SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

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

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

SA 3798. Mrs. HAGAN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3800. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3801. Mr. HATCH (for himself, Mr. ENZI, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3802. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3803. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3804. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3805. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3806. Mr. SPECTER (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3807. Mrs. HAGAN (for herself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3810. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

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

SA 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

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

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

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

(2) by adding at the end the following:

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

(b) STUDY AND REPORT.—

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

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

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

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

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

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 762, between lines 5 and 6, insert the following:

SEC. _____. ANTIMARKET MANIPULATION AUTHORITY.

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

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

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

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

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

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

''(3) ENFORCEMENT.—

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

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

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

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

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

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

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

''(I) an order should not be made—

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

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

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

''(iii) may be held before—

''(I) the Commission; or

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

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

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

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

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

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

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

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

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

''(C) assess such person—

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

''(I) $140,000; or

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

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

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

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

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

''(10) ORDERS.—

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

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

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

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

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

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

''(C) PROCEDURE.—

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

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

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

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

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

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

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

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

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

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

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

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

(a) DEPOSIT CONCENTRATION LIMIT.—

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

''(f) NATIONWIDE CONCENTRATION LIMITS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

''(ii) the sum of—

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

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

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

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

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

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

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

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

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

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

''(4) TREATMENT OF INSURANCE COMPANIES.—

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

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

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

''(c) PROMPT CORRECTIVE ACTION.—

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

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

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

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

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

''(3) REPORTS TO CONGRESS.—

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

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

''SEC. 14. CAPITAL ASSESSMENT PROGRAM.

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

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

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

SA 3788. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

TITLE _____—DISCOUNT PRICING CONSUMER PROTECTION ACT

SEC. _____. DISCOUNT PRICING CONSUMER PROTECTION ACT.

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

(b) PROHIBITION ON VERTICAL PRICE FIXING.—

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

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

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

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

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

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

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

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

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

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

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

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

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

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

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

(B) recreational boats and marine equipment;

(C) motorcycles;

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

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

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

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

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

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

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

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

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

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

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

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

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

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

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

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

SA 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

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

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

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

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

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

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

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

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

''(2) PERSON DESCRIBED.—

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

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

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

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

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

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

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

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1302. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1301, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3792. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII, add the following:

Subtitle C—Fiduciary Duty

SEC. 781. SECURITIES EXCHANGE ACT.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by this Act, is further amended by inserting after section 10D, the following:

''SEC. 10E. FIDUCIARY DUTY.

''(a) IN GENERAL.—Each financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(1) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(2) any CEA-regulated financial instrument; or

''(3) any financial instrument, the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(b) ENFORCEMENT.—This section shall be enforced—

''(1) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(A) by that regulator in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts; and

''(2) as to persons who are not described in paragraph (1)—

''(A) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts.

''(c) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in subsection (a) with respect to such persons.

''(d) LIMITATION.—The fiduciary duty referred to in subsection (a) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'financial services provider' means any person who, for compensation, is in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (1), (2), or (3) of subsection (a);

''(2) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(3) the term 'covered client' means—

''(A) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(B) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(C) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(4) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commodity Futures Trading Commission or under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

''(5) the term 'Federal functional regulator' means—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Office of the Comptroller of the Currency;

''(C) the Board of Directors of the Federal Deposit Insurance Corporation;

''(D) the National Credit Union Administration;

''(E) the Securities and Exchange Commission;

''(F) the Commodity Futures Trading Commission;

''(G) the Director of the Federal Housing Finance Agency; and

''(H) the Bureau of Consumer Financial Protection.''.

SEC. 782. COMMODITY EXCHANGE ACT.

Section 6b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by adding at the end the following:

''(e) FIDUCIARY DUTY.—

''(1) IN GENERAL.—A financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(A) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(B) any CEA-regulated financial instrument; or

''(C) any financial instrument the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(2) ENFORCEMENT.—This section shall be enforced—

''(A) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(i) by that regulator in Federal courts;

''(ii) by the office the Attorney General of the United States in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts; and

''(B) as to other persons—

''(i) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(ii) by the office the Attorney General of the United State in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts.

''(3) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in paragraph (1) with respect to such persons.

