madam Speaker, I rise today to recognize Betty Salter upon being awarded the Habitat for Humanity International Lifetime Achievement Award. Betty has dedicated her life to serving others, and I am proud to honor her service and commitment to the community.

Betty Salter is one of the founders of the Pensacola Habitat for Humanity and has served on the Board of Directors for 28 years. In the early years of the Pensacola affiliate, Betty served as chairman of the Family Selection Committee. In the late 1980's, when the affiliate could not afford to hire a director, she answered the call and volunteered as the Executive Director of Pensacola Habitat. Twenty years later, Betty remains the volunteer Executive Director. She and her husband James, also a volunteer, work six days a week building houses for low income families.

When Betty took over as Executive Director, the Pensacola Habitat for Humanity had built a total of four homes. Five years later, under Betty's leadership, house production jumped to twenty per year. Today, the affiliate builds between 55 and 60 homes each year. Betty's enthusiasm, energy, and generosity have motivated thousands of volunteers in our community to donate their time and their money in support of Habitat for Humanity. In 2004 and 2005, Betty helped lead the Pensacola affiliate through Hurricanes Ivan and Dennis, making sure projects continued as scheduled.

In addition to her service with Habitat for Humanity, Betty has been dedicated to all forms of housing assistance over the years. She served on the Board of Directors for Methodist Homes of Alabama and West Florida. She also served on the Board of the Children's Services Center for over twenty years. Betty has been awarded numerous honors over the years from many charity organizations. This year, Habitat for Humanity chose Betty as one of only four volunteers to award the first Habitat for Humanity International Lifetime Achievement Award.

Madam Speaker, on behalf of the United States Congress, I am honored to recognize Betty Salter for her service to the people of Northwest Florida. She is a dedicated community servant who has sacrificed so much for others in need. My wife Vicki and I wish all the best for continued success to Betty and her husband James, children Gail and Jane, grandchildren, great-grandchildren, and entire extended family.

TRIBUTE TO LOVELY HILL BAPTIST ASSOCIATION

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. CLYBURN. Madam Speaker, I rise today to pay tribute to the Lovely Hill Baptist Association in recognition and celebration of its rich history and tremendous impact in South Carolina. On December 12, 2009 this 108-year-old organization will celebrate Founders' Day for the very first time.

This organization held its first meeting in 1901 at Lovely Hill Baptist Church in Smoaks, South Carolina. Three years later, they were chartered under the name of Lovely Hill Baptist Educational Congress to reflect their mission to provide for the education of African American youth who weren't allowed to attend public schools. In 1918 the group purchased more than 34 acres to build the first school for black children in the St. George area. Once public schools were integrated, the land was used for the county fair.

In 1932, the organization's mission had grown, and to broaden its scope, officially became known as the Lovely Hill Baptist Association. Sixty years later, Lovely Hill Baptist Association was incorporated, and today, 22 churches are members. In 1999, the association broke ground for the construction of a new conference center on the site of the original school. Construction was completed in 2005, and today the facility provides a much needed center for community activities in St. George and surrounding areas.

The association has several auxiliaries including the Sunday School Congress of Christian Education, the Lovely Hill Women's Auxiliary/Young Women's Auxiliary, the Ushers' Convention, the Brotherhood Convention, and the Youth Convention.

Over the years, a number of moderators have served the Association faithfully—Reverends Coger H. Haygood, J.M. Marshall, S.D. Rickenbacker, and T.E. Sanders. The current moderator of the Association is my good friend, Reverend Dr. S.B. Marshall, who is ably assisted by the 1st vice-moderator, Reverend McKinley Ravenel, and 2nd vice-moderator, Reverend Floyd Wright.

Madam Speaker, I ask you and my colleagues to join me today in recognizing this organization that has contributed so much to the faith community in South Carolina. For more than a century, the Lovely Hill Baptist Association has provided excellent spiritual leadership and Christian education to the citizens of my congressional district. I applaud their rich history and significant contributions to countless numbers of my constituents. And I congratulate them on their inaugural Founders' Day and wish them Godspeed!

TRIBUTE TO DR. A. ZACHARY YAMBA

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. PAYNE. Madam Speaker, I would like to ask my colleagues here in the United States

House of Representatives to join me as I rise to honor and congratulate Dr. A. Zachary Yamba on his retirement from Essex County College. He is the longest serving college president in the State of New Jersey, and the longest sitting President of a predominantly black serving institution of higher education in the nation.

After serving 29 years as President, Dr. Yamba will retire December 4, 2009. Under Dr. Yamba's leadership, Essex County College has experienced unprecedented stability and growth. Enrollment at the College has increased from 7,500 students in 1980 to a record 25,000 students in 2009.

Within a year of his appointment, Essex County College was awarded full accreditation for a 10 year period, a status that was reaffirmed in 1991 and 2001. Over the next 29 years Dr. Yamba demonstrated a commitment to providing quality education to under-represented populations, and ultimately redefined the role of urban higher education in the State of New Jersey and the nation.

Dr. Yamba has positioned Essex County College to be one of the major factors in the movement to grant students of color greater access to higher education. Through his efforts, Essex County College stands in the top 1% of the nation for awarding African American Associate degrees. In addition, Essex County College is the number one Community College in New Jersey for awarding African American Associate degrees and is the number one institution in New Jersey for educating African American students.

Dr. Yamba's inter-generational influence has made an inedible mark on the educational tapestry of the City of Newark, and the State New Jersey. Dr. Yamba became a beacon of hope, accountability and excellence for the mission of urban community colleges. Without his contribution, it is clear that Essex County College and urban community colleges everywhere, would not be as dynamic or academically sound as they are today. He is Regent Emeritus on the Board of Regents of Seton Hall University, was inducted into its Athletic Hall of Fame (Soccer) and has also been awarded an honorary doctorate degree. Additionally, he holds honorary degrees from Rutgers University and the University for Development Students in Ghana.

Madam Speaker, I know my colleagues agree that Dr. Yamba has made a significant impact on the educational system in New Jersey, and the nation. He will leave a lasting impression on those who were fortunate enough to benefit from his guidance. I am honored to have worked with him for a number of years, and I wish him a wonderful retirement.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE FOR H.R. 3963

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. THOMPSON of Mississippi. Madam Speaker, in accordance with the House Report 111–345, I submit the Congressional Budget Office Cost Estimate for H.R. 3963.

DECEMBER 1, 2009.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3963, the Criminal Investigative Training Restoration Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3963—Criminal Investigative Training Restoration Act

H.R. 3963 would direct the Federal Air Marshal Service (FAMS) to require newly hired marshals to complete a training program in criminal investigative techniques. The bill would authorize the appropriation of at least $3 million in each of fiscal years 2010 and 2011 for that purpose.

Based on information from DHS about the anticipated number of new employees and costs to train them, CBO estimates that $6 million would be sufficient to establish and operate the proposed training program. Assuming appropriation of the necessary amounts, CBO estimates that fully funding H.R. 3963 would cost $2 million in 2010 and $6 million over the 2010–2014 period. Enacting the bill would not affect direct spending or revenues.

H.R. 3963 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

A TRIBUTE TO MR. FRANK G. FORGIONE, SR.

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. HOYER. Madam Speaker, I rise today to pay tribute to a longtime constituent of mine, Frank G. Forgione, Sr., for his outstanding dedication to music, service, and country.

From his earliest days, Frank—the son of two musicians—demonstrated an appreciation and recognition of the power of music. At age 11 he began studying music with Frank Holt, a percussionist for noted bandmaster and composer John Philip Sousa. At the encouragement of his instructors, he auditioned and was accepted into the Navy School of Music here in Washington in 1938.

In December 1941, Frank was stationed at Pearl Harbor aboard the USS *Oglala*. During the attack of December 7, the *Oglala* fell victim to the Japanese attack and sank. Fortunately, Frank was able to make it to a dock. He often said that every day he lived after that was a gift.

In 1951, he became head of the percussion department at his alma mater, the Navy School of Music. Just 10 years later, he founded and led the U.S. Navy Special Show Band—the first Navy Show Band—on a tour in South America. Called the Navy's Goodwill Ambassadors, the band toured through South America during a period of unrest.

When the band encountered anti-American sentiment or threats at their shows, Frank directed the band to perform, believing that the universality of music would be enough to win over the crowd. More often than not, his instincts proved correct. The band went on to make several more tours throughout South America and the rest of the world.

Frank Forgione's service did not go unnoticed. He became the first musician since John Philip Sousa to receive the Secretary of the Navy's Commendation Medal.

In 1972, Frank retired with the rank of Chief Warrant Officer. Retirement did not ebb his desire to serve. Inspired by his tours in South America, Frank dedicated himself to relieving the poverty he witnessed while on the continent. For the next 16 years, he enlisted many national corporations to donate food, educational materials, medicine, and other essential supplies to help improve the living conditions for those less fortunate.

In addition, Frank continued fulfilling his love of music. He created the Fort Washington Continentals, an award-winning youth drum corps located in Prince Georges County. The corps was selected to lead Washington's Bicentennial Parade.

At age 70, Frank became bandmaster for the New York Military Academy in Cornwall-on-Hudson, touring extensively throughout the United States, Europe, and Australia. While there he was given the honorary rank of Army Colonel. He retired again in 2005 at the age of 87. Though Frank passed away on July 27, 2009, it is undeniable that his spirit and appreciation for music have remained with those he touched throughout his life.

Madam Speaker, Frank G. Forgione, Sr. was blessed with the gift of music and committed to serving others. He helped to make the U.S. Navy, the State of Maryland, and communities throughout the world a better place. I urge my colleagues to join with me in paying tribute to this extraordinary individual for a life well lived and in offering sincerest condolences to his friends and family on their loss.

HONORING DALE E. HANINGTON

HON. MICHAEL H. MICHAUD

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MICHAUD. Madam Speaker, I rise today to recognize the accomplishments of Dale Hanington of Benton, ME.

Dale Hanington has served the trucking industry for the past two decades, with the last 17 as the president and CEO of the Maine Motor Transport Association, MMTA. During his long and distinguished career, Dale has admirably represented the transportation industry by promoting highway safety and tirelessly advocating for sound public policy affecting members of the MMTA.

Dale's insistence on integrity and the honest sincerity of his approach has gained him the respect of those who have worked with him, both in the trucking industry and during his career with the Maine State Police. It is his unwavering character and consistent advocacy for highway safety that led to his nomination by the Governor to serve on every Maine's Motor Carrier Review Board since its inception. Dale has never taken this reasonability

lightly, and has always dedicated his time and expertise to the group's role of reviewing the records of motor carriers with significant and repeated violations and ensuring that proper steps are taken to mitigate safety risks.

