nominations were reported without a single negative vote. These should be easy for the Senate to consider in a timely manner and confirm. Yet Republicans continue to stall.

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

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

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

Despite the fact that President Obama began sending judicial nominations to the Senate 2 months earlier than President Bush, the Senate is far behind the pace we set during the Bush administration. As I noted earlier, by this date in George W. Bush's Presidency, the Senate had confirmed 56 Federal circuit and district court judges. In the second half of 2001 and through 2002, the Senate with a Democratic majority confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction, this Senate may not achieve half of that. Last year the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. So far this year, despite two dozen nominations on the Executive Calendar, we have confirmed only 11 more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The nominations were confirmed.

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

LEGISLATIVE SESSION

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

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

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

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

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

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

Mr. SHELBY. Can they have a vote tonight?

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

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

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

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

The Senator from Colorado is recognized.

AMENDMENT NO. 3928 TO AMENDMENT NO. 3739

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

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

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

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

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

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

The clerk will report.

The legislative clerk read as follows:

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

The amendment is as follows:

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

At the end of the bill, insert the following:

TITLE XIII—PAY IT BACK ACT

SEC. 1301. SHORT TITLE.

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

SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

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

(1) in paragraph (3)—

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

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

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

(2) by adding at the end the following:

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

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

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

SEC. 1303. REPORT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

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

SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

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

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

''(1) rescinded; and

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

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

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

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

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

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

''(1) rescinded; and

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

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

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

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

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

(2) adding at the end the following:

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

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

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

''(c) PRESIDENTIAL WAIVER AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Once again, I thank Senator BENNET for his leadership.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

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

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

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

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

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

The amendment (No. 3928) was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 3955 TO AMENDMENT NO. 3739

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

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

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

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

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

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

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

The PRESIDING OFFICER. There is no order in effect.

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

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

Mr. CORKER. I will be very brief.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

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

Mr. GREGG. That would be totally reasonable.

Mr. DODD. That was not a sophisticated request.

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

Mr. DODD. Move along.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Georgia.

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

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

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

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

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

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

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

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

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

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

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

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

I yield to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Alabama.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Florida.

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

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

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

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

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

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

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

I thank the Chair.

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 3962 TO AMENDMENT NO. 3739

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

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

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

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

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

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

Mr. MERKLEY. I ask unanimous consent Senator KERRY, Senator FRANKEN, and Senator LEVIN be added as cosponsors.

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

Mr. MERKLEY. Mr. President, I thank the bipartisan cosponsors of this amendment, including Senator SNOWE, Senator SCOTT BROWN, and Members on both sides—my colleague, Senator KLOBUCHAR, will be speaking in a moment—Senator BEGICH, Senator BOXER, as I mentioned, Senator KERRY, Senator FRANKEN, and Senator SCHUMER.

I would like to applaud my colleague from Tennessee. Virtually every word that Senator CORKER stated tonight is an argument for this amendment that Senator KLOBUCHAR and I are cosponsoring. I will get into the details later because I want to yield time to my colleague from Minnesota and then my colleague from Connecticut to speak to the bill. Then I will offer my remarks.

I do think it is important to recognize that the bulk of what Senator CORKER addressed goes right to the heart of this amendment as well. There is a point of distinction between the two amendments, a critical point of distinction; that is, the 5-percent underwriting absolute line. That line is a line of great concern for those of us who have had experience with first-time home buyers, those who have had experience with families who are at the bottom of the income spectrum. I should make it clear that the downpayment is only a portion of the skin in the game that such families have because there are tremendous closing costs associated with these loans that the families must bear as well. So the inflexibility of that standard is a great concern and a great point of distinction between these two amendments.

I will continue on after my colleagues have spoken to address some of the major challenges this amendment addresses, but I would like to yield 5 minutes to Senator KLOBUCHAR.

The PRESIDING OFFICER. The Senator is recognized.

Ms. KLOBUCHAR. Mr. President, I thank Senator MERKLEY for his leadership on this issue. I was proud to work with him on this issue. I thank Chairman DODD as well for advancing this amendment, for the work he has done in this area. I also want to mention my good colleague in the House, Representative ELLISON, who was a leader on this in the State legislature in Minnesota and now in Congress. We worked on this issue in this bill together.

Complex and deceitful lending practices were at the heart of the financial crisis, and as we work to reform Wall Street we must ensure that the homes and the home equity of Americans are not put at unnecessary risk. With 1 in 7 homeowners—1 in 7, who would have ever thought that—delinquent on their mortgage or already in foreclosure, and many home loans delinquent, the housing market continues to slow economic recovery.

It has been estimated that each year predatory mortgage lending results in a loss of $1.9 billion for American families. It is critical that families have access to safe, fair, and affordable mortgages.

I see my colleague from Illinois, Senator DURBIN, who has seen firsthand in his State people losing their homes, people at the mercy of call-lines where they cannot reach anyone when they are calling for help.

Important borrower protections such as those we have in Minnesota should be a national policy to help safeguard families across the country. A decade ago, just 5 percent of mortgage loan originations were subprime, meaning they were made to borrowers who would not qualify for regular mortgages—only 5 percent. By 2005 it was 20 percent of mortgages that were subprime. It was a disaster waiting to happen.

This expanded home ownership to millions of people, but it also greatly increased the risk to our financial system. In Minnesota, in 2000 there were 8,347 subprime mortgages issued. By 2005 it had increased more than fivefold to more than 47,000 subprime mortgages. However, we now know that between 60 and 65 percent of people who ended up with subprime mortgages actually qualified for traditional mortgages. We need to make sure this never happens again.

That is why last year I introduced the Homeowner Fairness Act, which is comprehensive housing reform legislation that proposes tough new national standards based on the successes of the Minnesota mortgage lending law passed in 2007. That is why I have joined Senator MERKLEY on an amendment that will ensure several key ideas from this bill are included in the Wall Street reform bill.

These are not radical ideas. The fact that practices were ever allowed to take place should be shocking to those who have not even heard about them.

First, this amendment would require all mortgage originators to verify a borrower has the ability to repay a mortgage before giving loan approval. Let me repeat that. This amendment would require mortgage originators to verify a borrower has the ability to repay a mortgage before they approve the loan. It may just sound like common sense that you wouldn't loan someone money without first figuring out if they were able to pay, but these lenders never intended to keep the loans they originated long enough for it to matter. They simply sold their risky bets to someone else and put the profits on the bank.

Second, this amendment would prohibit a mortgage originator from steering a borrower toward terms that are more expensive than those for which he can qualify. In recent years, loan originators were often paid more if they got borrowers to take out predatory subprime loans, even when the borrower qualified for a prime loan. It is important to remember that the crisis we are addressing today with this comprehensive Wall Street reform bill was first triggered by the downturn in the national housing market. This downturn brought to light the prevalence of unsound lending practices, especially predatory lending tactics in the subprime market.

Ultimately, this disregard for underwriting standards spread risk throughout the financial system as these unsound loans were securitized and sold, chopped up and sold again. No one had any skin in the game.

Although the market for some prime mortgages was less than 1 percent of global financial assets, the faults in the system that started with unscrupulous origination practices allowed the turmoil in the housing market to spill over into other sectors. When sound mortgage loans are made they provide families with a piece of the American dream. But when loans are made recklessly, without concern for the consumer, these loans become nightmares—not just for the families who are left on the hook but for our entire economy. We need to make sure those abusive and exploitative mortgage practices come to an end.

For far too long, subprime lenders have put the homes and home equity of Americans at unnecessary risk. These commonsense protections are essential to restoring our economy and preventing a future crisis in the housing market.

I ask my colleagues to support the Merkley-Klobuchar amendment, and I yield the floor to my friend and great leader on this issue, Senator MERKLEY of Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I compliment my colleague from Minnesota for the incredibly solid and important work she has done on this topic. It goes right to the heart of building a family's financial foundations. There is a lot of movement that needs to be made to restore a framework that will build those foundations rather than destroy those foundations.

I yield to my colleague from Connecticut if he wishes to make remarks on this amendment?

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, first let me thank my colleague from Oregon and my colleague from Minnesota as well for their contribution. While he has left the floor, I would be remiss if I did not express my gratitude to BOB CORKER from Tennessee. Putting aside whatever differences we may have on this amendment, he has been a very valuable member of our committee.

This bill that is right here, all 1400 pages of it—substantial parts of this bill can be attributed to the work of BOB CORKER of Tennessee. I want my colleagues to know how grateful I am to him, to his staff, and others for some valuable ideas and thoughts. While not every one was included in the bill, he played a consistent role, showing up every time there was a meeting or gathering on this legislation. He spent a lot of hours with our colleague from Virginia, Mark Warner, particularly on titles I and II of this bill. I will say more about Senator CORKER's contribution during debate on this bill, but I wanted at least at the outset of this debate and discussion to thank him for his wonderful efforts on this legislation.

Let me begin and thank, of course, Senator MERKLEY and Senator KLOBUCHAR, as well as their other cosponsors of this, for the bipartisan support for their amendment. I will ask to have printed in the RECORD some correspondence. I have a letter we sent out in 2006. It will give you an idea—it was 4 years ago. It was signed by myself, Wayne Allard, who is no longer with us, of Colorado, Senator Sarbanes, JIM BUNNING of Kentucky, JACK REED of Rhode Island, and CHUCK SCHUMER.

The letter was pushing the regulators to establish some underwriting guidance for subprime mortgages. That is in 2006 that we sent that first letter. We were in the minority, we Democrats.

In April of 2007 we sent another letter to Chairman Bernanke. Here we said that our committee had held two hearings this year on the problem in subprime mortgage rates. This was in February and March of 2007, 3 years ago.