''(4) LIMITATION.—The fiduciary duty referred to in paragraph (1) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'financial services provider' means any person who, for compensation, engages in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (A), (B), or (C) of paragraph (1);

''(B) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(C) the term 'covered client' means—

''(i) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A);

''(ii) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(iii) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(D) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commission or under this Act; and

''(E) the term 'Federal functional regulator' means—

''(i) the Board of Governors of the Federal Reserve System;

''(ii) the Office of the Comptroller of the Currency;

''(iii) the Board of Directors of the Federal Deposit Insurance Corporation;

''(iv) the National Credit Union Administration;

''(v) the Securities and Exchange Commission;

''(vi) the Commodity Futures Trading Commission;

''(vii) the Director of the Federal Housing Finance Agency; and

''(viii) the Bureau of Consumer Financial Protection.''.

SA 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) COUNCIL OF INSPECTORS GENERAL WORKING GROUPS.—

(A) WORKING GROUPS TO EVALUATE COUNCIL.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Federal Deposit Insurance Corporation is appointed as receiver under section 202.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. FINANCIAL FRAUD PROVISIONS.

(a) SENTENCING GUIDELINES.—

(1) SECURITIES FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements, and appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements and to ensure a term of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3301. Securities fraud offenses

''(a) DEFINITION.—In this section, the term 'securities fraud offense' means a violation of, or a conspiracy or an attempt to violate—

''(1) section 1348;

''(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

''(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

''(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

''(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

''(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

''(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3301. Securities fraud offenses.''.

(c) FALSE CLAIMS AND INTERNATIONAL MONEY LAUNDERING.—

(1) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(A) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(B) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(2) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO AWARDS TO QUI TAM PLAINTIFFS.—Section 3730(d)(1) of title 31, United States Code, is amended, in the second sentence, by striking ''in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media,'' and inserting ''in a Federal criminal, civil or administrative hearing in which the Government or its agent is a party, in a congressional, Government Accountability Office, or other Federal audit, report, hearing or investigation, or in the news media,''.

(3) APPLICATION OF THE INTERNATIONAL MONEY LAUNDERING STATUTE TO TAX EVASION.—Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(A) inserting ''(i)'' before ''with the intent to promote''; and

(B) adding at the end the following:

''(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''Bureau'' and ''Federal consumer financial law'' have the meanings given those terms in section 1002; and

(B) the term ''civil investigative demand'' has the meaning given that term in section 1051.

(2) REVIEW OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY GENERAL.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Bureau may not issue a civil investigative demand unless—

(i) the Bureau consults with the Attorney General of the United States regarding the civil investigative demand; and

(ii) the Attorney General determines that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(B) PERIOD FOR REVIEW.—If the Attorney General has not made a determination described in subparagraph (A)(ii) as of the date that is 45 days after the date on which the Attorney General receives a request to issue a civil investigative demand, the Attorney General shall be deemed to have determined that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(C) GUIDELINES.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Bureau, shall promulgate guidelines for parallel proceedings involving the Federal consumer financial laws.

(ii) CONSIDERATIONS.—In promulgating guidelines under this subparagraph, the Attorney General and the Bureau shall consider—

(I) the significant deterrent and punitive effects of criminal sanctions;

(II) the ability to use a criminal conviction as collateral estoppel in a subsequent civil case;

(III) the possibility that the imposition of civil penalties might undermine a prosecution or the severity of a subsequent criminal sentence;

(IV) preservation of the secrecy of a criminal investigation, including the use of covert investigative techniques;

(V) prevention of the premature discovery of evidence by a defendant in a criminal case through the exploitation by the defendant of the civil discovery process;

(VI) avoidance of unnecessary litigation issues, such as unfounded defense claims of misuse of process in a civil or criminal action; and

(VII) avoidance of duplicative interviews of witnesses and subjects.

SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1077. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOYMENT PURPOSES.

(a) PROHIBITION FOR EMPLOYMENT AND ADVERSE ACTION.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting ''within the restrictions set forth in subsection (b)'' after ''purposes'';

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(3) by inserting after subsection (a) the following new subsection:

''(b) USE OF CERTAIN CONSUMER REPORT PROHIBITED FOR EMPLOYMENT PURPOSES OR ADVERSE ACTIONS.—

''(1) GENERAL PROHIBITION.—Except as provided in paragraph (3), a person, including a prospective employer or current employer, may not use a consumer report or investigative consumer report, or cause a consumer report or investigative consumer report to be procured, with respect to any consumer where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity—

''(A) for employment purposes; or

''(B) for making an adverse action, as described in section 603(k)(1)(B)(ii).