His many accomplishments while at the MMTA include increasing the association's strength to over 1,200 companies, as well as adding valuable services for the benefit of the membership. On a personal note, Dale has been a long time and trusted adviser of mine when it comes to the issue of truck weights in Maine. He has worked tirelessly with me and the entire Maine congressional delegation to advocate for a fix to the problem. We are getting closer to a permanent solution and we have Dale and his advocacy to thank for it.

Prior to his leadership at the MMTA, Dale graduated from the Northwestern Traffic Institute and served for 20 years with the Maine State Police, achieving the rank of lieutenant by the end of his career. He is actively involved in community and fraternal organizations such as the Freemasons, the Order of the Eastern Star, the Order of the Amaranth and he spent many years as a Scout Master for the Boy Scouts. Dale and his wife Jean are also very active in the First Baptist Church of Fairfield.

Madam Speaker, please join me in honoring Dale Hanington for his life of dedication and service to his community and his country.

HONORING THE LIFE OF JOHN WARREN COOKE

HON. FRANK R. WOLF–

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. WOLF. Madam Speaker, I rise to share with our colleagues the recent passing of John Warren Cooke, former speaker of the Virginia House of Delegates. He died on November 28, 2009, at the age of 94.

Born on February 28, 1915, in Mathews, Virginia, Speaker Cooke had a long history of service to Virginia, spending almost 4 decades in the House of Delegates from 1942 to 1980. After serving as the Democratic majority leader for 12 years, he became Speaker in 1968. He was well regarded on both sides of the aisle and considered a true gentleman.

After retiring from the Virginia House of Delegates, Speaker Cooke returned to his hometown to continue serving as the publisher of the Gloucester-Mathews Gazette Journal, as he had done since 1954.

Speaker Cooke's father, Major Giles B. Cooke, served on the general staff of General Robert E. Lee during the Civil War. As a 26–year-old, Major Cooke was on Lee's staff at Appomattox.

As the ninth generation of his family to serve in the Virginia General Assembly and one of the last living Americans with a father in the Civil War, Speaker Cooke will surely be missed by the people of the Commonwealth of Virginia.

I submit an obituary for Speaker Cooke published in The Washington Post on December 2.

[From the Washington Post, Dec. 2, 2009]

COURTLY, POWERFUL SPEAKER OF VA. HOUSE FOR 12 YEARS

(By Matt Schudel)

John Warren Cooke, 94, who served 12 years as the quietly influential speaker of the Virginia House of Delegates, died Nov. 28 at his home in the Mathews County town of Gloucester. The cause of death could not be learned.

Mr. Cooke, the last member of the Virginia legislature who was the son of a Confederate veteran, was the Democratic majority leader in the House of Delegates for 12 years before becoming speaker in 1968. He exercised his authority with a courtly demeanor and a gentle hand but was, as described in a 1979 Washington Post article, ''one of the state's most powerful but little-noticed officials.''

He served in the House of Delegates from 1942 to 1980, when Virginia was struggling with integration and changing from its Democratic, rural roots to a more urban and Republican-leaning state. Among other achievements, Mr. Cooke helped bring a new bipartisan spirit to Richmond by appointing Republicans to key committees for the first time in the legislature's history.

Until 1969, Virginia's legislators had no offices and conducted their business from their desks and briefcases. As speaker, Mr. Cooke had absolute authority to appoint the 100 members of the House to committees as he saw fit. His committee choices, usually based on seniority, could affect the direction and tone of legislation and whether it reached the full House for a vote.

Mr. Cooke, known as ''John Warren,'' was well liked and was praised by his colleagues as ''the soul of fairness.''

A 1970 Post story said Mr. Cooke's ''geniality'' and ''quick dry wit'' served him well in politics: ''He guides smoothly and skillfully, he is courteous, he is a gentleman down to his toes—and he is very, very popular.''

Mr. Cooke was considered a possible gubernatorial candidate in 1969 and 1973, but he bowed out of the races to remain in the House, representing a Tidewater district north of Williamsburg.

In 1972, as the Democratic speaker, he helped arrange a compromise between contentious factions of the Democratic-controlled legislature and Republican governor Linwood Holton to institute a sweeping reorganization of the state government.

John Warren Cooke was born Feb. 28, 1915, in Mathews, Va. His father, who was 76 when his son was born, was an Episcopal priest who had served on Gen. Robert E. Lee's staff during the Civil War.

Mr. Cooke attended the Virginia Military Institute and returned to his home town to work for the Gloucester-Mathews Gazette-Journal. He was publisher of the weekly newspaper from 1954 until March of this year and was president of the old Tidewater Baseball League.

Survivors include his wife of 62 years, Anne Brown Rawn Cooke of Mathews; and two children, Giles Buckner Cooke III of Williamsburg and Elsa VanNess Verbyla of Mathews.

HONORING THE 25TH ANNIVERSARY OF THE UNIVERSITY OF MIAMI'S HISPANIC-AMERICAN CULTURAL INSTITUTE

HON. ILEANA ROS-LEH TINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. ROS-LEHTINEN. Madam Speaker, I would like to congratulate the Hispanic-American Cultural Institute of the Koubek Center of the University of Miami on their 25th anniversary.

The Hispanic-American Cultural Institute is part of the University of Miami's Division of Continuing and International Education, which was founded in 1984 by Mr. Pablo Chao.

The Institute's primary mission is to offer cultural and academic services to elderly professionals who wish to remain active. The good work done by the Institute has helped countless individuals in our South Florida community. The Institute has offered conferences in various academic disciplines, which have been hosted by recognized educators, writers and leaders of the Hispanic community.

I congratulate the extraordinary leadership of the center's president for the past 10 years, Mr. Manuel I. Muñiz, and Director Chao on the Institute's 25th anniversary. The Hispanic-American Cultural Institute is a valued part of our community. I am sure that the Institute will continue to allow individuals to pursue their academic dreams regardless of age, as well as be a forum where the brightest minds of the Hispanic community can shine.

RECOGNIZING THE RETIREMENT OF JERRY EUBANKS

HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MILLER of Florida. Madam Speaker, I rise today to recognize Mr. Jerry Eubanks upon his retirement from the United States National Park Service. Jerry has been a lifelong public servant, and I am humbled to honor his service and commitment.

A native of McCool, Mississippi, Jerry joined the National Park Service in 1960 after graduating from Mississippi State University with a degree in Civil Engineering. Since joining the Park Service, he has worked across the country from Missouri to California to Virginia to preserve and protect America's national parks. In 1976, Jerry became Assistant Superintendent of the Great Smoky Mountains National Park, Tennessee and North Carolina. Jerry moved to the Gulf Coast in 1984 to serve as Superintendent of the Gulf Islands National Seashore, where he has remained ever since.

As Superintendent of the Gulf Islands National Seashore, Jerry has worked tirelessly to ensure the protection and viability of our area's natural resources and beauty. Over the past 25 years, he has led the park through numerous organizational and operational changes, resulting in substantial natural, cultural, and recreational program improvements. Among his many successes, Jerry helped lead recovery efforts during several damaging hurricanes including Hurricane Ivan in 2004 and Hurricane Katrina in 2005. He was able to bring operations back online quickly after the storms, ensuring the repair and protection of damaged resources and the restoration of major infrastructure. For his efforts over the course of his career, Jerry has received numerous awards for exemplary service including the Department of the Interior Meritorious Service Award in 2000.

Madam Speaker, on behalf of the United States Congress, I am honored to recognize Jerry Eubanks for his service to Northwest Florida. He is a dedicated community leader who will be sorely missed after his retirement. My wife Vicki and I wish all the best for continued success to Jerry and his wife Anne, his

children, grandchildren, and entire extended family.

CONGRATULATING DENNIS K. BURKE ON HIS INVESTITURE AS THE UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA

HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MITCHELL. Madam Speaker, I rise today to congratulate Dennis K. Burke on his investiture as the United States Attorney for the District of Arizona.

I have had the honor of knowing and working with Dennis for many years on numerous issues. I have supreme confidence that his long and distinguished law enforcement career and record of public service will serve Arizona's 8 million residents extremely well as he faces his newest and most important challenge.

Most recently, Dennis held one of the most important behind-the-scenes roles in Arizona state government as Chief of Staff for Governor Janet Napolitano. He also assisted Napolitano in her transition to Secretary of Homeland Security, serving as a senior advisor. He also worked in the Arizona Attorney General's Office and as an Assistant U.S. Attorney in the District of Arizona, where he prosecuted drug trafficking cases and organized crime. In addition, Dennis has served in the Department of Justice, as a staff member on the Senate Judiciary Committee and at the White House.

Because of this truly impressive record of accomplishment and service, I was elated when President Barack Obama nominated Dennis earlier this year. Madame Speaker, please join me in congratulating Dennis Burke and wishing him well as he takes on the challenge of leading the District of Arizona as its newest U.S. Attorney.

HONORING TROUSDALE COUNTY HIGH SCHOOL YELLOW JACKETS ON WINNING THE 2009 TSSAA CLASS 2A FOOTBALL STATE CHAMPIONSHIP

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. GORDON of Tennessee. Madam Speaker, I rise today to recognize the 2009 Trousdale County High School Yellow Jackets for winning the TSSAA Class 2A State Football Championship.

I congratulate these young men for their hard work and dedication. It takes teamwork and sacrifice from each individual for a team to succeed. The Yellow Jackets 12-1 season ended with them defeating the Buccaneers 13-7 in the Blue Cross Bowl on Saturday.

I commend Trousdale County High School Head Coach Kevin Creasy and Assistant Coaches Jackie Dillehay, Jason Dobbs, Brandon Eden, Hal Hailey, Ben Johnson, Adam Keeton, Steve McClain, and Ronnie White.

I congratulate each player of the 2009 Class 2A State Champion Yellow Jacket Football Team: T.J. Seay, Jordan Harper, Tacola Seay, Hunter Murphree, Craig Brown, Dre Crenshaw, Brent Ford, Dillon Young, Joe Sanders, Devon Turczyn, Seth Calhoun, Josh Payne, Mack Sanders, Tyler Edwards, Marcelly Smith, Joey Cox, Garrett Crafton, Dakota Stovall, Demarius Smith, Kale Satterfield, Victor Hardwick, Spencer Minor, Alex Gregory, Kyle Gregory, Austin Bode, Chase Roberson, Zach Scruggs, Joseph Phillips, Kyle Satterfield, Mitch Merryman, Cody Belcher, Baylor DeLeusomme, Marty Bottom, Shawn Melton, Hunter Kelley, Michael Harper, David Minor, Jordan Holder, Ned Dias, Koryay Smith, and Ben Stadter.