At the hearings, a number of committee members raised concerns that the regulators have not kept pace with deteriorating credit standards on the growth of abusive, unfair and deceptive lending practices. In addition, we are concerned that the Federal Reserve Board has not exercised its obligations under the Home Ownership and Equity Protection Act of 1994 to issue regulations that address the problems of predatory lending.

The letter goes on for two or three pages. That was signed by myself, Senator REED, Senator SCHUMER, Senator BAYH, Senator CARPER, Senator MENENDEZ, Senator AKAKA, Senator SHERROD BROWN, Senator BOB CASEY, and Senator TESTER.

In December of 2007 we sent another letter to Chairman Bernanke.

In light of the deepening crisis in the mortgage markets, a crisis you correctly attribute to abusive practices and lax underwriting standards in the subprime market, we want to reiterate to you the importance of acting forcefully to protect consumers in the rulemaking the Federal Reserve Board is currently undertaking under the Homeowners Equity Protection Act.

We go on for two or three pages. Again, I say respectfully, but not a single member of our committee from the other side signed that letter or the one in April of 2007. This letter was signed by myself, Senator JOHNSON, Senator REED, Senator SCHUMER, Senator BAYH, Senator CARPER, Senator MENENDEZ, Senator AKAKA, Senator BROWN, Senator CASEY, Senator TESTER, and Senator JOHN KERRY of Massachusetts.

Those are just three pieces of correspondence going back years ago, trying to get some attention to the predatory lending practices that were going on. Had we acted in 2006 or even in 2007, we would not even be close to the disastrous effects that have occurred with 7 million homes lost, 4 million today underwater in the country—in danger of falling into foreclosure, 250,000. A quarter of a million homes this year have been seized in foreclosure proceedings. Here were three pieces of lengthy correspondence signed, in one case on a bipartisan basis in 2006; in 2007 unfortunately on a partisan basis—not because we didn't seek additional signatures on the letter—to highlight the importance of underwriting standards and the need to step up.

I also want to add at this point a letter from the National Association of REALTORS, expressing strong opposition to the Corker-Gregg amendment. In their letter to the Senate—to all Senators, this letter went—they say the following.

The Corker-Gregg-Isakson amendment replaces the risk retention provisions . . . of the credit risk retention with a study on a feasibility of risk retention requirements for financial institutions and implements the residential mortgage underwriting standards that include a mandatory 5 percent downpayment for all mortgages. As our Nation continues to recover from the worst economic downturn since the Great Depression, REALTORS are cognizant that lax underwriting standards brought us to this point. It must be curtailed. However we caution that swinging the pendulum too far in the opposite direction may reverse the fragile recovery.

Based on data from the National Association of REALTORS, of home buyers and sellers, 11 percent of all home purchasers surveyed had downpayments of 5 percent or less. When considering only first-time home buyers, the percentage utilizing a downpayment of under 5 percent increases to 18 percent of all purchases. Improving underwriting to ensure that the consumer has the ability to pay their obligation is in the best interests of everyone, but eliminating the possibility for some creditworthy customers to buy a home will have significant detrimental ramifications for American families, the housing sector, and those businesses that support it.

Let me take a couple of minutes. I know my colleague from Texas is here, and others, but this is important, that people understand what happened. Because 5 percent sounds pretty reasonable. Why not 5 percent? Let me explain why that provision poses some risk to all of us. The Senator's amendment as offered has two parts to it. They almost kind of run into each other in a way.

The first half of the amendment strikes the government-imposed risk retention requirements in the underlying bill. These requirements, as explained before, and I will in a second again, would result in strong market-based underwriting standards in the residential mortgage market.

Then in the second half of the amendment, the amendment puts in government-dictated, hard-wired underwriting standards that would have very serious consequences, as the National Association of Realtors points out, for first-time home buyers, minority home buyers, and others who are seeking to attain the American dream of home ownership.

Like the earlier debates we have had, it does this at a time, as we all know, that the housing markets are just starting to recover, potentially putting that recovery at risk.

Let me start by discussing the first part of this amendment. The bill, section 941 of our bill, requires securitizers to retain an economic interest in the material portion of the credit risk for any asset that securitizers transfer, sell, or convey to a third party. What does this mean? Very simply put, it is skin in the game. Skin in the game—a skin-in-the game requirement that creates incentives that encourage sound lending practices, restores investor confidence, and permits securitization markets to resume their important role as a source of credit for households and businesses.

Excesses and abuses in the securitization process played a very major role in this crisis under what is called the ''originate to distribute'' model. Loans were made expressly to be sold into the securitization pools, which meant the lenders did not expect to bear the credit risk of borrower default.

What does that mean? Well, if you are the broker out cutting the deal, what was the first piece of advice on their Web page to the brokers, the unregulated brokers? The first piece of advice to them was, from their association: Convince the borrower. Convince the borrower you are their financial adviser.

Well, of course, they were anything but their financial adviser. Their job was, of course, to get people to sign up and commit to these mortgages, which they knew, in too many cases, could never, ever be met; that is, they, the borrower, would never possibly meet it.

If you had some skin in the game if you are the broker, you may be a little more careful about that. But, of course, the broker was acting on behalf of the lending institutions. Now you think, well, the lending institution is going to care about this. You know, when I bought my first home back X numbers of years ago, my mortgage stayed at the Old Stone Bank. I signed those papers. I could go down every day and I could pull out that drawer, wherever it was, and look at my mortgage. It did not leave the Old Stone Bank. It stayed right there.

Let me tell you, that fellow at the Old Stone Bank wanted to make darn sure that this young lawyer in Connecticut was going to meet his financial obligations. So they had underwriting standards for me. It did not cost me a lot on a downpayment. I was a new buyer, first-time home buyer. I had just gotten licensed to practice law in Connecticut, so they had a little confidence I might be able to meet my obligations. So they had underwriting standards.

Today it is vastly different. That fellow, a young lawyer today, who goes and gets that mortgage, the lending institution frankly could care less whether you have the underwriting standards. Why? Because it is going to sell that mortgage. That is what securitization is: I am going to sell it. On average they hold your mortgage 8 to 10 weeks. Then they sell it. It goes right out the door. So the broker could care less. He got me to sign up with a deal I could not afford. The old bank does not care anymore, because they are selling it, and bundling them together and shipping them out the door, and some unwitting investor may be purchasing these. Because they have been branded by the rating agencies as AAA or AA, they think they are pretty good.

So why am I putting skin in the game? Because if you do not have skin in the game, if you do not have a vested interest financially in the outcome, you do not care what happens, unfortunately, in too many cases. You have been paid. You have got out your dollar. You have been compensated as the broker; you have been compensated as the lending institution; you wash your hands of the whole thing.

That is what created this domino effect, because there were not people watching and caring what went on. So in my bill I said: Well, why not keep a little skin in the game or drop the skin in the game but write underwriting standards. You make the choice. But if you have got skin in the game, I suspect you are going to be careful about underwriting standards. If you write the underwriting standards, I do not want to take a pound of your flesh from the lending institution, if you are going to meet those obligations.

That is exactly what Senator MERKLEY and our colleague from Minnesota and others are suggesting here: Let's get good underwriting standards here. That is why I support what they are talking about. So I apologize for going into all of that ''originate to distribute,'' but originate the mortgage to distribute it. That is exactly what it means.

This led to significant, of course, deterioration in credit and loan underwriting standards, particularly in residential mortgages. With the onset of the crisis, there was widespread uncertainty regarding the true financial condition of holders of asset-backed securities, for obvious reasons, freezing interbank lending, constricting the general flow of credit. Complexity and opacity in the securitization markets prolonged and deepened the crisis, and it made recovery efforts that much more difficult.

My proposal in the bill has a measured approach which requires, of course, separate rulemaking requirements for different assets. I will not bother you with all of that.

A lot of people support this, by the way, including the Consumer Federation of America, the Investors Working Group, the America Securitization Forum, CalPERS, the Group of 30, even a former Republican Secretary of the Treasury, John Snow. And he says:

Because of the lack of participant accountability, the originate-to-distribute model of mortgage finance, with its once great promise of managing risk, became itself a massive generator of risk.

A study is not a credible response. I say that respectfully of the amendment of the Senator from Tennessee. He calls for a study in all of this. Our bill provides for comprehensive regulation of securitization markets, to prevent excesses and eliminate a potential source of financial instability.

Let me add quickly, I am a strong supporter of securitization. That has provided liquidity, which has made home ownership more available to more people. But you have got to do it carefully. If you are packaging these mortgages with no regard to whether they are available, and sending them out the door to be sold off, then you jeopardize securitization. If you get good underwriting standards, as the Senator from Oregon and Minnesota are requiring, then you are going to build in some safeguards; then securitization, with proper branding of what they are worth, and you are back on track again, and we can start to see housing improve for everybody.

The Corker amendment also requires, of course, here a 5-percent downpayment for all loans, no matter what the circumstance. That is a government-mandated requirement in a sense in this amendment. Even with FHA loans, hardwiring in statutes that as a requirement is very ill-considered, I would say.

The key cause of the crisis, as I have said many times over the past almost 4 years on the floor of this body, was the unscrupulous mortgage brokers and mortgage lenders who sold unaffordable mortgages to people who could not pay those mortgages.

In the majority of the cases, those loans were refinance loans, they were not even original mortgages. It was refinancing. No downpayments are required in refinancing at all. Downpayments did not even come up or come into play for these borrowers. But the mortgages were still outrageous and unaffordable. They still led to the foreclosures and contributed to the economic crisis we are in.