''(2) SOURCE OF CONSUMER REPORT IRRELEVANT.—The prohibition described in paragraph (1) shall apply even if the consumer consents or otherwise authorizes the procurement or use of a consumer report for employment purposes or in connection with an adverse action with respect to such consumer.

''(3) EXCEPTIONS.—Notwithstanding the prohibitions set forth in this subsection, and consistent with the other provisions of this title, an employer may use a consumer report with respect to a consumer in any case in which —

''(A) the consumer applies for, or currently holds, employment that requires national security or Federal Deposit Insurance Corporation clearance;

''(B) the consumer applies for, or currently holds, employment with a State or local government agency which otherwise requires use of a consumer report;

''(C) the consumer applies for, or currently holds, any management position or other position involving the handling or supervision of, or access to, customer funds or accounts at a financial institution (including any credit union); and

''(D) use of the consumer report with respect to the consumer is otherwise required by law.

''(4) EFFECT ON DISCLOSURE AND NOTIFICATION REQUIREMENTS.—The exceptions described in paragraph (3) shall have no effect on the other requirements of this title, including requirements in regards to disclosure and notification to a consumer when permissibly using a consumer report for employment purposes or for taking an adverse action with respect to such consumer.''.

(b) CONFORMING AMENDMENTS AND CROSS REFERENCES.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) in subsection (d)(3), by striking ''604(g)(3)'' and inserting ''604(h)(3)''; and

(B) in subsection (o), by striking ''A'' and inserting ''Subject to the restrictions set forth in section 604(b), a'';

(2) in section 604 (15 U.S.C. 1681b)—

(A) in subsection (a), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(B) in subsection (c), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (2)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)''; and

(ii) in paragraph (3)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)'';

(C) in subsection (d)(1), as redesignated by subsection (a)(2) of this section, by striking ''subsection (e)'' in both places it appears and inserting ''subsection (f)'';

(D) in subsection (f), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (1), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)''; and

(ii) in paragraph (5), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)'';

(3) in section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)'';

(4) in section 609 (15 U.S.C. 1681g)—

(A) in subsection (a)(3)(C)(i), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)''; and

(B) in subsection (a)(3)(C)(ii), by striking ''604(b)(4)(A)'' and inserting ''604(c)(4)(A)'';

(5) in section 613(a) (15 U.S.C. 1681k(a)), by striking ''section 604(b)(4)(A)'' and inserting ''section 604(c)(4)(A)''; and

(6) in section 615 (15 U.S.C. 1681m)—

(A) in subsection (d)(1), by striking ''section 604(c)(1)(B)'' and inserting ''section 604(d)(1)(B)'';

(B) in subsection (d)(1)(E), by striking ''section 604(e)'' and inserting ''section 604(f)''; and

(C) in subsection (d)(2)(A), by striking ''section 604(e)'' and inserting ''section 604(f)''.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1077. STUDY AND REPORT ON PAYDAY LENDING.

(a) STUDY REQUIRED.—The research unit established by the director under section 1013 shall conduct a study on the ability of the unemployed to access credit under reasonable terms, including an analysis of—

(1) the effects of the practice of ''payday lending'' on the unemployed;

(2) the potential impacts, both positive and negative, of using Federal or State unemployment benefit checks as collateral for obtaining a payday loan;

(3) alternative credit options for the unemployed, including the accessibility and costs associated with such options; and

(4) such other considerations as are determined to be relevant.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with recommendations to help the unemployed to access credit on reasonable terms; and

(2) shall make such report available to the public.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA,) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1248, strike line 22 and all that follows through page 1249, line 10 and insert the following:

(1) COVERED PERSONS.—This section shall apply to any covered person who is not a person described in section 1025(a) or 1026(a).

On page 1255, line 5, strike ''(A) IN GENERAL.—The Bureau'' and insert the following:

''(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal consumer financial law described in paragraph (1), either the Bureau or the Federal Trade Commission shall serve written notice to the other of the intent to take any enforcement action, prior to initiating such an enforcement action, except that if the Bureau or the Federal Trade Commission, in filing the action, determines that prior notice is not feasible, the Bureau or the Federal Trade Commission may provide notice immediately upon initiating such enforcement action.

''(B) COORDINATION.—The Bureau''.

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

On page 1255, line 19, strike ''(B)'' and insert ''(C)''.