HONORING JOHN WARREN COOKE–

HON. ROBERT J. WITTMAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. WITTMAN. Madam Speaker, I rise to share with our colleagues the recent passing of John Warren Cooke, former speaker of the Virginia House of Delegates.

On November 28, 2009, I and many others around the Commonwealth were saddened to hear of the passing of former Speaker of the House of Delegates, John Warren Cooke.

Speaker Cooke served in the House of Delegates, representing much of the Middle Peninsula from 1942–79 and was its Speaker from 1968 until his retirement.

His dedication and service touched countless citizens of the Commonwealth not only through his work in the General Assembly, but also as publisher of the Gloucester-Mathews Gazette–Journal.

Our thoughts and prayers are with Speaker Cooke's family as we all mourn his passing.

HONORING TEXAS ATTORNEY DAVID GROVE

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. POE of Texas. Madam Speaker, today the Second District of Texas recognizes attorney David Grove for being awarded the Mickey F. Mehaffy Award from the Jefferson County Bar Association, given each year to honor an attorney for their exceptional pro bono work. He has worked tirelessly to help less fortunate citizens find representation in the court of law.

David was born in Midland and attended the Baylor University School of Law. In 1978, after spending a summer as a law clerk in Beaumont, he returned to Jefferson County as an Assistant District Attorney. He joined a private firm 6 years later and started his solo practice in 1999.

David always donated his time and attention to pro bono work, however, he saw the need for it escalate after the double shot of Hurricane Rita in 2005 and Hurricane Ike in 2008. Both of these hurricanes caused immense damage across Southeast Texas and Southwest Louisiana. This left many residents with damage claims against insurance companies who could not afford representation.

David is a leading advocate for the indigent, making sure they are treated fairly. He also donates a large amount of time to helping families through divorces or child custody cases. He realizes that some people do not have the resources available to defend themselves, their family, or their home, and he makes sure they have equal representation.

Madam Speaker, on behalf of the Second Congressional District and all of Southeast Texas, I want to congratulate David Grove for this wonderful accomplishment. Through his diligent efforts and dedication he has given a voice to many who thought they had none.

EARMARK DECLARATION

HON. SPENCER BACHUS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BACHUS. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding funding that I requested as part of the H.R. 3288, the Consolidated Appropriations Act, 2010.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Office of Justice Programs, Juvenile Justice

Legal Name of Requesting Entity: Alabama Department of Public Safety

Address of Requesting Entity: Post Office Box 1511 Montgomery AL, 36102–1511

Description of Request: Provide $150,000 for efforts to target the investigation, arrest, and prosecution of child sexual predators in the State of Alabama. Funding will be used for additional personnel and equipment. These funds will allow the investigation and prosecution of child sexual exploitation . The FY 1998 Justice Appropriations Act directed DOJ to create a national network of state and local law enforcement cyber units to investigate cases of child sexual exploitation; this funding will help the State of Alabama to fulfill that mission. The project's total budget is $500,000. Specifically within the budget, $225,000 will go toward permanent personnel salaries, $110,600 for fringe benefits, $75,000 for travel and training and $25,000 for equipment. This request is consistent with the intended and authorized purpose of the Department of Justice, Office of Justice Programs—Juvenile Justice Account. The Alabama Department of Public Safety will meet or exceed all statutory requirements for matching funds where applicable.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Department of Justice, OJP—Byrne Discretionary Grants

Legal Name of Requesting Entity: Alabama Department of Public Safety

Address of Requesting Entity: Post Office Box 1511 Montgomery AL, 36102–1511

Description of Request: Provide $1,000,000 for the Alabama Department of Public Safety/Alabama Bureau of Investigation Cyber Crimes Unit, Alabama Fusion Center and the University of Alabama at Birmingham will partner with Alabama District Attorneys Association in a multi-pronged approach to investigate

and prosecute financial cyber crimes within Alabama. Staff will be hired to conduct computer research and monitor the phishing sites, train law enforcement agencies in analysis and investigative techniques as related to phishing, and conduct analysis and investigation into leads generated by the UAB Computer Forensics Department. This project will protect citizens from predatory actions such as cyber scams. Not only will more criminals be brought to justice but the victims will have a better chance of recovering losses. This will help protect financial institutions against fraud and lessen potential demands on the FDIC fund. The project's total budget is $3,215,585. Specifically within the budget, for the Alabama District Attorney's Association $225,000 will go toward personnel, $154,334 for fringe benefits, $60,000 for travel, $75,000 for supplies, $237,100 for equipment and $150,000 for other expenses; for the University of Alabama at Birmingham Association $364,639 will go toward personnel, $65,659 for fringe benefits, $50,000 for travel, $51,000 for tuition and health insurance,$210,000 for equipment and $289,997 indirect costs; and for the Alabama Department of Public Safety $238,968 will go toward personnel, $103,981 for fringe benefits, $60,907 for travel, $50,000 for supplies, $200,000 for equipment and $80,000 for other expenses. This request is consistent with the intended and authorized purpose of the Department of Justice, Office of Justice Programs—Ju Byrne Discretionary Grants. The Alabama Department of Public Safety will meet or exceed all statutory requirements for matching funds where applicable.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Department of Justice, COPS-Meth

Legal Name of Requesting Entity: Alabama District Attorney's Association—Office of Prosecution Services

Address of Requesting Entity: 515 South Perry Street Montgomery AL, 36104

Description of Request: Zerometh is Alabama's reaction to the destructive force of today's meth epidemic. Its purpose is to expose meth and its deadly consequences to teens and young adults (12–24). The goal is to stop a potential first-time user from ever trying the drug, while encouraging everyone to look for the warning signs and support treatment. The funding will be used to purchase media and develop presentations. Meth use is a national epidemic that requires attention at all levels, but education will be the critical step to slowing down the rate of addiction to the powerful job. Zerometh has a distinctly federal goal in its mission to educate young people as to the dangers of Meth and the impact it can have on their life. The project's total budget is $1,000,000. Specifically within the budget, $830,000 will go toward advertising and media expenses, $50,000 for meth education presentations, $55,000 for administration and training and $65,000 for equipment, supplies and printing. This request is consistent with the intended and authorized purpose of the Department of Justice, COPS-Meth Account. The Alabama District Attorney's Association—Office of Prosecution Services will meet or exceed all statutory requirements for matching funds where applicable.

EARMARK DECLARATION

HON. JO ANN EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mrs. EMERSON. Madam Speaker, pursuant to the House Republican standards on earmarks, I am submitting the following information in regards to H.R. 3288.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102–0270

Description of Request: Provide an earmark of $650,000 for an environmental study, engineering design work, and construction work on Route 25 in Jackson, Missouri. The funds will be used to alleviate traffic and dangerous conditions on Route 25 between Jackson Trail and the city limits of Jackson, Missouri. The State of Missouri will provide 20% match. All federal funds received will be spent on Route 25 in Jackson, Missouri and will not be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102–0270

Description of Request: Provide an earmark of $500,000 for the expansion of four-lane highway south of Poplar Bluff, Missouri to south of Route 160. The funds would also be used to rehabilitate dangerous intersections on Route 67 at U.S. 160, as well as Missouri Highway 158. The State of Missouri will provide 20% match. All federal funds received will be spent on this project and will not be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102–0270

Description of Request: Provide an earmark of $500,000 to rehabilitate the Chester Bridge which transverses the Mississippi River from Perry County, Missouri to Randolph County, Illinois. The bridge is vital to the region's transportation needs. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on rehabilitation of the Chester Bridge and will not be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Economic Development Initiatives

Requesting Entity: Washington County, Missouri

Address of Requesting Entity: 102 N. Missouri Street, Potosi, MO 63664

Description of Request: Provide an earmark of $300,000 for renovations to make the Washington County, Missouri building accessible to individuals with disabilities. The Washington County building is outdated; many sections are inaccessible to individuals in wheelchairs. The federal funds would provide the means for Washington County to bring the building in compliance with the Americans with Disabilities Act.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102–0270

Description of Request: Provide an earmark of $500,000 for right of way improvements and engineering design to the narrow portion of Route 63 in Phelps and Maries Counties. This project with improve the overall safety of the roadway. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on right of way improvements and engineering design. None of these funds will be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Transportation & Community & System Preservation

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102–0270

Description of Request: Provide an earmark of $500,000 to improve shoulders, as well as widen and straighten curves along Route 34 in Cape Girardeau and Bollinger Counties. This segment of Route 34 is heavily traveled by commuters and there are serious safety concerns with the roadway. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on improving Route 34. None of these funds will be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: OJP-Byrne

Requesting Entity: Southeast Missouri Network Against Sexual Violence

Address of Requesting Entity: #69 Doctors' Park, Suite C, Cape Girardeau, MO 63703

Description of Request: To provide an earmark of $200,000 to the Southeast Missouri Network Against Sexual Violence (SEMO NASV) to equip and staff an office in the Bootheel of Missouri to assist victims of domestic and sexual violence, as well as support local law enforcement investigations. SEMO NASV provides services to over 700 adult and child victims of sexual and physical abuse. The organization serves a 10-county region in Southeastern Missouri. It plays a vital role in the process of convicting sex offenders and provides counseling and other services to victims. The funds will be spent as follows: $126,000 for personnel, $59,000 for equipment, $12,000 for office space, and $3,000 for training and travel.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Southeast Missouri Drug Task Force

Address of Requesting Entity: P.O. Box 1763, Sikeston, Missouri 63801

Description of Request: Provide an earmark of $200,000 to supplement and support operations of the Southeast Missouri Drug Task

Force (SEMO DTF). SEMO DTF is a multi-jurisdictional drug task force unit that serves a 10-county area of Southeast Missouri. The unit conducts both covert and overt investigations into the possession, manufacture, and distribution of controlled substances. The funds will be spent as follows: $32,000 for personnel, $89,000 for overtime compensation, $66,000 for equipment, $4,500 for telecommunication services, $6,000 for supplies, and $2,500 for personnel expenses.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Mineral Area Drug Task Force/City of Leadington, Missouri

Address of Requesting Entity: P.O. Box 349, Farmington, MO 63640

Description of Request: Provide an earmark of $200,000 to assist with funding Mineral Area Drug Task Force's enforcement efforts in locating, dismantling, and reducing the number of methamphetamine laboratories within the area of their operation. Approximately $124,000 is for the purchase of equipment to assist officers in their investigations, $36,000 is for overtime for officers assigned to methamphetamine investigations, $16,000 is for office and field supplies to assist officers in the preparation of reports and to provide supplies to facilitate the processing of clandestine labs, and $24,000 is for travel and training to equip officers with the knowledge to efficiently perform- their duties.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Howell County, Missouri