Why was this? Well, it was because the brokers and bankers had no skin in the game. So they not only did not pay attention, in too many cases they did not even care whether the borrowers had the ability to pay back those loans. The Merkley-Klobuchar amendment specifically addresses this problem, by specifically requiring that lenders take into account the borrower's ability to pay, and laying out important criteria for determining that.

It will end the steering payments that caused so much of the trouble in the first place. And while the 5-percent downpayment may sound reasonable, and in some cases it is, there are many lending programs out there that allow for downpayments that are lower than 5 percent: FHA, which is struggling now, has traditionally allowed for downpayments less than 5 percent. FHA has been a path to home ownership, as we know, for millions of our fellow citizens. Many nonprofits such as Habitat for Humanity, the Enterprise Foundation, church-related housing groups—in fact, I have a letter signed by a number of these nonprofit organizations in opposition to the Corker amendment. I ask unanimous consent that all these letters I have referred to be printed in the RECORD.

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

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

U.S. SENATE,
Washington, DC.

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

CORKER-GREGG-ISAKSON AMENDMENT

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

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

MCCAIN-SHELBY-GREGG AMENDMENT

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

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

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

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

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

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

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

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

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

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

Sincerely,

VICKI COX GOLDER,
2010 President, National Association of REALTORS®.

MAY 11, 2010.

Hon. CHRISTOPHER DODD,
Chairman, Senate Committee on Banking, Housing, and Urban Affairs, Russell Senate Office Building, Washington, DC.
Hon. RICHARD SHELBY,
Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN DODD AND SENATOR SHELBY: We write in opposition to amendments to the Restoring American Financial Stability Act that would mandate a one-size-fits-all approach to mortgage underwriting and those amendments that would undercut the current mortgage finance system by eliminating Government Sponsor Enterprises (GSEs) without having a successor system in place.

Certain amendments currently being considered, such as a mandatory 5 percent down payment requirement, would undermine successful first-time homebuyer and workforce housing programs offered by qualified nonprofits and state and local governments. Unlike the broader mortgage market, these nonprofit and government sponsored lending programs require borrower financial education and have very low default rates. For example, the program administered by NYC's Department of Housing Preservation and Development had only five foreclosures out of 17,000 loans. The reason is that programs such as these utilize stringent underwriting standards that were lacking in some segments of the mortgage finance market. Yet, local government and nonprofit loan programs would be virtually eliminated by a national mandate for a 5 percent down payment because these programs utilize alternative down payment requirements to ensure that the homebuyer has ''skin in the game.'' For example, self-help homebuyer programs allow hours spent in building homes to compensate as part of the down payment. Other programs require extensive financial literacy, including pre- and post-purchase counseling, and state or local government issued loans coupled with sound underwriting standards that have proved successful in enabling low income and workforce families to achieve the American dream of homeownership, build wealth, and remain in their homes.

Moreover, buyers who receive financial literacy training and homeownership counseling with traditional loan products, irrespective of the down payment percentage, are critical to our nation's ability to address the foreclosure crisis and stabilize the housing market. A one-size-fits-all approach and flat down payment amounts eliminate the ability for local communities to rely on the experience and strong track records of local non-profit and government lenders who have built successful homeownership programs that did not contribute to the housing crisis.

In addition to avoiding flat down payments and federally mandated underwriting standards, we also believe that Congress should employ a thoughtful and analytic approach to examining the role of the two Government Sponsored Entities (GSEs) in the mortgage crisis and what the future of the U.S. mortgage finance system should look like versus an immediate wind down of both GSEs. We urge Congress to ensure that a successor system is in place prior to dissolving the two firms. The GSEs have provided critical capital to the housing market, ensuring that more Americans can benefit from homeownership. Though we must be careful only to extend mortgage loans to those who can afford to pay the loans over the life of the mortgage, we must be equally careful not to cut off mortgage lending at a time when the markets are recovering.

The problems in the housing market were caused by a confluence of factors. We must address all of them, instead of singling out one or two reasons or entities, and, inadvertently, making homeownership unattainable for many working families.

Thank you for taking the time to address these concerns.

Sincerely,

Enterprise Community Partners; National NeighborWorks Association; Habitat for Humanity International; Community Resources and Housing Development Corporation; National Community Reinvestment Coalition; Kalamazoo Neighborhood Housing Services, Inc.; Nuestra Comunidad Development Corporation; Manna, Inc; Community Frameworks; UNHS NeighborWorks HomeOwnership Center; Frontier Housing, Inc.; Boston LISC; Chicago LISC; Connecticut Statewide LISC; Duluth LISC; Houston LISC; Jacksonville LISC; Los Angeles LISC; Mid South Delta LISC; New York City LISC; Philadelphia LISC; Pittsburgh Partnership for Neighborhood Development (SWPA LISC); San Diego LISC; Toledo LISC; Virginia LISC; Impact Capital (Washington State LISC); Local Initiatives Support Corporation; Housing Assistance Council; Homes for America, Inc.; Housing Partnership Network; Neighborhood Housing Services of Phoenix; Cambridge Neighborhood Apartment Housing Services; NHS of the Lehigh Valley, Inc.; NeighborWorks Columbus; Ithaca Neighborhood Housing Services; Knox Housing Partnership; NHS of Orange County; Buffalo LISC; Greater Cincinnati & NE Kentucky LISC; Detroit LISC; Hartford LISC; Indianapolis LISC; Greater Kansas City LISC; Michigan Statewide LISC; Milwaukee LISC; Greater Newark & Jersey City LISC; Phoenix LISC; Rhode Island LISC; San Francisco Bay Area LISC; Twin Cities LISC; Washington DC LISC.

Mr. DODD. These are groups, it appears that, in fact, I should say in fairness to Senator CORKER, in the latest version of his amendment, that allows for some exceptions on a case-by-case basis of these nonprofits, where each individual nonprofit has to go to the regulators for such an exemption. But they simply may not get it. They get to apply. It is optional to give that.

Many insured depositors, of course, have mortgage programs that require less than 5-percent downpayments. They are performing well, and have done so in the past. And we want low- and moderate-income families to go to banks and get loans, qualified low- and moderate-income people to have to meet those standards. We do not want to simply shut them off to nonprofits. We want to get them into the financial mainstream.

The Corker amendment would create a new barrier to accomplishing that goal. But the Merkley-Klobuchar amendment provides for those underwriting safeguards, does not put such tight restrictions, even on FHA mortgages, that would make it impossible for an awful lot of people.

I thank my colleagues. I have spoken a long time here. I apologize. But I think it is important to know the history of how we got into the mess and what happened out there that led us to these difficulties, why underwriting is important.

What Senator MERKLEY and Senator KLOBUCHAR have offered is to get back to that sensible requirement here without writing these stringent requirements in this legislation that would be so difficult. So I urge my colleagues to support the Merkley-Klobuchar amendment and respectfully oppose the Corker amendment.

By the way, their amendment is endorsed by a number of our colleagues on both sides of the aisle. I thank Senator SCOTT BROWN of Massachusetts, who is involved with this amendment, by Senator MERKLEY and others. I commend him for it. It is a good proposal.

The PRESIDING OFFICER (Mr. UDALL of Colorado.) The Senator from Rhode Island.

Mr. WHITEHOUSE. May I interject myself in this debate for 1 minute to ask unanimous consent with respect to the Whitehouse amendment that restores States rights to protect against exorbitant, out-of-State lenders doing business in one's own State.

I ask unanimous consent that Senator COCHRAN of Mississippi be added as a cosponsor. I want to take a moment to let him know how much I appreciate his cosponsorship of what is now a bipartisan amendment, and I look forward to continuing to secure additional sponsors from both sides of the aisle.

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

The Senator from Oregon.

Mr. MERKLEY. Mr. President, before I speak on this amendment, I want to applaud my colleague from Connecticut who spoke so passionately and knowledgeably about the challenge that had been faced by subprime underwriting gone astray.

If only the letters that he and his colleagues wrote in 2006 and in 2007, those multiple appeals, if only those who had the power to establish those underwriting standards had been listened to, had been followed up on, then we would have a much smaller challenge today. We would not have had this big meltdown in 2008 and 2009, with so many millions of American families having the value of their home destroyed. I applaud him for his advocacy year after year after year.

I am pleased to be able to join him in this effort now. I particularly applaud the efforts to establish standards for skin in the game. This is a very responsible way to create accountability for our mortgage originators. I do want to note that there are three issues that particularly contributed to dysfunction at the retail mortgage level.

The first is liar loans, undocumented income, where a mortgage originator would tell the client: Well, we will just pencil in here that you earn $150,000. It does not matter. Don't you worry about what you are earning. We will put this in here. That obviously led to a complete corruption of the quality of the mortgage. Certainly the families involved had no prospect of paying for those mortgages and the interest rates they were being signed up for.

A second was to fail to employ basic underwriting measures, measures like loan to value and credit history and employment history, and current obligations and debt to income, and so forth.

These are the types of measures any responsible originator goes through to understand whether this loan makes sense for this family, whether there will be the ability to repay.

The third piece is the incentives that were provided to mortgage originators put those originators 180 degrees out of sync with their customers. Essentially, it worked like this. If a loan was good for a family, it didn't make as much money for the lender. If it was bad for a family, it made a lot of money for the lender. So the lender and the home buyer have different interests; one wants a low-interest mortgage, a fair mortgage; the other wants a mortgage that has hidden clauses, prepayment penalties, and exploding interest rates. But incentive payments, sometimes called steering payments, technically called yield spread premiums—these were paid to the mortgage originators to induce them to sign those families they had taken into their trust into a loan that was good for the lender but not good for the family, corrupting a transaction at the heart of the most important financial moment in a family's experience, the moment of buying their family home.