On page 1256, line 15, strike ''(C)'' and insert ''(D)''.

On page 1256, line 19, strike ''(D)'' and insert ''(E)''.

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

SA 3798. Mrs. HAGAN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1235, line 12, strike ''or other'' and insert '', appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators, and other''.

On page 1249, line 13, after ''Commission'' insert ''and appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators,''.

On page 1251, line 17, after ''authorities,'' insert ''including any formal committee established by State regulators to coordinate multi-state examinations or enforcement efforts for a class of covered persons,''.

SA 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

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SA 3800. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 94, between lines 4 and 5, insert the following:

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

SA 3801. Mr. HATCH (for himself, Mr. ENZI, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XII, insert the following:

TITLE XIII—TREATMENT OF FANNIE MAE AND FREDDIE MAC

SEC. 1301. PLAN ON REFORMING FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury, the Director of the Federal Housing Finance Agency, and the Secretary of Housing and Urban Development shall propose and submit to Congress a plan to end the conservatorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and to reform such entities.

(b) REQUIREMENTS.—The plan required under subsection (a) shall be drafted so as to

have the least amount of impact as possible on—

(1) the provision of affordable housing to underserved areas; and

(2) the cost to the taxpayer.

SA 3802. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 124, line 9, insert after the semicolon, ''and''

''(ii) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to enhance their effectiveness in liquidating and reorganizing financial companies, including whether provisions relating to qualified financial contracts should be modified.''

SA 3803. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 278 line 23, strike ''$50,000,000,000'' and insert ''$150,000,000,000''.

On page 284, between lines 10 and 11, insert the following:

''(15) LIMITATION ON USE OF FUND.—Notwithstanding any other provision of law, amounts in the Orderly Liquidation Fund may not be used under any circumstances to 'bail out' or maintain the solvency of any covered institution.''.

SA 3804. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(n) ENHANCED DISCLOSURES REQUIRED.—

''(1) IN GENERAL.—The Commission shall, by rule, with respect to each issuer that is subject to enhanced standards under title I of the Restoring American Financial Stability Act of 2010, and that is required to file periodic reports with the Commission, and any other issuers that the Commission determines appropriate—

''(A) require each such issuer to provide, together with its annual reports to the Commission, a detailed written description of all off balance sheet activities of the issuer and a detailed justification for not putting each of those activities on the balance sheet; and

''(B) pursuant to its authority under section 13 and 15(d), require each such issuer to disclose in each quarterly and annual filings required by the rules of the Commission—

''(i) the total liabilities of the issuer as of period end and total assets as of period end;

''(ii) the average daily liabilities during the measured period and average daily assets during the measured period;

''(iii) any short term borrowings, including separately presenting securities sold under agreements to repurchase, shown as of the end of the period and as a daily average during the period;

''(iv) a period end leverage ratio, measured as total equity capital as of period end, divided by total assets as of period end;

''(v) an average daily leverage ratio, measured as average daily equity capital during the measured period, divided by average daily assets during the measured period; and

''(vi) any other leverage or liquidity ratios that the Commission determines, by rule, to be appropriate.

''(2) TRANSACTIONS AFFECTING FUTURE LIQUIDITY.—The Commission shall issue rules requiring the disclosure of information on transactions that were accounted for as sales by the issuer, but have implications for future liquidity.

''(3) GRAPHIC REPRESENTATIONS AUTHORIZED.—The disclosures under this subsection may include a graphic representation of the information required to be disclosed.''.

SA 3805. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1435, line 19, strike ''(g)''and insert the following:

''(g) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any loan secured by real property or a dwelling, the total amount of direct and indirect compensation from any source permitted to a mortgage originator may not vary based on the terms or conditions of the loan.

''(2) LIMITATIONS ON FINANCING OF ORIGINATION FEES AND COSTS.—

''(A) IN GENERAL.—For any loan secured by real property or a dwelling, a mortgage originator may not arrange for a consumer to finance through the rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may arrange for a consumer to finance an origination fee or cost through the rate, if—

''(i) the mortgage originator receives no other compensation, however denominated, directly or indirectly, from the consumer or any other person;

''(ii) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

''(iii) the loan does not contain a prepayment penalty;

''(iv) the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' has the same meaning as in section 103(aa)(4);

''(v) the loan does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal banking agencies; and

''(vi) there is no other conflict of interest between the mortgage originator and the consumer.