Address of Requesting Entity: 1106 Missouri Avenue, West Plains, Missouri 65775

Description of Request: Provide an earmark of $250,000 for the South Central Drug Task Force to enhance drug enforcement in project area. South Central Drug Task Force is a multi-jurisdictional drug enforcement task force, and an existing HIDTA initiative within Midwest HIDTA, comprised of federal, state, and local law enforcement officers including nine Sheriff's Departments, Municipal Police Departments, Missouri State Highway Patrol, United States Forest Service, and United States Park Service. Approximately $50,000 in overtime funding for existing narcotics officers; $122,500 for technical surveillance and reporting equipment; $65,000 for civilian personnel/Intel analyst; and $12,500 for consumable supplies.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: COPS-Law Enforcement Technology

Requesting Entity: St. Francois County, Missouri

Address of Requesting Entity: 102 Industrial Drive, Park Hills, MO 63601

Description of Request: Provide an earmark for the Southeast Missouri Law Enforcement District for $697,000 project for the following counties of the 8th Congressional District to acquire and greatly benefit from availability of a Law Enforcement Visual Tool: Iron, Washington, and Bollinger. Federal, state, and local agencies will have a common tool to jointly manage emergencies. The project enhances public safety, officer safety, by placing sophisticated geospatial intelligence information in the hands of emergency responders. The funding would be used as follows: $12,000 for project administration, $675,000 for image libraries, and $10,000 for equipment.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Ozarks Medical Center

Address of Requesting Entity: P.O. Box 1100, West Plains, MO 65775

Description of Request: Provide an earmark of $500,000 for equipment in a new and expanded Emergency Department.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Southeast Missouri State University

Address of Requesting Entity: One University Plaza, MS 1900, Cape Girardeau, MO 63701

Description of Request: Provide an earmark of $205,000 for the Southeast Health on Wheels (SHOW) Mobile Program. The SHOW Mobile initiative is a health literacy, health promotional and disease prevention and primary health and dental care program designed to serve Southeast Missouri. The program is administered by the College of Health and Human Services of Southeast Missouri State University.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Higher Education FIPSE

Legal Name of Requesting Entity: Southeast Missouri State University

Address of Requesting Entity: One University Plaza, Cape Girardeau, MO 63701

Description of Request: Provide an earmark of $500,000 to expand the services of Kent Library into a modem Information Commons concept and to link the same technical and support services that this renovation will provide to the students, faculty, and staff on the main campus, to the students and faculty on the River Campus, four regional campuses and the community within the University's service region.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Higher Education FIPSE

Legal Name of Requesting Entity: Three Rivers Community College

Address of Requesting Entity: 2080 Three Rivers Boulevard, Poplar Bluff, MO 63901

Description of Request: Provide an earmark of $215,000 to upgrade the delivery and management of on-line learning system. This enhancement will make it possible to rapidly expand education/training programs, and the initiation of on-line degree programs.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: HHS, Social Services

Legal Name of Requesting Entity: Susanna Wesley Family Learning Center, Inc.

Address of Requesting Entity: 207 N. Washington St., Box 249, East Prairie, MO 63845

Description of Request: Provide an earmark of $250,000 for the Susanna Wesley Family Learning Center's Positive Alternative System Strategies to Work, or ''Pass to Work,'' which will provide families with activities designed to emphasize good academic and healthy physical performance for at-risk children. In addition, this program will offer employment training, career counseling, and health behavior advice.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Missouri State University

Address of Requesting Entity: 901 S. National, Springfield, MO 65897

Description of Request: Provide an earmark of $250,000 for nursing and allied technology enhancements, specifically to create nursing clinical simulation laboratories at the West Plains campus to support their nursing and allied health programs.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: University of Missouri System, Columbia, MO

Address of Requesting Entity: University Hall, 1100 Carrie Francke Drive, Columbia MO, 65211

Description of Request: $249,000 is provided for the University of Missouri's Extension Community Economic and Entrepreneurial Development (ExCEED) program. The funding will be used to promote economic development in the Mississippi River Hills Region and the Ozark Heritage Region. Over a three year period, funding will be utilized to expand the current part-time Executive Director position in the Mississippi River Hills Region to full-time, as well as establishing a part-time youth entrepreneurship coordinator and equipment in this rural area. Additionally, over three years this funding will allow their Ozark Heritage Region to expand the entrepreneurship education and business counseling.

Requesting Member: JO ANN EMERSON

Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: Downtown West Plains, Inc., West Plains, MO

Address of Requesting Entity: 401 Jefferson Ave., West Plains, MO 65775

Description of Request: $500,000 is provided for Downtown West Plains, Inc., a 501(c)(3) corporation, to complete the exterior and interior renovation of a 100-year-old building which will house a Small Business Incubator. These funds will be matched with $1,144,000 in local, state, and other federal funds. The Ozarks Small Business Incubator, when completed, will provide personalized assistance to small business entrepreneurs by supporting their efforts with business related education, financial guidance, business plan development, mentoring, and access to tangible resources such as building space, shipping dock, and shared office equipment.

Requesting Member: JO ANN EMERSON

Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: Girl Scouts of the USA, New York, NY

Address of Requesting Entity: 420 Fifth Avenue, New York, NY 10018

Description of Request: $305,875 is provided to the Girl Scouts of the USA for a national program to improve financial literacy. Federal funds would help launch the first phase of the Improving Girls' Financial Literacy project—a comprehensive, effective and universal financial literacy curriculum for delivery to 2.6 million Girl Scouts of all ages, and corresponding materials for their 900,000 adult volunteers. Funds would support planning; research to ensure that the program is age-appropriate, effective and evidence based; development and creation of materials for the six

levels of Girl Scouting; corresponding facilitator guides to help the volunteers and other activities to ensure that this program is successful.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS HAS NO RESET BUTTON

HON. JAMES P. McGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. McGOVERN. Madam Speaker, I rise today to commemorate the adoption of the Universal Declaration of Human Rights exactly 61 years ago. This document was born on the ashes of a global war which saw the murder of over six million Jewish people during the Holocaust and the deaths of over 60 million people around the world.

Just when it seemed that humanity was irrevocably lost in the global devastation of this conflict, some of the greatest leaders of their time, such as Eleanor Roosevelt, came together at the United Nations to enshrine a common human bond of individual dreams and aspirations protected by defined rights in the Universal Declaration of Human Rights. While formally a resolution, not a treaty, its provisions are part of every legally binding international instrument which sets out to protect human rights.

Today, 61 years after its adoption, the catalog of defined rights has withstood the test of time, but the full implementation of those rights is as elusive as ever. The language and the context in which we discuss these rights today may have changed, but the urgency and importance to protect them globally has not. Terms such as internet freedom, global war on terror, environmental devastation, water-boarding, Guantanamo, corporate social responsibility, food security, women's rights and the Responsibility to Protect are just a few of those modern terms which put in sharp focus the relevance of those rights set forth in this document 61 years ago.

During that period, the United States was a leader among nations in defining and defending those rights and spearheaded international consensus and agreements. More recently, however, we seem to have either forgotten the hard-won lessons of that period or at least have misapplied them.

Instead of holding on tighter to our believes and commitments after the 9/11 attacks, we were willing to consider these sacred values impediments to our national sovereignty and infringements on our right to defend our country. Instead of heeding the admonition of one of the greatest American Presidents—another Roosevelt—who led this nation through the Great Depression and defeated the most evil regime in human history, that ''the only thing we have to fear is fear itself,'' we abandoned our human rights commitments at home. Faced with an unknown and secretive enemy, fear drove us to suspend important legal protections, to re-define the meaning of torture, to engage in extraordinary renditions of individuals utilizing poor human rights records of other countries, and we created with Abu Ghraib and Guantanamo monuments to that failed policy that still serve as recruiting tools for extremists all over the world. All the while we harshly criticized friends and foes alike if they disagreed with us, and set on an international course of democracy promotion, which was of the ''either you are with us, or you are against us'' nature.

To regain our international standing and reputation, and in recognition of the fact that we can only defeat terrorism with the support of the relevant local populations, we have recently undertaken significant diplomatic efforts to repair our international relationships. We have announced the closure of Guantanamo, and have ruled out enhanced interrogation techniques, have passed hate crimes legislation at home and have joined the Human Rights Council. While important parts of these objectives have yet to be achieved, the American public and the international community have rightfully applauded these important and difficult initiatives.

But while we have made domestic human rights gains, we now stand to lose our human rights bearings abroad. With ambiguous statements and actions the United States has sent signals to repressive regimes that human rights may no longer feature prominently in our foreign relations and that there is the possibility of a ''fresh start,'' which can be triggered by a magical ''reset button.'' While I strongly support the direct engagement of repressive regimes around the globe, I am equally convinced that past human rights records cannot be ''reset,'' or glossed over. The Universal Declaration does not provide for a ''reset button'' for gross human rights violations, nor do any of the international human rights treaties. Repressive regimes will only seriously engage the United States and the international community on important human rights issues if we take a principled stand, both in public and in private, which is based on accountability. We owe justice to human rights victims, be that in Sudan, Burma, China, North Korea, Russia or anywhere else in the world.

PERSONAL EXPLANATION

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. WOOLSEY. Madam Speaker, on December 9, 2009, I was unavoidably detained and was unable to record my vote for rollcall No. 945 and rollcall No. 946. Had I been present I would have voted:

Rollcall No. 945: ''yes''—Providing for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives, markets, and for other purposes

Rollcall No. 946: ''yes''—To eliminate an unused lighthouse reservation, provide management consistency by bringing the rocks and small islands along the coast of Orange County, California, and meet the original congressional intent of preserving Orange County's rocks and small islands, and for other purposes

INTRODUCING THE COMMON SENSE TAX RELIEF ACT OF 2009

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. FRELINGHUYSEN. Madam Speaker, I rise today to offer legislation to address the needs of Americans across the country who have been unnecessarily burdened by taxes, entitled ''The Common Sense Tax Relief Act of 2009.''

As you all are well aware, Americans are extremely concerned with the current state of the economy and they are looking to their government to foster an economic environment that promotes growth.

At a time when Congress is considering health care and energy bills that will significantly raise taxes on all Americans, we must be cognizant of the fact that overall tax bills keep rising.