This amendment addresses all three of these core pieces of dysfunction in the mortgage market. It ends no-documentation or liar loans as they are called, where income is created like writing a work of fiction. It sets minimum underwriting standards related to loan to value, ability to repay, and ability to repay not based on some teaser rate but on any rate the loan could potentially go up to in the first 5 years. So you make sure, if this has a variable rate clause, that this family will be able to manage those payments in the first 5 years and certainly verification of income in the process. So you have documentation and verification, essentially the sound underwriting process that was in place for decades before it all went awry over the last 10 years.

This amendment will apply to all loans. It amends the Truth in Lending Act or TILA, which applies to all loans. It will base broker compensation on the size of the loan and on the loan value or the loan amount and the volume of loans a broker makes, rather than on the type of loan. We take this impossible situation that mortgage originators were put in, where their interests were 180 degrees reversed from the client. Yet it is a trust relationship, it puts them in sync, where the broker has no incentive to steer a family into an exploding interest rate, no incentive to steer a family into a loan with a prepayment penalty, no incentive to steer a family into a loan that has other hidden clauses designed to strip wealth from working families.

Finally, this amendment provides a safe harbor to make sure mortgage originators are on sound ground if they follow this set of originating principles and, in the process, makes sure they do not do balloon payments or fees that exceed 3 percent, a series of sound business practices that serve the industry and serve the family.

I mentioned before that my colleague from Tennessee has a bill that has many of these mortgage underwriting standards. I applaud him for his long experience and concern in helping families to succeed. But we do disagree about two provisions. One provision is stripping the skin in the game that makes sure mortgage originators have a stake in the quality of the mortgage. The second is to establish a solid line on a 5-percent standard. Many families, when they are buying a modest home, have a significant expenditure in all kinds of closing costs, independent of their downpayment. They may well have thousands of dollars, $5,000, $8,000 of skin in the game before they ever get to the downpayment. So we want to create the flexibility for first-time home buyers and for families on the lower end of the income spectrum to be able to get into home ownership.

In fact, frankly, it is these families for whom it is so important we make the mortgage process available. Because a young family who is able to buy that first home and do so with the responsible underwriting principles laid out in this amendment, in 5 years they will be buying their second home, maybe a bit nicer home, maybe an extra bedroom or two for the children, and maybe later on they are able to move up again to the sort of home they have always dreamed about having or the sort of yard with the trees in it that the treehouse is going into and so forth. That is the American dream, to be able to engage in this progression. You engage in that progression because you build equity. You build equity by getting into home ownership at the start. Having solid underwriting standards but not an inflexible line is the way to go on this.

I do note that the amendment Senator KLOBUCHAR and I are offering is supported by a host of organizations: The Center for American Progress, the Center for Responsible Lending, the National Association of Consumer Advocates, the National Consumer Law Center, the National Fair Housing Alliance, Consumer Action, the Housing Finance Alliance, and Mortgage Insurance Companies of America.

This is a bipartisan sentiment to restore solid mortgage underwriting standards. I appreciate the thoughtfulness and energy that has gone into it from both sides of the aisle to craft ways to approach this. When we vote tomorrow morning, I ask all my colleagues to vote yes for strong underwriting standards. Vote yes for putting mortgage originators in sync with their clients rather than radically oppose the interests of their clients. Vote yes to end liar loans. Certainly, vote yes for the young families and those families with lower income who wish to get into that first home so they can get their share of the American dream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3759, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I rise to talk about the Hutchison-Klobuchar amendment, which will be in order after votes on the Merkley and Corker amendments. The votes will come tomorrow, but my colleague, Senator KLOBUCHAR, and I are very concerned about the underlying bill only putting Fed supervision over bank holding companies that are $50 billion and above. One of the key parts of regulatory reform in this financial arena is that nobody wants too big to fail anymore. My colleague, the cosponsor of this amendment, and I wish to assure there is no indication in any way that only bank holding companies that are $50 billion and above would be having supervision of and access to the Fed.

We want to make sure of two things. First, that there is a level playing field, that everyone who wants to be a member of the Fed, who wants to have access to the Fed, will be able to do that, including State banks.

The underlying bill would prohibit State banks from being able to be members of the Fed. That is a real concern for community bankers all over America. The second concern is that we have regional Feds. When the Federal Reserve was established, there was a debate about whether we would have regional offices or whether there would just be the Federal Reserve Board sitting in Washington. The decision was made to have Federal banks in key parts all over the country that would be regional banks. The purpose was that we needed to know what was happening all over the country, not only in New York, not only in Washington, DC, but throughout the country, because it is the community banks that are the depository institutions that are the mainstay of our economy and our financial community. If you take the Federal Reserve supervisory authority away from all those community banks around the country and regional banks no longer have input into what is going on in smaller communities, we will have too big to fail in reality, and we will also have a monetary policy that is going to cater to the big financial institutions, which are what utterly failed in the last 2 years in the financial meltdown.

Senator KLOBUCHAR and I have an amendment that would go back to where we are today, that the Fed would have supervisory power over State banks that choose to go into the Fed, and it would be universal for all the holding companies and the banks in the system.

Before my colleague from Minnesota speaks, I wish to submit for the RECORD a couple letters that have been written, one by the Independent Community Bankers of America.

Dear Senator,

On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I write to urge your support for an amendment to S. 3217 to be offered by Senators Hutchison and Klobuchar . . . that would restore the Federal Reserve's authority to examine state-chartered community banks and small bank holding companies.

That is the amendment we are discussing tonight.

I ask unanimous consent to have this letter printed in the RECORD.

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

INDEPENDENT COMMUNITY BANKERS OF AMERICA®,
Washington, DC, May 6, 2010.

DEAR SENATOR: On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I write to urge your support for an amendment to S. 3217 to be offered by Senators Hutchison and Klobuchar (#3759) that would restore the Federal Reserve's authority to examine state-chartered community banks and small bank holding companies.

The Federal Reserve System comprises 12 regional Federal Reserve Banks overseen by a Board in Washington. The virtue of this structure is that it prevents the Federal Reserve from being focused exclusively on the power-centers of Washington and New York. Through their examination of state-chartered community banks and bank holding companies, the regional Federal Reserve Banks keep their finger on the pulse of a diverse range of institutions in diverse regional economies and the Main Street small businesses and municipalities served by these institutions. As Chairman Bernanke has testified, the Federal Reserve's authority gives them insight into what's happening in the entire banking system. This insight is crucial not only to the Federal Reserve's exercise of its monetary functions, but to its ability to gauge the impact of banking regulations across diverse institutions.

The Federal Reserve must be the central bank of the United States, not the central bank of Wall Street and a handful of too-big-to-fail institutions. Your support for the Hutchison/Klobuchar amendment will help ensure that the Federal Reserve serves the entire economy.

Thank you for your attention to this matter.

Sincerely,

CAMDEN R. FINE,
President and CEO.

Mrs. HUTCHISON. I also will include a letter from the Chamber of Commerce of the United States of America, signed by the executive vice president.

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports an amendment expected to be offered by Sens. Hutchison and Klobuchar to S. 3217 . . . which would maintain Federal Reserve Board oversight of state member banks and smaller holding companies.

I ask unanimous consent to have this letter printed in the RECORD.

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

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, May 6, 2010.

TO THE MEMBERS OF THE UNITED STATES SENATE: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports an amendment expected to be offered by Senators Hutchison and Klobuchar to S. 3217, the "Restoring American Financial Stability Act of 2010 (RAFSA)," which would maintain Federal Reserve Board oversight of state member banks and smaller holding companies.

S. 3217 would focus the attention of the Federal Reserve on just the largest institutions and could serve to limit the Federal Reserve's understanding of the importance of community banks. Federal Reserve supervision enhances the ability of the Federal Reserve to assess credit impact in local communities. Smaller banks tend to fund smaller businesses, which is an important source of jobs for the economy. Removing Federal Reserve supervision of community banks could mean the Federal Reserve would lose timely information about the flow of credit to small businesses.

The Chamber looks forward to working with the Senate on meaningful, bipartisan legislation to ensure that the U.S. financial system is protected and that small businesses continue to have access to the capital they need to sustain, grow, and create jobs.

Sincerely,

R. BRUCE JOSTEN.

Mrs. HUTCHISON. I also wish to read a couple excerpts from a letter by the Federal Reserve Bank of Kansas City to Senator BENNET. It goes into a lot of other things, but the relevant part says:

Unfortunately, if the Senate divides the oversight of the [bank holding companies] between the banking regulators, it will multiply and complicate this oversight significantly. This is hardly an improvement. And, limiting the regional Reserve Banks' source of industry information gained through their contact with all institutions and bank regulators will greatly compromise its ability to understand industry trends and deal with future crises. This is a mistake and I hope you will consider it carefully in your deliberations.

That is signed by Thomas Hoenig, president of the Federal Reserve Bank of Kansas City.

In addition, the President of the Dallas Federal Reserve Bank, Richard Fisher, came to my office to make this point most affirmatively, that he wanted to make sure he still had the supervisory power and the ability to learn from the State banks, the community banks in the whole region where the Dallas Federal Reserve Bank sits.

Last, I wish to read an excerpt from the alert of the American Bankers Association:

As you know, S. 3217, the regulatory restructuring bill, contains language that would move oversight of state banks that are members of the Federal Reserve and their holding companies to the [FDIC]. [The American Bankers Association] is strongly opposed to this provision, as this would take away the Federal Reserve's ability to regulate state member banks and would undermine the Federal Reserve's ability to fully understand small and mid-size institutions and the communities they serve.

As early as Wednesday, May 5, the Senate will consider an ABA-supported amendment . . . by Senators Kay Bailey Hutchison and Amy Klobuchar that would restore current law by returning oversight of state member banks and holding companies to the Federal Reserve.