''(3) MORTGAGE ORIGINATOR.—As used in this subsection, the term 'mortgage originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

''(i) takes a residential mortgage loan application;

''(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

''(iii) offers or negotiates terms of a residential mortgage loan;

''(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

''(C) does not include any person who is—

''(i) not otherwise described in subparagraph (A) or (B), and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

''(ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A), and who does not advise a consumer on loan terms (including rates, fees, and other costs);

''(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

''(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

''(i) is fully amortizing;

''(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

''(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

''(iv) meets any other criteria that the Federal banking agencies may prescribe; and

''(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan

for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

''(h)''.

SA 3806. Mr. SPECTER (for himself and Mr. KAUFMAN), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title IV, insert the following:

SEC. _____. FIDUCIARY STANDARD OF CARE FOR BROKER-DEALERS.

Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended by inserting at the end the following:

''(3)(A)(i) A registered broker or dealer, or any agent, employee or other person acting on behalf of such a broker or dealer, that provides investment advice regarding the purchase or sale of a security or a security based swap, or solicits or offers to enter into, or enters into a purchase or sale of a security or a security-based swap, shall have a fiduciary duty to act in the best interests of the investor and to disclose the specific facts relating to any actual or reasonably anticipated conflict of interest relating to that security or transaction or contemplated transaction.

''(ii) The Commission may adopt rules and regulations to define the full scope and application of the duty referred to in clause (i), to grant exceptions, and to adopt safe harbors, if and to the extent the Commission finds that such additional rules, regulations, exceptions, and safe harbors are necessary or appropriate as in the public interest or for the protection of investors.

''(B)(i) It shall be unlawful for any person subject to a fiduciary duty under subparagraph (A) to effect, directly or indirectly, by the use of any instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, any transaction in, or to induce or attempt to induce, the purchase or sale of any security or security-based swap, if in connection with such purchase or sale, or attempted purchase or sale, such person willfully violates that duty or disclosure obligation.

''(ii) Any person who violates clause (i) shall be fined under title 18, United States Code, or imprisoned not more than 25 years, or both.''.

SA 3807. Mrs. HAGAN (for herself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 486, strike lines 1 through 12, and insert the following:

(3) the term ''sponsoring or investing'', when used with respect to a hedge fund or private equity fund—

(A) means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(B) includes any activity that would cause the aggregate investment of an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, in hedge funds and private equity funds to exceed 10 percent of the total Tier 1 capital (as that term is defined in section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) of the institution, company, or subsidiary; and

(C) except as provided in subparagraph (B), does not include any activity described under this paragraph—

(i) that is conducted in connection with, or in facilitation of, customer relationships or on behalf of unaffiliated customers;

(ii) that is related to investing a de minimis amount, as determined by the Council, in any hedge fund or private equity fund, not to exceed 10 percent of the total equity of any such fund; and

(iii) for which the obligations of any hedge or private equity funds are not guaranteed, directly or indirectly, by any affiliate.

On page 490, strike line 9 and all that follows through page 491, line 10.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mr. MURRAY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1006, line 7, strike ''Such inaccuracy'' and all that follows through line 9, and insert the following: ''Such inaccuracy necessitates changes in the way initial credit ratings are assigned.''.

On page 1042, strike lines 17 through 24, and insert the following:

(a) STUDY.—Not later than 1 year after the Credit Rating Agency Board, as established under section 15E(w) of the Securities Exchange Act of 1934, begins to assign nationally recognized statistical rating organizations to provide initial credit ratings, the Comptroller General of the United States shall conduct a study on the effectiveness of the implementation of the changes made to that section by section 939D of this Act, including the selection method by which the Credit Rating Agency Board assigns nationally recognized statistical rating organizations to provide initial credit ratings.

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

''(w) INITIAL CREDIT RATING ASSIGNMENTS.—

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) BOARD.—The term 'Board' means the Credit Rating Agency Board established under paragraph (2).

''(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'qualified nationally recognized statistical rating organization', with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Commission determines, under paragraph (3)(B), to be qualified to issue credit ratings with respect to such category.

''(C) REGULATIONS.—

''(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

''(I) IN GENERAL.—The term 'category of structured finance products'—

''(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

''(bb) shall be further defined and expanded by the Commission, by rule, as necessary.