Over the past year, unprecedented spending on government programs through the so-called ''stimulus bill'' and the bloated Omnibus Appropriations Act of 2009 has produced, at best, modest signs of recovery.

Americans have felt a great deal of uncertainty as their jobs remain in jeopardy and they are unsure as to what additional financial burden will be levied upon them by the federal government.

I represent a state that currently has the highest tax burden in the nation, and to add insult to injury, New Jersey receives the least amount of federal dollars back from Washington per taxpayer.

Every weekend that I am back in my district, I hear from constituents who have had enough with being taxed by a government that has made no effort to follow these constituents lead in getting their financial houses in order.

For this reason, I have offered the Common Sense Tax Relief Act of 2009. This legislation seeks to make permanent several widely supported tax credits that will directly benefit families and small businesses seeking relief, clarity and certainly in their financial planning.

To assist families, this bill will make permanent the child tax credit and the marriage penalty relief tax credit. To assist in the advancement of education, this bill will make permanent the teacher tax deduction, and the tuition deduction. And to assist small business and families seeking to plan their financial futures, the bill makes permanent the current capital gains and dividends tax rates and eliminates the ''death tax.''

Madam Speaker, I urge the immediate consideration of this important legislation that will help propel our economy forward and provide significant relief to all of our constituents.

EARMARK DECLARATION

HON. GREGG HARPER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. HARPER. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of H.R. 3288—Consolidated Appropriations Act, 2010.

MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Monticello Readiness Center

Project Amount: $14,350,000

Agency: Army National Guard

Account: MILCON

Recipient and Address: 74 Old Highway 27, Monticello, MS 39654

Description of Request: The Headquarters and Headquarters Company of the 106th Brigade Support Battalion is located in a completely inadequate facility in Monticello, MS. This facility can no longer adequately accommodate a National Guard unit due to its lack of space and the outdated utilities. The existing facility is 55 years old and has been determined to be structurally unsound and infeasible for rehabilitation. Overall, the numerous current deficiencies affect the training of this unit in an adverse manner, in that essential mobilization training cannot be accomplished in a satisfactory manner. FY10 Funds will be used to replace the armory.

TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Jackson-Evers International Airport airfield improvements

Project Amount: $2,375,000

Agency: Federal Aviation Administration

Account: Airport Improvement Program

Recipient and Address: Jackson-Evers International Airport, 100 International Drive, Jackson, MS 39298

Description of Request: Jackson-Evers International Airport is in need of essential airfield infrastructure improvements that involve rehabilitation and replacement of security systems and airfield erosion and drainage systems.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: East Metropolitan Corridor, MS

Project Amount: $2,750,000

Agency: Federal Highway Administration

Account: Surface Transportation Priorities

Recipient and Address: City of Flowood, P.O. Box 320069, Flowood, MS 39232

Description of Request: Funds will be used to finish pre-construction activities. The East Metropolitan Corridor is 5 miles in length and links Interstate 20, at the Crossgates Interchange in Brandon, MS with Lakeland Drive at its intersection with Old Fannin Road in Flowood, MS.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Lake Harbour Drive, MS

Project Amount: $1,500,000

Agency: Federal Highway Administration

Account: Surface Transportation Priorities

Recipient and Address: City of Ridgeland, P.O. Box 217, Ridgeland, MS 39158

Description of Request: Construction of the Lake Harbour Drive extension will provide a major east-west corridor through the City of Ridgeland that will traverse the significant physical barriers that now bisect the City and impede safe and efficient access, emergency service, economic development and commercial activity.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: MSU for community planning and development

Project Amount: $500,000

Agency: Housing and Urban Development

Account: Neighborhood Initiatives

Recipient and Address: Mississippi State University, P.O. Box 6301, Mississippi State, MS 39762

Description of Request: FY 10 funds will continue an aggressive program of basic infrastructure improvements on the Mississippi State University main campus in Starkville, Mississippi.

COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Expansion of the Research, Technology and Economic Development Park

Project Amount: $6,000,000

Agency: Department of Commerce

Account: National Institute of Standards and Technology

Recipient and Address: Mississippi State University, P.O. Box 6363, Mississippi State, MS 39762

Description of Request: Mississippi State University proposes construction of Phase II of the Research,

Technology and Economic Development Park. This will provide high quality infrastructure together with office and laboratory space for small high technology companies to locate in close proximity to Mississippi State University.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: NOAA Northern Gulf Institute

Project Amount: $4,500,000

Agency: Department of Commerce

Account: NOAA–ORF

Recipient and Address: Mississippi State University, P.O. Box 9627, Mississippi State, MS 39762

Description of Request: The NGI defines the Northern Gulf of Mexico region as the upland and watershed, coastal zone, and coastal ocean areas from the Sabine River, LA in the west to the Suwannee River, FL in the east. The Northern gulf is a rich and interdependent natural environment of great complexity and is important to the region and the nation. The riverine-dominated Northern Gulf ecosystems are under pressure from increasing population and coastal development, impacts from severe storms and climate variability, inland watershed and coastal wetlands degradation, and many other factors. NGI has chosen an approach to Northern Gulf Region issues, problems and opportunities that is closely aligned with NOAA's strategic and research priorities and its user-community. This approach is science driven, regionally focused, and coordinated with other Gulf of Mexico Basin activities, and seeks whenever appropriate to promote the application of its results to support decision makers and policy development.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: MSU Cyber Crime Initiative and National Consortium for Digital Forensics Training

Project Amount: $1,500,000

Agency: Department of Justice

Account: OJP-Byrne

Recipient and Address: Mississippi State University, P.O. Box 9637, Mississippi State, MS 39762

Description of Request: The National Forensics Training Center (FTC) provides needed no cost digital forensics investigation training to state and local law enforcement officials nation-wide. Law enforcement students are provided lodging, meals, and training at no cost. The FTC maintains a highly trained instructor staff, two classrooms, and a mobile lab for training purposes. A Full suite of digital forensics short course classes are offered which expose law enforcement and judicial officials to technical techniques in digital investigations and current search and seizure laws applicable to electronic evidence. The project also supports the State of Mississippi Cyber Crime Fusion Center managed by the State Attorney General, a one of a kind Federal/State/Local cooperative effort, addressing cyber crime. Other partners in this effort have included Jackson State University and the University of Mississippi's National Center for Justice and Rule of Law. Since the FTC began operation in late 2005, more that 2100 law enforcement students have participated in its training from 22 states. The demand for this training is increasing every year.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Mississippi State University, Mississippi State, MS, for the development of an early childhood teacher education delivery system

Project Amount: $750,000

Agency: Department of Education

Account: Elementary and Secondary Education

Recipient and Address: Mississippi State University, Early Childhood Institute, P.O. Box 6013, Mississippi State, MS 39762

Description of Request: Funding would be used to create and pilot a new early childhood teacher delivery system to improve the quality of instruction and prevent attrition of teachers in early care and education centers.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Mississippi Museum of National Science Foundation, Jackson, MS for educational outreach programs

Project Amount: $220,000

Agency: Institute of Museum and Library Services

Account: Museums and Libraries

Recipient and Address: Mississippi Museum of Natural Science Foundation, 2148 Riverside Drive, Jackson, MS 39202

Description of Request: Funding would be used for the acquisition of education outreach vans and equipment so the museum's science literacy programs can reach approximately 120,000 students throughout the state; and for biological database services to assist land managers and economic developers to improve their efficiency and effectiveness by providing tools to streamline planning and permitting processes.

INTRODUCTION OF SMALL BREWERS' EXCISE TAX BILL

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. NEAL of Massachusetts. Madam Speaker, I rise today to introduce legislation to promote American jobs. Over 30 years ago, Congress worried that a few industry giants would dominate the domestic beer industry, squeezing out local and regional brewers. In response, Congress reduced the tax rate on beer produced by small brewers. That differential has led to the creation of thousands of craft brewers, who are small business owners and employers in our communities. However, the consolidation at the top of the market has continued.

Today, the two top players in the beer market, which are global companies, control more than 90% of American beer production. Clearly, we need to do more to foster and promote growth for these small, independent American brewers. That is why I am filing legislation today, along with my Committee colleague and friend from Texas, Mr. BRADY, to provide a more graduated rate of excise tax on beer produced domestically by small brewers. Our bill provides two benefits to small brewers. First, for those who produce less than 60,000 barrels per year, the current excise tax rate is cut in half to $3.50 per barrel. Second, for those who produce more than 60,000 but less than 6 million barrels, still well short of the industry giants, they will enjoy the same tax break on the first 60,000 barrels but will pay a tax rate of $16 per barrel rather than the current $18 per barrel on the amount over 60,000 and less than 2 million. Any barrel over that threshold will continue to be taxed at the current $18 rate.

This legislation has the support of the Brewers Association, representing more than 1,500 small and independent brewers in America, including 85 regional breweries that produce between 15,000 and 2 million barrels per year, 470 microbreweries that produce less than 15,000 barrels per year, and 961 brewpubs that sell 25% or more of their beer on site. These small brewers employ more than 100,000 workers, generating more than $3 billion in wages. Their dedication to craft brewing has led to a renaissance in flavorful beer here in America and more respect for American brewers abroad. However, they still lack the economies of scale in marketing, advertising, production, promotion and distribution that the giants of the industry enjoy.

As the landscape of the beer market continues to change, we should revisit these tax provisions to provide for further growth of these smaller brewers. We should continue the effort we started more than 30 years ago to nurture a diverse and competitive market and promote small domestic producers to keep this American industry thriving. These are good jobs in our local communities that protect American craftsmanship. I urge our colleagues to join us in this effort.

EARMARK DECLARATION

HON. CONNIE MACK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MACK. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of H.R. 3288—Consolidated Appropriations Act, FY 2010.

Project Name: Interstate 75/Collier Boulevard/SR 84 Interchange Improvements

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: Federal Highway Administration

Legal Name of Requesting Entity: Florida Department of Transportation

Address of Requesting Entity: 605 Suwannee Street, Tallahassee, Florida 32399

Description of Request/Justification of Federal Funding: $800,000: The current interchange serves the east Naples area, Golden Gate City, and Marco Island, and is the closest interchange from the east to the City of Naples. The funding will be utilized for capacity improvements at the Interstate 75/Collier Boulevard/SR 84 Interchange and will improve traffic flow in the region.