It is very important that our amendment be passed by the Senate. It will make a great improvement to this bill in that it will restore the law as it is today. It will not have the mixup of the varying regulatory bodies having control in one area, where a bank across the street does not have the ability to go to the Fed and one across the street does. We don't need that. What we want in this regulatory reform is to allow all the banks to be members of the Federal Reserve, to have the same discounts, the same backing of that supervisory authority so Federal Reserve banks all over our country will have the input of the community banks in our system rather than making monetary policy from New York and Washington, DC. The last thing we need is more people who are out of touch with mainstream America doing the regulation of our financial industry.

Mr. President, I commend my colleague, Senator KLOBUCHAR from Minnesota, and would like to ask her to speak at this time because I think this bipartisan amendment will improve this bill greatly, and I look forward to having the vote tomorrow.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank my colleague, Senator HUTCHISON, for her great leadership on this issue. We have worked together from the beginning on this amendment, and you can see there is support for this amendment from the Lone Star State to the North Star State, spanning this country—as you look at the many States across this country that truly believe it is important to have the regional Federal Reserve involved in decisions, not have anything and everything concentrated in Washington and New York City, which we believe got us into lots of this trouble in the first place.

The amendment we have offered is important because what it does is seek to preserve a system that ensures that the institution charged with our Nation's monetary policy has a connection to Main Street, not just Wall Street—Main Street in Benson, MN; Main Street in Austin, TX; Main Street in Denver, CO. That is what we are talking about.

As I have said before, Main Street banks pretty much stayed away from the high flying, way-too-risky deals of the past decade, and when the pavement on Wall Street began to buckle and collapse, these banks—these small community banks—did not panic and run to Washington with tin cups and outstretched hands.

Like the rest of Main Street, they suffered because of bad bets made on Wall Street. But they kept doing their work. They kept serving their customers. So now, with us debating a Wall Street reform that will affect how these small banks, these community banks do business, I think they have a right to speak up. That is what this amendment is about.

I would like to give a lot of credit to Chairman DODD, who is here as usual in the late evening hours, as well as Ranking Member SHELBY, along with the rest of their Banking Committee who worked so incredibly hard. Chairman DODD has been working with us on this amendment and has been working with us on many issues affecting the community banks. I thank him for that.

I think we took another important step yesterday when we passed the Tester-Hutchison amendment that will make sure community banks pay only their fair share when it comes to Federal bank insurance.

But the issue my colleague, Senator HUTCHISON, so eloquently discussed is whether the Federal Reserve will continue to oversee our State member community banks. That issue still remains.

Like I am sure all of you have, I have heard from my community banks. I have heard from the Fed. I have thought about this a lot. I just want to give you an example of what those community banks—the bankers out there in the heartland, who basically are standing out there with their feet firmly on the ground, with their briefcases in their hands. They were not there as these credit default swaps swallowed and swirled around their heads. They were there just doing their job.

Here is what Noah Wilcox, the president of Grand Rapids State Bank in Grand Rapids, MN—Grand Rapids, MN, home of the Judy Garland Museum. If you ever want to go there, you can actually put your head in a cut-out hole of the Tin Man. Yes, you can. The Tin Man—right—needed a heart. The lion needed courage. And the scare crow needed a brain. You could go there to Grand Rapids.

Well, this is what the president of the Grand Rapids State Bank said:

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

From the Lone Star State to the North Star State.

When Congress established the Federal Reserve in 1913, Congress purposely created a system of regional banks, overseen by a board in Washington, to ensure that the power of this institution would not be concentrated far from these banks and the communities they serve. That is why I believe Mr. Wilcox's—the guy from Grand Rapids, the banker—statement rings especially true. He was not just advocating for his bank or other banks in Minnesota or across the country. He said the Federal Reserve was created for ''all of America.''

The Federal Reserve Bank of Minneapolis just does not supervise banks, it also partners with the communities it serves by providing resources and sharing expertise. I will give you one example. We have Art Rolnick, known nationally for the work he has done on early childhood development. He works with the Federal Reserve. He is one of their policy experts. He is retiring this summer. He has literally devoted the last few years of his career looking at early childhood development—the investment. He has put out numbers. He has put out studies straight from the Federal Reserve because he had that information on the ground to show the kind of return of investment you get when you invest in kids early on. I do not think we would see that coming out of the Federal Reserve in Washington. This came out of the regional banks.

This interaction with regional banks can clearly be seen in the interdisciplinary research it conducts in Minnesota with the University of Minnesota and in its partnerships with financial institutions and community-based organizations to provide investment in low- and moderate-income communities.

Together the regional banks provide a presence across this country that gives the Fed grassroots connections—not just in board rooms in New York, not just in the hallways of Congress in Washington, but right there in Grand Rapids, MN, on Main Street—insights into local economies. What is happening with the timber industry? What is happening with the medical device industry? They know that on the front line. What is happening to the high-tech industry? What is happening with the telecommunications industry in Denver? That is what the regional banks do for us.

They also provide legitimacy when they have to make tough decisions—when the Fed has to make those tough decisions—to have those regional banks out there with legitimacy in the banking community and the business community to say: This is not just about Wall Street; this is also about Main Street.

Their geographic diversity also allows the regional banks to develop unique expertise. For instance, the Federal Reserve Bank in Minneapolis has a wide breadth of knowledge in the agricultural economies of Minnesota and the other States in its district. You are not going to get that in the middle of New York City. You are not going to get that in the middle of Washington, DC. Through the Federal Reserve of Minneapolis, the community banks they supervise have a better understanding of the markets that ultimately aid them in their loan making decisions.

Through their working relationships with community banks, the regional Federal Reserve banks also collect and analyze important information about the movements and trends in local economies. Because community banks interact with so many parts of the economy—from the ordinary folks who bank with them, to the small businesses they provide loans, to real estate developers, and even local governments—their connections to the communities they serve provide a unique perspective for the Fed to tap.

This relationship is a two-way street, as it also provides a voice for our community banks that would be lost if the Federal Reserve were to only supervise the largest banks. A system like this would certainly limit, and potentially distort, the picture the Federal Reserve gets of what is happening in our Nation's banking system.

I repeat, this crisis did not happen because of this little bank in Grand Rapids, MN. It happened because eyes were not watching what was going on on Wall Street. Eyes were not watching what was going on in these big banks. The rest of these guys—these small banks—they were the ones who were the victims of this crisis.

As the president of the Federal Reserve Bank in Minneapolis pointed out in a speech this past March, it would be shortsighted to conclude that the Federal Reserve ''can safely be stripped of its role as a supervisor of small banks.'' As he noted, disruptions in the financial system can come from all sectors and the connection the regional Federal Reserve banks provide to local economies can be vital in ensuring the stability of the financial system.

Opponents will argue that the Federal Reserve does not need to supervise banks to gain insight into them, that they can get this information by other means and through other sources. But, currently, much of the Federal Reserve's interaction with community banks comes from the supervision done by its examiners. Many of these examiners have lived and worked in the districts they serve for many years, and the information they provide is critical to the Fed's understanding of local economies.

This system—a system that serves all Americans—is threatened if we do not act. Currently, the Federal Reserve Bank of Minneapolis—and I am sure you see this in Texas, in Missouri, in Colorado, and the Federal Reserve's banks all across this country—currently, the Federal Reserve Bank of Minneapolis oversees over 600 banks in the Ninth District. Without this amendment, it would oversee one—one—bank.

This is what my friend, the Senator from Texas, is talking about. You would go from 600 banks—in an area that did not cause this financial crisis, that was simply a victim of this financial crisis—you would take 600 banks from them, send them out somewhere in a consolidated way to Washington and New York, and they would oversee one. All they would have is a bank holding company with over $50 billion in assets. This means connections to over 600 communities will be lost, not just in Minnesota, but in Montana, North Dakota, South Dakota, Wisconsin, and Michigan. That is the region.

The Federal Reserve System was designed to prevent it from being focused just on Wall Street, at the expense of Main Street. That is why the Hutchison-Klobuchar amendment is so important, to put this bill in a place where we not only get the great accountability of the bill, with the great work that is being done in every single sector, so we do not make these mistakes again that were made that brought us to the brink of a financial crisis that allowed all of these banks to be on the verge of collapse—and some of them, in fact, collapsed on Wall Street—that is an important piece—but it is equally important to make sure our Main Street community banks get a fair shake and that the Federal Reserve in the regional areas of this country—from the Lone Star State to the North Star State—be allowed to continue to get the information they need to do their job.

I urge other Senators to join Senator HUTCHISON and me in supporting this amendment, to make sure the voices of our community banks, the voices of our small towns across the country and the local economies they serve, continue to be heard.

Mr. President, I yield back to Senator HUTCHISON.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I call up the amendment Senator KLOBUCHAR and I have just been discussing, and the amendment, as modified, is at the desk. It is No. 3759, as modified.

The PRESIDING OFFICER. Without objection, the clerk will report the amendment, as modified.

The assistant editor of the Daily Digest read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Ms. KLOBUCHAR, Mr. JOHANNS, Mr. CORKER, Mr. VITTER, Mr. BOND, Mr. SHELBY, Mr. CRAPO, Mr. BROWN of Massachusetts, and Mr. BENNETT proposes an amendment numbered 3759, as modified, to amendment No. 3739.