''(II) CONSIDERATIONS.—In issuing the regulations required subclause (I), the Commission shall consider—

''(aa) the types of issuers that issue structured finance products;

''(bb) the types of investors who purchase structured finance products;

''(cc) the different categories of structured finance products according to—

''(AA) the types of capital flow and legal structure used;

''(BB) the types of underlying products used; and

''(CC) the types of terms used in debt securities;

''(dd) the different values of debt securities; and

''(ee) the different numbers of units of debt securities that are issued together.

''(ii) REASONABLE FEE.—The Board shall issue regulations to define the term 'reasonable fee'.

''(2) CREDIT RATING AGENCY BOARD.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall—

''(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;

''(ii) subject to subparagraph (C), select the initial members of the Board; and

''(iii) establish a schedule to ensure that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.

''(B) SCHEDULE.—The schedule established under subparagraph (A)(iii) shall prescribe when—

''(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

''(ii) the Commission will issue rules and regulations under this section;

''(iii) the Board may issue rules under this subsection; and

''(iv) the Board will—

''(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

''(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

''(C) MEMBERSHIP.—

''(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

''(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

''(I) not less than a majority of the members shall be representatives of the investor industry, including both institutional and retail investors who do not represent issuers;

''(II) not less than 1 member should be a representative of the issuer industry;

''(III) not less than 1 member should be a representative of the credit rating agency industry; and

''(IV) not less than 1 member should be an independent member.

''(iii) TERMS.—Initial members shall be appointed by the Commission for a term of 4 years.

''(iv) NOMINATION AND ELECTION OF MEMBERS.—

''(I) IN GENERAL.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.

''(II) MODIFICATIONS OF THE BOARD.—Prior to the expiration of the terms of office of the initial members, the Commission—

''(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

''(bb) shall retain the composition of members described in clause (ii).

''(v) RESPONSIBILITIES OF MEMBERS.—Members shall perform, at a minimum, the duties described in this subsection.

''(vi) RULEMAKING AUTHORITY.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

''(D) OTHER AUTHORITIES OF THE BOARD.—The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

''(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

''(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

''(A) APPLICATION.—

''(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured financial products.

''(ii) CONTENTS.—An application submitted under clause (i) shall contain—

''(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

''(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

''(III) any additional information the Board may require.

''(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

''(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).

''(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations

''(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

''(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

''(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

''(5) ASSIGNMENT OF RATING DUTIES.—

''(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

''(B) METHOD OF SELECTION.—

''(i) IN GENERAL.—The Board shall—

''(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

''(II) prescribe and publish the selection method to be used under subparagraph (A).

''(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

''(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;

''(II) evaluations conducted under paragraph (6);

''(III) formal feedback from institutional and retail investors; and

''(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

''(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

''(iv) ADJUSTMENT OF PROCESS.—The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

''(C) RIGHT OF REFUSAL.—

''(i) REFUSAL.—A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by—

''(I) notifying the Board of such refusal; and

''(II) submitting to the Board a written explanation of the refusal.

''(ii) SELECTION.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

''(iii) INSPECTION REPORTS.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

''(6) EVALUATION OF PERFORMANCE.—

''(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

''(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

''(i) the results of the annual examination conducted under subsection (p)(3);

''(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

''(I) how the rated instruments perform;

''(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and

''(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

''(iii) any additional factors the Board determines to be relevant.

''(C) REQUEST FOR REEVALUATION.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

''(D) DISCLOSURE.—The Board shall make the evaluations conducted under this paragraph available to Congress.

''(7) RATING FEES CHARGED TO ISSUERS.—

''(A) LIMITED TO REASONABLE FEES.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

''(B) FEES.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.

''(8) NO PROHIBITION ON ADDITIONAL RATINGS.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

''(9) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

''(A) IN GENERAL.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

''(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

''(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a credit rating described in

subparagraph (A) may not be construed to be an initial credit rating.

''(10) PUBLIC COMMUNICATIONS.—Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by—

''(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security; or

''(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).

''(11) PROHIBITION ON MISREPRESENTATION.—With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating organization selected under paragraph (5)(A).

''(12) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

''(13) CONFLICTS.—

''(A) MEMBERS OR EMPLOYEES OF THE BOARD.—

''(i) LOAN OF MONEY OR SECURITIES PROHIBITED.—

''(I) IN GENERAL.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

''(II) EXCEPTION.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

''(I) discloses the negotiations immediately upon initiation of the negotiations; and

''(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

''(B) CREDIT ANALYSTS.—

''(i) IN GENERAL.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.