Project Name: FGCU Impact of Freshwater Flow into Coastal Waters—FGCU Coastal Watershed Institute

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: Higher Education (includes FIPSE)

Legal Name of Requesting Entity: Florida Gulf Coast University

Address of Requesting Entity: 10501 FGCU Blvd., South, Fort Myers, FL 33965

Description of Request/Justification of Federal Funding: $350,000; Florida's coast is a principal economic driver, attracting millions of tourists and thousands of residents to the coastal communities of Southwest Florida. Proper management of the freshwater that the coastal environment receives is critical to preventing toxic algal blooms and negative impacts on recreational and commercial fisheries. FGCU is requesting federal funding for their Coastal Watershed Institute to address the impacts associated with changes in the freshwater flows into the area. This project is geared to students learning about future management of our fragile ecosystems.

Project Name: Emergency Services Technology, Collier County, Florida

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: DOJ/COPS

Legal Name of Requesting Entity: Collier County, FL

Address of Requesting Entity: 3301 East Tamiami Trail, Naples, Florida 34112

Description of Request/Justification of Federal Funding: $800,000 will be utilized for the acquisition of public safety technology equipment for the Collier County Emergency Services Center. The funding is important because it will help to better equip Collier County's emergency service providers to respond to events that could endanger the safety and citizens of Collier County, Florida.

Project Name: FGCU Law Enforcement and Public Safety

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: DOJ/OJP-Byrne Discretionary Grants

Legal Name of Requesting Entity: Florida Gulf Coast University

Address of Requesting Entity: 10501 FGCU Blvd, South, Fort Myers, Florida 33965

Description of Request/Justification of Federal Funding: $200,000 will be utilized for the development of tools for training and processing crime scenes for use by law enforcement and public safety officials. This work will be done at the Florida Gulf Coast University in its Law Enforcement and Public Safety Department.

HONORING THE SERVICE AND SACRIFICE OF MARTIN COUNTY, NORTH CAROLINA SHERIFF'S DEPUTY CHARLES DOUGLAS BROWN, JR.

HON. G. K. BUTTERFIELD

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BUTTERFIELD. Madam Speaker, it is with deep sadness that I report that a law officer was killed in the line of duty in my Congressional District on Tuesday, December 8, 2009. Thirty-eight-year-old Martin County Sheriff's Deputy Charles ''Charlie'' Douglas Brown, Jr. was killed in an exchange of gunfire while on duty.

Funeral services will be held on Saturday, December 12, 2009 as the entire community mourns his untimely death. He is survived by his wife, Cindy, and their two daughters, Morgen and Carlie. He was a member of Maple Grove Christian Church.

Sheriff's Deputy Brown was a U.S. Marine veteran having served in Desert Storm. He served as a member of the U.S. Marines Honor Guard and was recognized with the Elegance Medal. He also assisted with the Katrina disaster in New Orleans, Louisiana and the Tsunami Disaster in Thailand. He was a K9 officer serving with his faithful dog H2.

He had a great love of fishing and hunting, and he was well liked by his fellow officers and throughout the community.

As a nation, we have lost more than 20,000 officers in the line of duty over the course of our history. Mr. Brown was the 115th law officer killed in the line duty this year, and the seventh officer killed in the line of duty in North Carolina.

Despite the constant threats of harm and danger, day after day, and year after year, dedicated professionals, like Mr. Brown, make the sacrifices for their communities, without asking for thanks or praise.

Sheriff's Deputy Brown unwaveringly upheld the values that make this country great—duty honor, sacrifice. Those values and their sacrifice are a somber reminder that the freedoms that we share do not come without a cost.

He and his fellow officers who will carry on this essential work deserve our strong support

and our thankful recognition. Madam Speaker, I ask that my colleagues join me in recognizing Mr. Brown's extraordinary service and sacrifice.

CELEBRATING THE 20TH ANNIVERSARY OF THE FRIENDS OF YALE–NEW HAVEN CHILDREN'S HOSPITAL

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. DELAURO. Madam Speaker, I rise to honor the wonderful work done by the Friends of Yale–New Haven Children's Hospital, who are celebrating their 20th anniversary this month.

In 1989, a dear friend of mine, the late Dr. Joseph Warshaw, brought together a diverse group of community volunteers in and around Yale–New Haven Children's Hospital to address issues related to children's health, safety, and well-being. In the two decades since, these dedicated volunteers have continued their important work on behalf of the kids and families of Connecticut, contributing thousands of hours of volunteer time and having raised over $1 million for Yale–New Haven Children's Hospital and the Department of Pediatrics at the Yale School of Medicine.

Through telethons, fundraisers, sports tournaments and other community outreach events, the Friends have worked to raise awareness of and financial support for the important pediatric work done by Yale–New Haven. In addition, they have gone to great lengths to support Yale–New Haven's Emergency Department, the only Level 1 Trauma Center for children in Connecticut, and have fashioned a Pediatric Allocation Committee to distribute funds to worthy projects in the hospital.

The Friends have also helped to fund several very worthwhile programs for the broader community, including We're Special Too!, designed for the siblings of children with chronic illness, and Reach Out & Read (ROR), a literacy program which distributes free books to the children who seek treatment at Yale–New Haven. And for many years I have joined the Friends on Christmas morning, as they have distributed gifts to the kids at Yale–New Haven and helped to ensure that even Connecticut's sick and injured children do not miss out on the joys of the day.

For twenty years, in ways both great and small, the Friends have worked to brighten the lives of children and families in New Haven. On this anniversary, I applaud their efforts and their decades of service, and I look forward to celebrating more anniversaries with them in the years to come.

IN HONOR OF JAMES P. MERCREADY

HON. JOHN H. ADLER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. ADLER of New Jersey. Madam Speaker, I am pleased to have this opportunity to express my gratitude to Mr. James Mercready for his dedicated and tireless service with the East Dover Fire Company in Toms River, NJ.

Mr. Mercready has selflessly and bravely served the people of Toms River throughout his career and is retiring in January after a lifetime of service. After serving as president of the company for the past six years, he has made important improvements to the Fire Company and the safety of the town and its people.

I would like to thank Mr. Mercready for his exemplary service. Thank you for all you have done and I wish you a Happy Retirement.

Daily Digest

Highlights

House agreed to the conference report to accompany H.R. 3288, Consolidated Appropriations Act, 2010.

Senate

Chamber Action

Routine Proceedings, pages S12835–S12969

Measures Introduced: Nine bills were introduced, as follows: S. 2863–2871. **Page S12909**

Measures Reported:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution, Fiscal Year 2010". (S. Rept. No. 111–106)

S. 1755, to direct the Department of Homeland Security to undertake a study on emergency communications. (S. Rept. No. 111–105) **Page S12909**

Measures Passed:

Non-Federal Public Entities Funds Extension: Senate passed H.R. 4165, to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits, clearing the measure for the President. **Page S12969**

Airport and Airway Trust Fund Extension: Senate passed H.R. 4217, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, clearing the measure for the President. **Page S12969**

Social Security Act: Senate passed H.R. 4218, to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators, clearing the measure for the President. **Page S12969**

Measures Considered:

Service Members Home Ownership Tax Act: Senate continued consideration of H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, taking action on the following amendments proposed thereto: **Pages S12836–76**

Pending:

Reid Amendment No. 2786, in the nature of a substitute. **Page S12836**

Dorgan Modified Amendment No. 2793 (to Amendment No. 2786), to provide for the importation of prescription drugs. **Page S12836**

Crapo motion to commit the bill to the Committee on Finance, with instructions. **Page S12836**

Conference Reports:

Transportation, Housing and Urban Development, and Related Agencies Appropriations Act—Conference Report: Senate began consideration of the conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, after agreeing to the motion to proceed. **Pages S12876–S12904**

During consideration of this measure today, Senate also took the following action:

By 56 yeas to 43 nays (Vote No. 371), Senate agreed to the motion to proceed to consideration of the conference report. **Page S12877**

A motion was entered to close further debate on the conference report, and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Saturday, December 12, 2009. **Page S12898**

Messages from the House: **Page S12908**

Measures Referred: **Page S12908**

Executive Communications: **Pages S12908–09**

Executive Reports of Committees: **Page S12909**

Additional Cosponsors: **Pages S12909–11**

Statements on Introduced Bills/Resolutions: Pages S12911–13

Amendments Submitted: Pages S12913–68

Authorities for Committees to Meet: Page S12968

Privileges of the Floor: Page S12968

Record Votes: One record vote was taken today. (Total—371) Page S12877

Adjournment: Senate convened at 10 a.m. and adjourned at 8:04 p.m., until 10 a.m. on Friday, December 11, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S12969.)

Committee Meetings

(Committees not listed did not meet)

PUBLIC TRANSPORTATION SAFETY

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Housing, Transportation and Community Development concluded a hearing to examine the Federal role in overseeing the safety of public transportation systems, after receiving testimony from Senator Mikulski; Ray LaHood, Secretary of Transportation; David J. Wise, Director, Physical Infrastructure Issues, Government Accountability Office; Brian Cristy, Massachusetts Department of Public Utilities, Boston; and John B. Catoe, Jr., Washington Metropolitan Area Transit Authority, and William Millar, American Public Transportation Association, Washington, D.C.

DATA-DRIVEN PERFORMANCE

Committee on the Budget: Committee concluded a hearing to examine data-driven performance, focusing on using technology to deliver results, after receiving testimony from Aneesh Chopra, Chief Technology Officer and Associate Director for Technology, Office of Science and Technology Policy; Vivek Kundra, Federal Chief Information Officer, Administrator for Electronic Government and Information Technology, Office of Management and Budget; Roger W. Baker, Assistant Secretary of Veterans Affairs for Information and Technology; and Brad Douglas, Georgia Department of Administrative Services Commissioner, Atlanta.

FEDERAL AVIATION ADMINISTRATION

Committee on Commerce, Science, and Transportation: Subcommittee on Aviation Operations, Safety, and Security concluded an oversight hearing to examine aviation safety, focusing on Federal Aviation Administration (FAA) safety initiatives, after receiving testimony from Randolph Babbitt, Administrator, Federal Aviation Administration, Department of Transportation.

GRID-SCALE ENERGY STORAGE

Committee on Energy and Natural Resources: Committee concluded a hearing to examine the role of grid-scale energy storage in meeting our energy and climate goals, after receiving testimony from Steven E. Koonin, Under Secretary for Science, Jon Wellinghoff, Chairman, Federal Energy Regulatory Commission, Robert McGrath, Deputy Laboratory Director, Science and Technology, National Renewable Energy Laboratory, and Elliot Mainzer, Executive Vice President, Corporate Strategy, Bonneville Power Administration, all of the Department of Energy; Ralph D. Masiello, KEMA, Inc., Chalfont, Pennsylvania; and Kenneth Huber, PJM Interconnection, Valley Forge, Pennsylvania.