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

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

The amendment, as modified, is as follows:

(Purpose: To maintain the role of the Board of Governors as the supervisor of holding companies and State member banks)

On page 299, strike line 3 and all that follows through page 367, line 19, and insert the following:

SEC. 312. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) FUNCTIONS OF THE OFFICE OF THRIFT SUPERVISION.—

(1) SAVINGS AND LOAN HOLDING COMPANY FUNCTIONS TRANSFERRED.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(A) the supervision of—

(i) any savings and loan holding company; and

(ii) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(B) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 5(q) of such Act relating to tying arrangements is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and subparagraph (A), there are transferred to the Comptroller of the Currency all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to Federal savings associations.

(C) CORPORATION.—Except as provided in paragraph (1) and subparagraph (A), all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation.

(D) COMPTROLLER OF THE CURRENCY AND THE CORPORATION.—Except as provided in paragraph (1) and subparagraph (A), all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings associations is transferred to the Office of the Comptroller of the Currency.

(c) CONFORMING AMENDMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended by striking paragraphs (1) through (4) and inserting the following:

''(1) the Office of the Comptroller of the Currency, in the case of—

''(A) any national banking association;

''(B) any Federal branch or agency of a foreign bank; and

''(C) any Federal savings association;

''(2) the Federal Deposit Insurance Corporation, in the case of—

''(A) any insured State nonmember bank;

''(B) any foreign bank having an insured branch; and

''(C) any State savings association;

''(3) the Board of Governors of the Federal Reserve System, in the case of—

''(A) any State member bank;

''(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

''(C) any foreign bank which does not operate an insured branch;

''(D) any agency or commercial lending company other than a Federal agency;

''(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

''(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

''(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.''.

(2) FEDERAL DEPOSIT INSURANCE ACT.—

(A) APPLICATION.—Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended to read as follows:

''(3) APPLICATION TO BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE AND AGREEMENT CORPORATIONS.—

''(A) APPLICATION.—This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 shall apply to—

''(i) any bank holding company, and any subsidiary (other than a bank) of a bank holding company, as those terms are defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the bank holding company was the appropriate Federal banking agency;

''(ii) any savings and loan holding company, and any subsidiary (other than a depository institution) of a savings and loan holding company, as those terms are defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the savings and loan holding company was the appropriate Federal banking agency; and

''(iii) any organization organized and operated under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or operating under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.) and any noninsured State member bank, as if such organization or bank was a bank holding company.

''(B) RULES OF CONSTRUCTION.—

''(i) EFFECT ON OTHER AUTHORITY.—Nothing in this paragraph may be construed to alter or affect the authority of an appropriate Federal banking agency to initiate enforcement proceedings, issue directives, or take other remedial action under any other provision of law.

''(ii) HOLDING COMPANIES.—Nothing in this paragraph or subsection (c) may be construed as authorizing any Federal banking agency other than the appropriate Federal banking agency for a bank holding company or a savings and loan holding company to initiate enforcement proceedings, issue directives, or take other remedial action against a bank holding company, a savings and loan holding company, or any subsidiary thereof (other than a depository institution).''.

(B) CONFORMING AMENDMENT.—Section 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(9)) is amended to read as follows:

''(9) [Reserved].''.

(d) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.

SEC. 313. ABOLISHMENT.

Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

(a) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

"SEC. 324. COMPTROLLER OF THE CURRENCY.

''(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the 'Office of the Comptroller of the Currency' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

''(b) COMPTROLLER OF THE CURRENCY.—

''(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

''(2) ADDITIONAL AUTHORITY.—The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 (including matters that were within the jurisdiction of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the transfer date under that Act) as was vested in the Director of the Office of Thrift Supervision on the transfer date under that Act.''.

(b) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: ''or any Federal savings association''.

(c) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting ''Office of the Comptroller of the Currency,'' after ''the Securities and Exchange Commission,''.

SEC. 316. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 312(b) and 313 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that, for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision that is transferred to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors by this subtitle, the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as appropriate, as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, AND OTHER MATERIALS.—All orders, resolutions, determinations, agreements, regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions of the Office of Thrift Supervision that are transferred by this subtitle and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those materials, and shall be enforceable by or against the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

(c) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY THE OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Office of the Comptroller of the Currency shall—

(A) in consultation with the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of such regulations in the Federal Register.

(2) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) in consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of such regulations in the Federal Register.

(3) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) in consultation with the Office of the Comptroller of the Currency and the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Board of Governors; and

(B) publish a list of such regulations in the Federal Register.

(d) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision that the Office of Thrift Supervision, in performing functions transferred by this subtitle, has proposed before the transfer date, but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to its terms.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision that the Office of Thrift Supervision, in performing functions transferred by this subtitle, has published before the transfer date, but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to its terms.

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

Except as provided in section 312(d)(2), on and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate.

SEC. 318. FUNDING.

(a) FUNDING OF OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Chapter 4 of title LXII of the Revised Statutes is amended by inserting after section 5240 (12 U.S.C. 481, 482) the following:

''SEC. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the funds transferred to the Office of the Comptroller of the Currency under this section, the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

''The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section.''.

(b) FUNDING OF BOARD OF GOVERNORS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

''(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

''(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the responsibilities of the Board with respect to such companies.

''(2) COMPANIES.—The companies described in this paragraph are—

''(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

''(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

''(C) all nonbank financial companies supervised by the Board under section 113 of the Restoring American Financial Stability Act of 2010.''.

(c) CORPORATION EXAMINATION FEES.—Section 10(e) of the Federal Deposit Insurance Act (12 U.S.C. 1820(e)) is amended by striking paragraph (1) and inserting the following:

''(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations, or as the Corporation determines is necessary or appropriate to carry out the responsibilities of the Corporation.''.

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire, in any lawful manner, such goods and services, or personal or real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle B—Transitional Provisions

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

(2) determine jointly, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this Act and ending on the transfer date;

(B) which personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on the date of enactment of this Act and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and

(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

SEC. 322. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) EMPLOYEES TRANSFERRED; SERVICE PERIODS CREDITED.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

(B) DECLINING TRANSFERS ALLOWED.—The Office of the Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(4) ADDITIONAL APPOINTMENT AUTHORITY.—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under subsection (a)(1) shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this subtitle shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY.—If any provision of this subtitle conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEE STATUS AND ELIGIBILITY.—The transfer of functions and employees under this subtitle, and the abolishment of the Office of Thrift Supervision under section 313, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the transfer date, an employee holding a permanent position on the day before the date on which the employee was transferred shall not be involuntarily separated or involuntarily reassigned outside the locality pay area (as defined by the Office of Personnel Management) of the employee.

(2) EXCEPTIONS.—The Comptroller of the Currency and the Chairperson of the Corporation, as applicable, may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this subtitle, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Comptroller of the Currency or the Chairman of the Board of Governors may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) INCORPORATION INTO AGENCY PAY SYSTEM.—Not later than 2 years after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision; and

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee.

(l) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(2) SERVICE CREDIT.—For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

SEC. 323. PROPERTY TRANSFERRED.

(a) PROPERTY DEFINED.—For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

(b) PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.—Not later than 90 days after the transfer date, all property of the Office of Thrift Supervision that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the

Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) AUTHORITY OF DIRECTOR.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfer of functions under this subtitle, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

SEC. 326. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title, shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

On page 459, line 17, strike ''bank'' and insert ''nonmember bank, and the Board may, by order, exempt a transaction of a State member bank,''.

On page 1045, line 19, insert after ''Currency'' the following: '', the Board of Governors of the Federal Reserve System,''.

Mrs. HUTCHISON. Mr. President, we are restoring section 605 of the underlying bill. But I just think it is so important we take this action. Senator KLOBUCHAR made a great statement about what would happen with the Minnesota Fed going down to one bank. How are they going to have the input to talk to the Federal Reserve Board about monetary policy if their supervision is over one bank? In fact, I understood they might be closing some of the local offices of the Fed because there will be nothing to supervise, and there will be no input, there will be no knowledge of what is going on in some of the communities.

I think the Federal Reserve Bank of Dallas is in much the same situation. It would also go down to one from about over 400. I will get the numbers exactly by tomorrow. But that is just going to make a huge difference in the knowledge base of our Federal Reserve Board. It would be unthinkable to have monetary policy made without the input from all of our States that the regional banks give at this time.

The regional banks do a great job. I have dealt with many of the regional banks. They have great influence on monetary policy. The presidents of the regional banks rotate in the Open Market Committee that makes our Fed decisions, and it is a very good system. It was carefully put together so it would be a monetary system that represents our whole country. That is probably one of the reasons why our economy has remained so stable through the years since the Federal Reserve was created.

So I appreciate the support of the Senator from Minnesota. This is a truly bipartisan amendment. We have Republican cosponsors, Democratic cosponsors, and I am very hopeful we will have a vote early tomorrow in this mix because I think this will add a lot of support from our community banks to know they are not going to be shut out of access to the Federal Reserve, and that the Federal Reserve banks will not be shut out from the community banks that are so important for the knowledge base of our monetary policy that is made and, frankly, is the main stay of the stability of our economic system.

So I thank the distinguished chairman of the committee for staying and letting us talk tonight, and I look forward to having the vote tomorrow on our amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. First of all, let me just say regarding the Merkley-Klobuchar amendment to the Corker—not amendment to it, but the side-by-side—I wish to thank Senator SCOTT BROWN of Massachusetts and OLYMPIA SNOWE of Maine for cosponsoring that amendment on the underwriting standards. I appreciate that very much.

Let me say to both of my colleagues, Senator HUTCHISON and Senator KLOBUCHAR, as my colleagues know, I started out many months ago with the idea of trying to come down to a single prudential regulator as one of the reforms in this bill. One of my concerns, as my colleagues know, was we had some nine agencies. It was an alphabet soup out there with a lot of overlap in terms of actually who is responsible, who is going to be accountable for things that occur. Obviously, we want to have a dual banking system, the State banks and so forth, that don't want to be drawn into a Federal system unnecessarily. So it began to break down from a single prudential regulator to maybe two.