''(ii) EXCEPTION.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(14) EVALUATION OF CREDIT RATING AGENCY BOARD.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

''(A) the continuation of the Board;

''(B) any modification to the procedures of the Board; and

''(C) modifications to the provisions in this subsection.''.

SA 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1171, strike line 6 and all that follows through page 1187, line 9.

SA 3810. Mr. DORGAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—The Board of Governors shall disclose to Congress and to the public, with respect to any emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, line 14, strike ''and'' and all that follows through ''annually report'' on line 15 and insert the following:

''(M) identify all financial institutions that have domestic or international (or both) operations or activities of a significant size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, resulting or arising from stand alone operations or activities individually, or as a mix or combination of such international operations or activities that may pose a grave threat to the financial stability of the United States; and

''(N) annually report''.

On page 33, strike line 3 and all that follows through page 61, line 12 and insert the following:

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent or more of the members then serving, shall determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent of the members then serving, shall determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States, or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and

operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company

would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS FOR COMPANIES WITHOUT SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, that does not have significant international operations or activities, may pose a grave threat to the financial stability of the United States, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in paragraph (2), until such company does not pose a grave threat to the financial stability of the United States.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) take any combination of the actions described in subparagraphs (A) through (C).

(b) MITIGATORY ACTIONS FOR COMPANIES WITH SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, has significant international operations or activities of a size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, and would pose a grave threat to the financial stability of the United States, and would, therefore, require international or cross-border resolution in the event of failure, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in subparagraph (B), until such company's international operations or activities no longer pose such a threat.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) to take any combination of the actions described in subparagraphs (A) through (C).

(3) INTERNATIONAL RESOLUTION MECHANISM.—Because only a binding comprehensive international resolution mechanism will mitigate the grave threat such a subject company poses to the United States, this requirement shall remain in effect until the Council, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, votes that there is a binding, effective, and comprehensive international resolution mechanism. At such time, all such companies shall be transitioned to regulation under paragraph (1).

(4) INTERNATIONAL COOPERATION.—The Council shall work promptly and urgently with all appropriate countries and international authorities to establish a binding, effective, and comprehensive international resolution mechanism, and shall report to Congress not less than once every 6 months on all activities taken in connection with such effort, including actions taken or not taken by other countries and international organizations. The Council shall designate a Vice Chairperson with the sole responsibility for working with international authorities to establish such a resolution mechanism.

(c) The Council shall determine the appropriate time periods for any actions pursuant to this subsection, but any such time periods shall be as soon as prudently possible, and in no event later than 2 years after such action is ordered.

(d) NOTICE AND HEARING.—

(1) IN GENERAL.—The Council, in consultation with the Board of Governors, shall provide to a company described in subsection (a) or (b) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed mitigatory action. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Council, in consultation with the Board of Governors, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Council shall notify the company of the final decision of the Council, including the results of the vote of the Council, as described in subsection (a) or (b).

(e) FACTORS FOR CONSIDERATION.—The Council and the Board of Governors shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and (b), and in a decision described in subsection (d).

(f) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Council may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction, and in no case shall any such fee exceed $0.50.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1440, after line 21, insert the following:

(c) REQUIREMENTS ON MORTGAGE ORIGINATORS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by striking subsection (j) and inserting the following:

''(j) CONSEQUENCE OF FAILURE TO COMPLY.—Any mortgage made in violation of a provision of this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.''; and

(2) by adding at the end the following:

''(n) REQUIREMENTS FOR MORTGAGE ORIGINATORS.—

''(1) ABILITY TO PAY.—

''(A) IN GENERAL.—No creditor or mortgage broker may make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer without first verifying the reasonable ability of the consumer to pay the scheduled payments of, as applicable—

''(i) principal;

''(ii) interest;

''(iii) real estate taxes; and

''(iv) homeowner insurance, assessments, and mortgage insurance premiums.

''(B) VARIABLE INTEREST RATE.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer for which the applicable annual percentage rate may vary over the life of the credit, the reasonable ability to pay shall be determined, for purposes of this paragraph, on the basis of a fully indexed rate plus 200 basis points and a repayment schedule which achieves full amortization over the life of the extension of credit.