BUSINESS MEETING

Committee on Environment and Public Works: Committee ordered favorably reported the following business items:

S. 373, to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal, with an amendment in the nature of a substitute;

S. 1214, to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, with an amendment in the nature of a substitute;

S. 1421, to amend section 42 of title 18, United States Code, to prohibit the importation and shipment of certain species of carp;

S. 1519, to provide for the eradication and control of nutria in Maryland, Louisiana, and other coastal States;

S. 1965, to authorize the Secretary of the Interior to provide financial assistance to the State of Louisiana for a pilot program to develop measures to eradicate or control feral swine and to assess and restore wetlands damaged by feral swine;

H.R. 509, to reauthorize the Marine Turtle Conservation Act of 2004;

H.R. 2188, to authorize the Secretary of the Interior, through the United States Fish and Wildlife Service, to conduct a Joint Venture Program to protect, restore, enhance, and manage migratory bird populations, their habitats, and the ecosystems they rely on, through voluntary actions on public and private lands;

H.R. 3433, to amend the North American Wetlands Conservation Act to establish requirements regarding payment of the non-Federal share of the costs of wetlands conservation projects in Canada that are funded under that Act;

H.R. 3537, to amend and reauthorize the Junior Duck Stamp Conservation and Design Program Act of 1994;

S. 1397, to authorize the Administrator of the Environmental Protection Agency to award grants for electronic device recycling research, development, and demonstration projects, with an amendment in the nature of a substitute;

S. 1660, to amend the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products, with an amendment in the nature of a substitute;

A proposed resolution relating to Army Corps study for Espanola Valley, Rio Grande and Tributaries, New Mexico; and

A proposed resolution relating to the General Services Administration.

DEFENSE TRADE COOPERATION TREATIES

Committee on Foreign Relations: Committee concluded a hearing to examine Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on June 21 and 26, 2007 (Treaty Doc. 110–07), and Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007 (Treaty Doc. 110–10), after receiving testimony from Andrew Shapiro, Assistant Secretary of State; and James A. Baker, Associate Deputy Attorney General, Department of Justice.

NOMINATIONS

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine the nominations of Grayling Grant Williams, of Maryland, to be Director of the Office of Counternarcotics Enforcement, and Elizabeth M. Harman, of Maryland, to be an Assistant Administrator of the Federal Emergency Management Agency, both of the Department of Homeland Security, after the nominees testified and answered questions in their own behalf.

NEEDS OF CHILDREN IN DISASTERS

Committee on Homeland Security and Governmental Affairs: Ad Hoc Subcommittee on Disaster Recovery concluded a hearing to examine children and disasters, focusing on a progress report on addressing needs, after receiving testimony from Craig Fugate, Federal Emergency Management Agency, Department of Homeland Security; Nicole Lurie, Assistant Secretary for Preparedness and Response, RADM, U.S. Public Health Service, Department of Health and Human Services; William Modzeleski, Associate Assistant Deputy Secretary, Office of Safe and Drug-Free Schools, Department of Education; Paul G. Pastorek, Louisiana State Superintendant of Education, Baton Rouge; Mark K. Shriver, National Commission on Children and Disasters, and Matt Salo, National Governors Association, both of Washington, D.C.; Melissa Reeves, National Association of School Psychologists, Bethesda, Maryland; and Douglas W. Walker, Project Fleur-de-lis, New Orleans, Louisiana.

BUSINESS MEETING

Committee on Health, Education, Labor, and Pensions: Committee ordered favorably reported the nominations of Jacqueline A. Berrien, of New York, Victoria A. Lipnic, of Virginia, and Chai Rachel Feldblum, of Maryland, each to be a Member, and P. David Lopez, of Arizona, to be General Counsel, all of the Equal Employment Opportunity Commission, Patrick Alfred Corvington, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service, Adele Logan Alexander, of the District of Columbia, to be a Member of the National Council on the Humanities, Lynnae M. Ruttledge, of Washington, to be Commissioner of the Rehabilitation Services Administration, Department of Education, and Sara Manzano-Diaz, of Pennsylvania, to be Director of the Women's Bureau, Department of Labor.

BUSINESS MEETING

Committee on the Judiciary: Committee ordered favorably reported the following business items:

S. 448, to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, with amendments; and

The nominations of Rosanna Malouf Peterson, to be United States District Judge for the Eastern District of Washington, William M. Conley, to be United States District Judge for the Western District of Wisconsin, Denny Chin, of New York, to be United States Circuit Judge for the Second Circuit, Paul R. Verkuil, of Florida, to be Chairman of the Administrative Conference of the United States, and John Gibbons, to be United States Marshal for the District of Massachusetts, Richard G. Callahan, to be United States Attorney for the Eastern District of Missouri, and John Leroy Kammerzell, to be United States Marshal for the District of Colorado, all of the Department of Justice.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to the call.

BUSINESS MEETING

Select Committee on Intelligence: Committee ordered favorably reported the nominations of Caryn A. Wagner, of Virginia, to be Under Secretary of Homeland Security for Intelligence and Analysis, and Philip S. Goldberg, of the District of Columbia, to be Assistant Secretary of State for Intelligence and Research.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 24 public bills, H.R. 4259–4282; and 1 resolution, H. Con. Res. 220; were introduced. **Pages H14742–43**

Additional Cosponsors: **Pages H14743–44**

Reports Filed: Reports were filed today as follows:

H. Res. 964, providing for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, and to regulate the over-the-counter derivatives markets (H. Rept. 111–370);

In the matter of Marc Goldberg (H. Rept. 111–371); and

H.R. 2843, to provide for the joint appointment of the Architect of the Capitol by the Speaker of the House of Representatives, the President pro tempore of the Senate, the Majority and Minority Leaders of the House of Representatives and Senate, and the chairs and ranking minority members of the committees of Congress with jurisdiction over the Office of the Architect of the Capitol (H. Rept. 111–372, Pt. 1). **Page H14742**

Speaker: Read a letter from the Speaker wherein she appointed Representative Blumenauer to act as Speaker Pro Tempore for today. **Page H14447**

Suspensions—Proceedings Resumed: The House agreed to suspend the rules and pass the following measures which were debated on Tuesday, December 8th:

Expressing the sense of the House of Representatives that Congress should provide increased Federal funding for continued type 1 diabetes research: H. Res. 35, to express the sense of the House of Representatives that Congress should provide increased Federal funding for continued type 1 diabetes research; **Page H14461**

Ann Marie Blute Post Office Designation Act: H.R. 4017, to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the "Ann Marie Blute Post Office", by a ⅔ recorded vote of 419 ayes with none voting "no", Roll No. 950; and **Page H14480**

Expressing support for the designation of a National Prader-Willi Syndrome Awareness Month to raise awareness of and promote research into this challenging disorder: H. Res. 55, to express support for the designation of a National Prader-Willi Syndrome Awareness Month to raise awareness of and promote research into this challenging disorder. **Page H14496**

Consolidated Appropriations Act, 2010—Conference Report: The House agreed to the conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, by a yea-and-nay vote of 221 yeas to 202 nays with 1 voting "present", Roll No. 949. **Pages H14450–80**

H. Res. 961, the rule providing for consideration of the conference report, was agreed to by a yea-and-nay vote of 221 yeas to 200 nays, Roll No. 948, after the previous question was ordered by a yea-and-nay vote of 227 yeas to 187 nays, Roll No. 947. **Pages H14460–61**

A point of order was raised against the consideration of H. Res. 961 and it was agreed to proceed with consideration of the resolution by voice vote. **Pages H14450–51**

Waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules: The House agreed to H. Res. 962, waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, by a yea-and-nay vote of 239 yeas to 183 nays, Roll No. 951, after agreeing to order the previous question without objection. **Pages H14480–87**

Wall Street Reform and Consumer Protection Act of 2009: The House resumed consideration of H.R. 4173, to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, and to regulate the over-the-counter derivatives markets.

Consideration is expected to resume tomorrow, December 11th. **Pages H14487–H14738**

Agreed to:

Peterson amendment (No. 3 printed in H. Rept. 111–370) that makes sundry changes to the bill; **Pages H14682–H14709**

Peterson amendment (No. 4 printed in H. Rept. 111–370) that provides that the CFTC would define the terms "Commercial Risk", "operating risk", and "balance sheet risk" for purposes of the Commodity Exchange Act; **Pages H14709–10**

Matsui amendment (No. 10 printed in H. Rept. 111–370) that requires any mortgage servicer or lender participating in the Making Home Affordable Program, to report to the Department of Treasury on a monthly basis. The Department shall make such a report available on their website within two weeks of receiving such information for public viewing. The report to Treasury shall include, but not limited to the following, with respect to the Making Home Affordable Plan: (A) the number of loan modification requests received; (B) number of loan modification requests being processed; (C) the number of loan modification requests that have been approved; (D) the number of loan modification requests that have been denied. The amendment gives the Secretary of Treasury authority to publicly release any other relevant data the Secretary deems necessary; **Pages H14721–23**

Frank (MA) manager's amendment (No. 1 printed in H. Rept. 111–370), as modified, that makes sundry changes to the bill (by a recorded vote of 240 ayes to 182 noes, Roll No. 953); **Page H14729**

Lynch amendment (No. 5 printed in H. Rept. 111–370) that provides rules toward the equitable governance of clearing houses and swap exchange facilities (by a recorded vote of 228 ayes to 202 noes, Roll No. 955); **Pages H14710–12, H14730–31**

Murphy (NY) amendment (No. 6 printed in H. Rept. 111–370) that replaces the current definition of Major Swap Participant with the definition that was reported out of the House Agriculture Committee (by a recorded vote of 304 ayes to 124 noes, Roll No. 956); and **Pages H14712–14, H14731**