I say this with great respect, but I would point out that the Federal Reserve Board, of course, never implemented the requirements on mortgage lending that passed in 1994. A lot of the major financial institutions were basically unregulated institutions. My concern has been that the Fed did not exactly live up to its reputation during this period of time and contributed in major ways to the problems we are in today.

So I have great respect for their monetary function, which is the core function; the payment system, which is their core function; their primarily monetary function, determining the credibility of our currency. We had an earlier debate today on that very issue. The system was established in 1914, 1917, almost 100 years ago.

At some point down the road we are going to need to think about the Federal Reserve System. We have two Federal Reserve regional banks in the State of Missouri. The next one is in San Francisco. So I think the idea of thinking through how to make it more relevant is a legitimate issue. Obviously, we are not going to deal with that in this bill. We will leave that for a later Congress to work on those issues.

I appreciate what my colleagues are trying to do, and I recognize the importance at these regional levels that want to maintain some involvement in all of this for the reasons that Senator KLOBUCHAR and Senator HUTCHISON have identified. Again, I know how we have been talking about how to work on this a bit. Let me just make one plea. One of the major concerns that happened with this proliferation of regulators—it happened with AIG classically and in other cases; it happened back in the thrift crisis days as well—is that industries go out and shop and they look for the regulator of least resistance, the ones they can get away the most with. That was one of the major problems that happened here.

So I want to avoid wherever possible this, what they call regulatory arbitrage; that is, the shopping that goes on: Let me find the regulator that will let me get away with the most. Of course, the Federal Reserve has a lot to demonstrate in the years ahead that they got the message, as they didn't do a very good job when they had the responsibility.

So coming Congresses will have to keep an eye on this to make sure they are going to not only want the job, but also to assume the responsibility in doing this so we don't end up with problems running haywire again. It is true, small banks didn't create a problem. Only about 800 out of the 8,000 are regulated by the Federal Reserve. The overwhelming majority, of course, are not regulated by the Federal Reserve. And, of course, they didn't do much in it because they didn't get involved in subprime lending. So it wasn't a problem. There was a reason they didn't get involved in subprime lending, which is for another day, but nonetheless I understand they got in trouble with commercial loans which was their major problem.

So I hope on the arbitrage issue that we try to create as much of a level playing field as possible so we don't find institutions shopping around because of assessment costs or other matters which can once again find this migration into an area, not because it is a right place to be but because it is where you would prefer to be. The decision by institutions as to where they want to be ought not be the criteria by which we determine regulation. We have to have a better set of rules than that or we end up back where we were before.

My colleagues have done a great job. They have been faithful in reaching out and trying to find accommodation where they can. So I am very grateful to both of my colleagues and their cosponsors. We look forward to tomorrow having a vote. In the meantime, I have made an appeal to work on a couple of pieces of this thing. We would not go into that right now. I thank them both and I thank my colleagues. It has been a long day. We covered a lot of ground today—some major amendments. We will vote tomorrow and move along.

Again, I make the point that this almost seems like a throwback. When I arrived some 30 years ago, this was the way we did things. We haven't had a single tabling motion. We haven't had a single filibuster. I would argue maybe this is one of the top two pieces of legislation to be considered in this Congress on regulatory reform. It is a major undertaking. The patience and the involvement of my colleagues has been terrific, and I wish to thank them as well.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, can I just commend Senator DODD and Senator SHELBY for setting this tone. There was an article this weekend about how we are working together on a major piece of legislation. As my colleagues can see from the amendment, Senator HUTCHISON and I have a bipartisan amendment, and I appreciate the chairman's openness to this amendment and his kind words. I thank him for his work.

Mr. DODD. I thank you both.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I would also say that this shouldn't be a political bill. This should be a bill that is hammered out on the floor and that does have bipartisan amendments because it is complicated. It does have to fit together a lot of different needs, different regulatory standards, different types of banks and financial institutions and nonbank financial institutions. I hope it is going to be a product that—regardless of how big the vote is—will make the system better. I think this process has been the best I have seen this year in accommodating different concerns that have been raised by both sides.

So I thank the chairman and the ranking member for that. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, there is no more debate this evening.

Mr. LEVIN. Mr. President, I come to the Senate floor today to speak in support of a package of amendments to the financial reform bill that is a result of an investigation by the Permanent Subcommittee on Investigations, which I chair. I am submitting these amendments with the support of my colleague, Senator KAUFMAN, who is not only a member of the subcommittee but also sat with me through hours of subcommittee hearings over a period of 2 weeks to examine some of the causes and consequences of the crisis that nearly brought down our financial system, that necessitated billions of dollars in taxpayer money to arrest, and that was a principal cause of the worst recession in nearly a century.

We also are submitting the package as eight separate amendments to facilitate their consideration.

Over nearly a year and a half, our bipartisan investigation examined millions of pages of documents, conducted over 100 interviews, and culminated in four hearings during April, with over 2,500 pages of hearing exhibits and more than 30 hours of testimony. The American people, having suffered so much in this crisis and having had to pay so much of their hard-earned money to keep it from getting even worse, deserve to know what happened.

But more than establishing a record of what went wrong, we sought information to help keep us from repeating the same mistakes in the future. Like all of the subcommittee's investigations, our eye was on both establishing a factual record and on using that record to support legislation that would rebuild Main Street's defenses against the excesses of Wall Street.

The recklessness, lax oversight, and conflicts of interest our investigation has uncovered cry out for legislated reform. The hearings revealed that mortgage lenders such as Washington Mutual dumped hundreds of billions of dollars of high risk and sometimes fraudulent home loans into the U.S. financial system; banking regulators, such as the Office of Thrift Supervision, observed and understood the flaws and the risks, failed to stop them, and even impeded the examination efforts of the Federal Deposit Insurance Corporation; credit rating agencies, such as Moody's and Standard & Poor's, gave inflated ratings to risky structured finance products in an effort to keep market share and please their investment bank clients; and investment banks such as Goldman Sachs, assembled, marketed, and sold high risk mortgage-related products, while betting against the very products they created.

That is why I and Senator KAUFMAN have assembled a package of amendments to the financial regulatory reform bill now before the Senate. We believe these amendments would help stop the bad loans, misleading credit ratings, poor quality securitizations, and other problems we saw in our investigation, as well as slow down the existing revolving door for regulators. They are intended to strengthen an already strong bill that so many of our colleagues have worked so hard to bring to this point. Let me outline briefly what our amendments would accomplish.

Ban on Stated-Income and Negative Amortization Loans. First, in response to the hundreds of billions of dollars in high-risk mortgage loans that began this crisis and that were featured in our first hearing, our amendment would sharply limit two of the most dubious practices: stated-income loans and negatively amortizing loans. Stated-income loans, also known as ''liar loans,'' are ones in which lenders allow borrowers simply to state their income on the loan applications without any confirmation of the borrower's income or assets. Negative amortization loans are loans in which lenders allow the borrowers, for a specified period of time, to pay less than the monthly amount needed to cover the interest, resulting in loan balances that increase rather than decrease over time, and then impose a much higher loan payment to make up for the earlier low payments. That leads to payment shock and loan defaults by a large number of borrowers.

Washington Mutual, which was the case history in our first hearing, used stated-income and negative amortization loans with disastrous results, leading to the largest bank failure in U.S. history. Stated-income loans made up 90 percent of its home equity loans, for example, and 70 percent of its option ARMs, adjustable-rate mortgages, which often are negatively amortizing. Because both types of loans default at much higher rates than traditional 30-year fixed rate mortgages, lenders such as Washington Mutual quickly sold them to remove the risk from their books. But those high-risk loans did not disappear; they were packaged into securities and sold to investors, spreading risk throughout the financial system. Eventually, when housing prices stopped rising and borrowers could not refinance their mortgages, the loans defaulted in record numbers, the securities plummeted in value, and the securitization market crashed. Our amendment would ensure that stated-income and negative amortization loans could not again be used to foist high-risk, poor quality loans off on investors in securitizations.

Skin in the Game Securitizations. Second, our amendment would strengthen an existing provision in the bill that requires financial firms to retain some of the risk of the mortgage-backed securities they assemble. Too often, lenders such as Washington Mutual and investment banks such as Goldman Sachs were in the business of packaging high-risk mortgages into structured financial instruments, slicing and dicing them in new ways, obtaining credit ratings indicating that portions of these instruments carried no more risk than Treasury securities but significantly higher returns, and then passing the risk to others, selling them to investors without retaining any risk on their books. In many cases, as our hearings showed, these financial institutions knew the products they had assembled were of dubious quality but were happy to sell them so long as they made a fee and knew that none of the risk could come back to harm them. This short-term pursuit of profits, with no concern for customers or for the toxic securities polluting the financial system, so damaged the securitization markets that they are still struggling to recover.

Our amendment would help stop these short-sighted and dangerous securitization practices by requiring financial institutions that securitize mortgages to keep some of their own skin in the game. It would build on an existing provision in the Dodd bill by requiring that securitizers keep an ownership interest in the securities they create. While the existing provision would require securitizers to keep a 5 percent interest in the securitization as a whole, it does not specify whether that 5 percent interest could be concentrated in a single portion, or tranche, of securities, such as the low-risk, supersenior tranche at the top or the high-risk equity tranche at the bottom, which is often what happened during the crisis. Our amendment would make it clear that the ownership interest would have to be distributed throughout the capital structure—not just in a single tranche—so that the securitizer's interests would be aligned with the interests of all levels of investors buying the securities and would give the securitizer a stake in the success of all of the tranches, not just one.