''(C) VERIFICATION OF CONSUMER INCOME AND FINANCIAL RESOURCES.—

''(i) IN GENERAL.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer, the income and financial resources of the consumer shall be verified for purposes of this paragraph by tax returns, payroll receipts, bank records, or other similarly reliable documents.

''(ii) CONSUMER STATEMENT INSUFFICIENT.—A statement by a consumer of income or financial resources shall not be sufficient to establish the existence of any income or financial resources when verifying the reasonable ability of the consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer for purposes of this paragraph.

''(D) OTHER CRITERIA.—A creditor or mortgage broker may rely on additional criteria other than income and financial resources to establish the reasonable ability of a consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer, to the extent such other criteria are also verified through reasonably reliable methods and documentation.

''(E) EQUITY IN DWELLING NOT TO BE TAKEN INTO ACCOUNT.—The consumer's equity in the principal dwelling that secures or would secure the consumer credit transaction may not be used to establish the ability to make the payments described in subparagraph (A) with respect to such transaction.

''(2) PROHIBITION ON STEERING.—

''(A) IN GENERAL.—In connection with a credit transaction secured by the principal dwelling, a mortgage broker or creditor may not—

''(i) steer, counsel, or direct a consumer to rates, charges, principal amount, or prepayment terms that are more expensive for that which the consumer qualifies; or

''(ii) make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer that is more expensive than that for which the consumer qualifies.

''(B) DUTIES TO CONSUMERS.—If unable to suggest, offer, or recommend to a consumer a home loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall—

''(i) based on the information reasonably available and using the skill, care, and diligence reasonably expected for a mortgage originator, originate or otherwise facilitate a suitable home mortgage loan by another creditor to a consumer, if permitted by and in accordance with all otherwise applicable law; or

''(ii) disclose to the consumer—

''(I) that the creditor does not offer a home mortgage loan that is not more expensive than a loan for which the consumer qualifies, but that other creditors may offer such a loan; and

''(II) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

''(C) PROHIBITED CONDUCT.—In connection with a credit transaction secured by the principal dwelling, a mortgage originator may not—

''(i) mischaracterize the credit history of a consumer or the home loans available to a consumer;

''(ii) mischaracterize or suborn the mischaracterization of the appraised value of the property securing the extension of credit; and

''(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.''.

SA 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) Each Inspector General of a designated Federal entity may at any time be removed, but only for cause. In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources previously announced for May 6, 2010, at 9:30 a.m., has been rescheduled and will now be held on Tuesday, May 11, 2010, at 10 a.m., in room SR–325 of the Russell Senate Office Building.

The purpose of the hearing is to review issues related to deepwater offshore exploration for petroleum and the accident in the Gulf of Mexico involving the offshore oil rig Deepwater Horizon.

For further information, please contact Linda Lance at (202) 224–7556 or Allyson Anderson at (202) 224–7143 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on May 4, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The President's Proposed Fee on Financial Institutions Regarding TARP: Part 2''.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled ''ESEA Reauthorization: Improving America's Secondary Schools'' on Tuesday, May 4, 2010. The hearing will commence at 2 p.m. in room 430 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, on May 4, 2010, at 9:30 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Wall Street Fraud and Fiduciary Duties: Can Jail Time Serve as an Adequate Deterrent for Willful Violations?''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on May 4, 2010, at 2:30 p.m. to conduct a hearing titled, ''Recruiting and Retaining a Robust Federal Workforce.''

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

COLLECTOR CAR APPRECIATION DAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 513.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 513) designating July 9, 2010 as ''Collector Car Appreciation Day'' and recognizing that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States.

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

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

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

The resolution (S. Res. 513) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 513

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

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

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

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

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

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

Resolved, That the Senate—

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

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

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

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

Mr. REID. Mr. President, we have had a big day in the Senate. Because of my Republican friends, we have been able to accomplish almost nothing—not quite but almost nothing. I love old cars, and I am glad we are able to pass this important legislation: Collector Car Appreciation Day. Collector Car Appreciation Day.

While people out there are looking for jobs, trying to save their homes, we are doing what the Republicans let us do: Collector Car Appreciation Day. That is the extent of our work because the Republicans have objected to everything we have tried to do on trying to reform Wall Street—for obvious reasons.

We all read the press saying the lobbyists are here lined up with their Gucci shoes and their new suits and a lot of new ties because we are told they are spending millions of dollars a week on these people to stop us from reforming Wall Street.