Frank (MA) en bloc amendment consisting of the following amendments printed in H. Rept. 111–370: Paulsen amendment (No. 11) that clarifies that the non-voting members of the systemic risk council shall not be excluded from participating in any of the Council's proceedings, meetings, discussions, and deliberations; Burgess amendment (No. 20) that strikes the word "orderliness" from the list of items the Financial Services Oversight Council must advise Congress on how to improve financial regulatory developments; Burgess amendment (No. 21) that indexes to inflation any mitigatory action imposed by the Financial Services Oversight Council involving the sale, divestiture or transfer of more than $10 billion in total assets by a financial holding company subject to stricter standards; Burgess amendment (No. 22) that requires the Federal Reserve to define by rule or regulation the term "significantly undercapitalized" at a threshold the Fed determines to be prudent for the effective monitoring, management and oversight of the financial system; Burgess amendment (No. 23) that sets an outer time limit of two years to the amount of time the GAO can use to audit the Federal Reserve; Burgess amendment (No. 24) that removes from the GAO study of the SEC's "revolving door" the requirement to determine if employees of the SEC who are later employed by financial institutions "have engaged in information sharing"; Dent amendment (No. 27) that states a sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information; Moore (KS) amendment (No. 28) that specifies only the tax policies, licensing and other regulatory requirements of the home state of the policyholder govern a surplus lines transaction, as well as allows sophisticated commercial entities direct access to the surplus lines market; the amendment also prohibits states from voiding established, contractual arbitration agreements between reinsurers and primary companies; Murphy (NY) amendment (No. 34) that repeals a prohibition on the payment of interest on business checking accounts; and Herseth Sandlin amendment (No. 25) that directs the SEC to take into account the relative risk profile of different classes of funds when it is developing the new registration regime for private funds. **Pages H14734–38**

Rejected:

Sessions amendment (No. 2 printed in H. Rept. 111–370) that sought to strike provisions which create a new private right of action against credit rating agencies; the amendment contains enforcement of credit rating agencies to the SEC (current practice) (by a recorded vote of 172 ayes to 257 noes, Roll No. 954); **Pages H14729–30**

Frank (MA) amendment (No. 7 printed in H. Rept. 111–370) that sought to create authority for the prudential regulators, the CFTC and the SEC, to set margin in swap and security-based swap transactions involving end users (by a recorded vote of 150 ayes to 280 noes, Roll No. 957); **Pages H14714–16, H14731–32**

Stupak amendment (No. 8 printed in H. Rept. 111–370) that sought to require transparency in swaps contracts by requiring all non-cleared swaps

be executed on a registered swap execution facility (by a recorded vote of 98 ayes to 330 noes, Roll No. 958); and **Pages H14716–18, H14732–33**

Stupak amendment (No. 9 printed in H. Rept. 111–370) that sought to allow the Commodity Futures Trading Commission and the Securities and Exchange Commission the authority to ban abusive swaps, amends any proposed commercial risk definition to disregard balance sheet risk, and maintains any illegal swap entered into after enactment of this Act will not be valid (by a recorded vote of 150 ayes to 279 noes, Roll No. 959). **Pages H14718–21, H14733**

Proceedings Postponed:

Kanjorski amendment (No. 12 printed in H. Rept. 111–370) that seeks to strike the provisions exempting public companies with less than $75 million in market capitalization from the requirements of the Sarbanes-Oxley Act related to the external audit of internal controls and **Pages H14723–26**

McCarthy (CA) amendment (No. 14 printed in H. Rept. 111–370) that seeks to strike section 6012 (relating to ''Effect of Rule 436(G)''). The amendment would strike increased liability language that would be a barrier to entry, inhibiting increased competition in the rating agency market. **Pages H14726–28**

H. Res. 964, the rule providing for further consideration of the bill, was agreed to by a yea-and-nay vote of 238 yeas to 186 nays, Roll No. 952, after the previous question was ordered without objection. **Pages H14495–96**

United States-China Economic and Security Review Commission—Reappointment: Read a letter from Representative Boehner, Minority Leader, in which he reappointed Mr. Peter T. R. Brookes of Virginia and Mr. Daniel M. Slane of Ohio to the United States-China Economic and Security Review Commission, effective January 1, 2010. **Page H14738**

Quorum Calls—Votes: Five yea-and-nay votes and eight recorded votes developed during the proceedings of today and appear on pages H14460–61, H14461, H14479–80, H14480, H14487, H14495–96, H14729, H14730, H14730–31, H14731, H14732, H14732–33 and H14733. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 10:30 p.m.

Committee Meetings

INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Interior, Environment, and Related Agencies held an oversight hearing on the Smithsonian Institution. Testimony was heard from Mark L. Goldstein, Director, Physical Infrastructure Team, GAO; and the following officials of the Smithsonian Institution: A. Sprightley Ryan, Inspector General; and G. Wayne Clough, Secretary.

STATUS OF ARMY AND MARINE CORPS RESET REQUIREMENTS

Committee on Armed Services: Subcommittee on Readiness, Air and Land Forces, and the Subcommittee on Seapower and Expeditionary Forces continued hearings on Status of Army and Marine Corps Reset Requirements, Part II. Testimony was heard from the following officials of the Department of Defense: GEN Peter W. Chiarelli, USA, Vice Chief of Staff, Department of the Army; and GEN James F. Amos, USMC, Assistant Commandant, U.S. Marine Corps.

DRINKING WATER AND PUBLIC HEALTH IMPACTS OF COAL COMBUSTION WASTE DISPOSAL

Committee on Energy and Commerce: Subcommittee on Energy and Environment held a hearing entitled ''Drinking Water and Public Health Impacts of Coal Combustion Waste Disposal.'' Testimony was heard from public witnesses.

U.S. STRATEGY IN AFGHANISTAN

Committee on Foreign Affairs: Continued hearings on U.S. Strategy in Afghanistan, Part II. Testimony was heard from Karl W. Eikenberry, U.S. Ambassador to Afghanistan, Department of State; and GEN Stanley A. McChrystal, Commander, International Security Assistance Force (ISAF) and Commander, U.S. Forces Afghanistan (USFOR–A), Department of Defense.

MOVING MORE EFFECTIVE IMMIGRATION DETENTION MANAGEMENT

Committee on Homeland Security: Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing entitled ''Moving More Effective Immigration Detention Management.'' Testimony was heard from Dora Schriro, Commissioner, Department of Correction, New York City; and public witnesses.

JUDGE PORTEOUS IMPEACHMENT

Committee on the Judiciary: Task Force on Judicial Impeachment continued possible Impeachment of United States District Judge G. Porteous, Jr. Part III. Testimony was heard from Alan Baron, Special Impeachment Counsel, Committee on the Judiciary; and public witnesses.

EXAMINING THE STATE OF JUDICIAL RECUSALS AFTER CAPERTON V. A. T. MASSEY

Committee on the Judiciary: Subcommittee on Courts and Competition Policy held a hearing on Examining the State of Judicial Recusals after *Caperton* v.

A. T. Massey. Testimony was heard from Judge M. Margaret McKeown, United States Courts of Appeals, Ninth Circuit District, San Diego, California; and public witnesses.

TRIBAL LAW AND ORDER ACT

Committee on the Judiciary: Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 1924, Tribal Law and Order Act of 2009. Testimony was heard from Representative Sandlin; Tom Perrelli, Associate Attorney General, Department of Justice; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Oversight and Government Reform: Ordered reported the following measures: S. 303, amended, Federal Financial Management Improvement Act of 2009; H. Res. 708, amended, Congratulating Nancy Goodman Brinker for receiving the Presidential Medal of Freedom; H. Res. 779, Recognizing and supporting the goals and ideals of National Runaway Prevention Month; H. Res. 942, Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup; H. Con. Res. 158, Expressing support for the designation of an Early Detection Month for breast cancer and all forms of cancer; H. Con. Res. 160, amended, Honoring the American Kennel Club on its 125th Anniversary; H.R. 4095, To designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the ''Congresswoman Jan Meyers Post Office Building;'' and H.R. 4139, To designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the ''Sergeant Matthew L. Ingram Post Office.''

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Committee on Rules: Granted, by a record vote of 8–3, a structured rule providing for further consideration of H.R. 4173, Wall Street Reform and Consumer Protection Act of 2009. The rule provides that there will be no additional general debate. The rule waives all points of order against provisions in the bill, as amended. The rule provides that the bill, as amended, shall be considered as read. The rule makes in order only those amendments printed in the report of the Committee on Rules and the amendments en bloc described in section 3 of the rule. The rule provides that the amendments made in order may be offered only in the order printed in the Committee report (except as specified in section 4), may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The rule waives all points of order against the amendments printed in the Committee report or amendments en bloc except for clauses 9 and 10 of rule XXI.

The rule provides that the chair of the Committee on Financial Services or his designee may offer amendments en bloc consisting of amendments printed in the report not earlier disposed of. Amendments en bloc shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

The rule provides that the Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report out of the order printed, but not sooner than 30 minutes after the chair of the Committee on Financial Services or his designee announces from the floor a request to that effect. In the case of sundry amendments reported from the Committee, the question of their adoption shall be put to the House en gros and without division of the question. The rule provides one motion to recommit with or without instructions.

The rule also provides that the Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee. It also provides that the Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII). The rule provides that during consideration of the bill, the Chair may reduce to two minutes the minimum time for electronic voting. The rule provides that in the engrossment of the bill, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

DECISIONS ON THE FUTURE DIRECTION AND FUNDING FOR NASA

Committee on Science and Technology: Held a hearing on Decisions on the Future Direction and Funding for NASA: What Will They Mean for the U.S. Aerospace Workforce and Industrial Base? Testimony was heard from public witnesses.

RECOVERY ACT: PROGRESS REPORT FOR TRANSPORTATION INFRASTRUCTURE INVESTMENT

Committee on Transportation and Infrastructure: Held a hearing on Recovery Act: Progress Report for Transportation Infrastructure Investment. Testimony was heard from John D. Porcari, Deputy Secretary, Department of Transportation; Katherine A. Siggerud, Managing Director, Physical Infrastructure Issues, GAO; and public witnesses.

Joint Meetings

CREATING JOBS AFTER THE RECESSION

Joint Economic Committee: Committee concluded a hearing to examine the challenge of creating jobs in the aftermath of the recession, after receiving testimony from Joseph E. Stiglitz, Columbia University, New York, New York; and Russell Roberts, George Mason University, Fairfax, Virginia.

COMMITTEE MEETINGS FOR FRIDAY, DECEMBER 11, 2009

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, hearing on Home Foreclosures: Will Voluntary Mortgage Modification Help Families Save Their Homes? Part II, 11 a.m., 2141 Rayburn.

Committee on Oversight and Government Reform, and the Subcommittee on Domestic Policy, joint hearing entitled "Bank of America and Merrill Lynch: How Did a Private Deal Turn Into a Federal Bailout? Part V," 10 a.m., 2154 Rayburn.

Next Meeting of the **SENATE**

10 a.m., Friday, December 11

Senate Chamber

Program for Friday: Senate will be in a period of morning business. Senators should expect two votes on motions to waive with respect to the conference report to accompany H.R. 3288, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

9 a.m., Friday, December 11

House Chamber

Program for Friday: Complete consideration of H.R. 4173—Wall Street Reform and Consumer Protection Act of 2009.

Extensions of Remarks, as inserted in this issue

HOUSE

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