In addition, our amendment would make it clear that regulators could allow lenders to go below the 5 percent requirement only if they are including high-quality, low-risk assets in their securities, such as 30-year fixed rate mortgages. Inclusion of this low-risk standard in the provision allowing lenders to avoid the 5 percent requirement would create an enormous incentive for securitizers to use low-risk loans in their securitizations.

Gustafson Fix. Third, we would address the effects of a 1995 Supreme Court ruling in the Gustafson case that has left investors in private securities offerings without protection from material misstatements or omissions in the security's prospectus. The Gustafson ruling interpreted the securities laws as depriving purchasers in private offerings of the same protections against material misstatements or omissions that apply to public offerings. Our amendment would restore congressional intent and close that loophole.

FDIC Examination Authority. Fourth, we would strengthen protections for the Federal deposit insurance fund and against the need for taxpayer bailouts by enhancing the FDIC's authority to initiate bank exams and enforcement actions. Under our amendment, the FDIC's chairperson would have the authority to initiate an exam, authority that now rests solely with the FDIC's board, which is cumbersome and includes other regulators that can prevent FDIC from acting quickly. During the subcommittee's second hearing, documents and testimony showed how the Office of Thrift Supervision thwarted FDIC efforts to participate in examinations of Washington Mutual and take enforcement action to reduce the bank's unsustainable high-risk lending. The Federal agency charged with protecting the deposit insurance fund should not have to jump through hoops to look at bank records or stop unsafe or unsound practices. Our amendment would make it clear that the FDIC can act decisively and quickly to deal with endangered financial institutions before their failure threatens the FDIC insurance fund or the safety of the financial system.

Credit Rating Agencies. Fifth, our amendment would strengthen a host of provisions in the Dodd bill dealing with credit rating agencies. Credit rating agencies did not originate the bad loans or risky securities that led to the crisis. But their disastrously inaccurate ratings made those loans and securities easy to sell and helped spread risk throughout the financial system.

The subcommittee's third hearing showed a clear conflict of interest inherent in the credit rating agencies' business model: They are dependent for revenue upon the same financial firms whose products they are supposed to impartially rate. Our amendment would eliminate that conflict by requiring rating agencies to receive their fees through an intermediary to be established or designated by the SEC.

In addition, the amendment would strike the existing statutory ban that prohibits direct SEC oversight of the credit rating models, methodologies, and criteria that failed so catastrophically in this crisis, and would explicitly direct the SEC to oversee them. We would also require the agencies to rate as more risky products that, for example, lack past performance data; that are provided by an issuer with a history of issuing poorly performing instruments; that receive prior credit ratings already subject to downgrade; that consist of synthetic instruments in which no income is being contributed by actual assets; or that consist of instruments whose complexity or novelty make it difficult to reliably predict their performance. We would also build upon a Dodd provision requiring that certain information be provided about each credit rating issued by an agency, including a requirement that ratings come with an ''expiration date'' indicating whether they are intended to be effective for more or less than a year. We would also bar credit rating agencies from relying on due diligence reviews of financial products when the agencies have reason to believe that the due diligence is inadequate. Together, these provisions would help ensure that the SEC has the authority it needs to conduct vigorous and meaningful oversight of credit rating agencies, instead of the current system that provides for SEC oversight in theory but denies it in practice.

Restriction on Synthetic Asset-Backed Securities. Sixth, we would rein in the pernicious effects of synthetic asset-backed securities on the financial system. These securities contain no real assets. Their value is tied to the assets that they reference, but the securitizer and the investors need not, and often do not, have any economic interest in those assets. Too often, these instruments have amounted to nothing more than bets on whether a security or other asset would go up or down in value. Such transactions, usually embodied in collateralized debt obligations, or CDOs, greatly magnified the damage that resulted when poor quality mortgage-backed securities defaulted and helped bring down storied financial firms such as Lehman Brothers and Bear Stearns.

Under our amendment, synthetic asset-backed securities that lack any substantial or material economic purpose other than speculation on the value or condition of referenced assets could no longer be sold. Wall Street firms that claim a synthetic asset-backed security has a substantial economic benefit apart from wagering on asset values will have an opportunity to prove those claims to the SEC. We must end the pollution of the U.S. financial system with these dangerous financial instruments that spread risk without adding anything of substance to the real economy.

Slowing the Revolving Door. Seventh, we would seek to slow down the revolving door between financial regulatory agencies and the financial sector by requiring a 1-year ''cooling off'' period before a Federal financial regulator could work for a financial institution he or she regulated. In 2005, we enacted a 1-year cooling off period for bank examiners, after Riggs Bank hired the bank examiner who used to oversee its operations and who took some questionable regulatory actions before switching his employment. That law has been on the books for 5 years, providing a healthy deterrent to bank examiners that get too close to the banks they regulate. Our amendment would expand this approach to all Federal financial regulators, from the Federal Reserve to the SEC to the CFTC to the new Consumer Financial Protection Bureau. It would prevent a regulator who participated personally and substantially in the regulation or oversight of a particular financial institution or took an enforcement action against a specific financial institution from taking a job with the same institution for at least a year.

Foreign Bank Anti-Tax Evasion Remedy. Finally, based upon a number of previous subcommittee investigations showing how some foreign banks have been deliberately assisting U.S. clients to evade U.S. taxes, our amendment would give the Treasury Department discretionary authority to take measures against foreign financial institutions or foreign jurisdictions that impede U.S. tax enforcement. Those measures include such actions as imposing additional recordkeeping requirements, refusing to honor credit cards issued by a foreign bank or, in the most extreme cases, prohibiting U.S. financial institutions from doing business with the offending foreign financial institution or jurisdiction. This provision would build upon a Patriot Act provision that has proven highly effective in stopping foreign banks from engaging in money laundering activities and would take the same approach in discouraging foreign banks from aiding or abetting tax evasion.

We offer this amendment in the hope of improving what is already a strong bill, either as a package or divided into its separate elements. It is not all that needs to be done—for example, I have joined with Senator MERKLEY in an amendment submitted to limit proprietary trading and conflicts of interest by financial institutions—additional problems examined during the subcommittee hearings. It is clear that the evidence revealed by the subcommittee's lengthy investigation and four hearings requires Congress to act now to protect Main Street from financial abuses that have so damaged our economy and American families.

Mrs. FEINSTEIN. Mr. President, I rise to speak in support of an amendment I am offering to the Wall Street reform bill.

The Dodd-Lincoln bill, as currently drafted, takes major steps to reform the $900 trillion derivative markets. It would require every trade to be reported in real time to the CFTC; require all cleared contracts to be traded on an exchange or on a swap execution facility; require speculative position limits set in ''aggregate'' for each commodity, instead of contract by contract; and require foreign boards of trade to adhere to minimum standards comparable to those in the United States, including reporting requirements—this provision is designed to address the underlying problem of the so-called London Loophole.

I very much support these provisions. However, I am concerned that the bill doesn't go far enough to address the London loophole. This loophole has allowed for the trading of U.S. energy commodities—such as crude oil—on foreign exchanges without strong oversight from U.S. regulators.

This means that there is no cop on the beat to shield U.S. oil prices from manipulation or excessive speculation when they are traded in foreign markets, like commodities exchanges in London or Shanghai.

The amendment I am proposing would allow CFTC to require foreign boards of trade to register with CFTC, which would give CFTC the enforcement authority it needs. This provision was in President Obama's original proposed financial reform bill, and it is strongly supported by CFTC Chairman Gensler.

First, let me explain what has become known as the London loophole.

As Congress has taken steps to improve regulatory oversight of domestic commodity trading markets, Wall Street traders have increasingly turned to offshore markets to electronically trade U.S. energy futures—in order to evade American market oversight and speculation limits.

This new regulatory loophole earned its nickname—the London loophole—because America's most important crude oil contract—known as West Texas Intermediate—is today traded on the Intercontinental Exchange in London. This contract has what is called a price discovery impact because it is commonly referenced as the standard market price of oil.

The practical implication of this is that U.S. traders can use electronic exchanges based overseas to artificially drive up the prices of U.S. commodities—without any consequences from our Nation's market regulators. This is a major problem.

A 2008 CFTC report found that traders using this London exchange to trade U.S. crude oil futures held positions far larger than would be allowed by American regulators. In fact, from 2006 to 2008 at least one trader position exceeded U.S. speculation limits every single week on the London exchange, and British regulators had done nothing about it.

The good news is that some steps have been taken administratively to address this loophole.

In 2008, the CFTC negotiated an agreement with British regulators to bring greater oversight to American commodities contracts traded in London. The agreement called for speculation limits for the electronic trading of U.S. energy commodities—like crude oil—on foreign exchanges, and required recording-keeping and an audit trail. But CFTC has limited legal authority to enforce this agreement.

Bottom Line: We need to make sure the CFTC can oversee trading of American commodities, whether it happens through a computer server located on Wall Street or in Shanghai.

The Dodd-Lincoln bill currently before us does include some important provisions to help close the London loophole. As drafted, the bill will require foreign boards of trade that provide access to American traders to comply with comparable rules enforced by a foreign regulator, publish trading information daily, supply data to CFTC, and enforce position limits.

However, CFTC may be unable to force a Foreign Board of Trade to comply with these requirements.

This is because the CFTC's current method of overseeing foreign exchanges has tenuous legal underpinnings, due to a Commodity Exchange Act provision forbidding CFTC from ''regulating'' foreign boards of trade.

In many instances, the CFTC can take action against a U.S. trader on a foreign exchange to prevent manipulation or excessive speculation only with the cooperation and consent of the foreign regulator. The other, more controversial option is for the CFTC to completely ban the foreign exchange from all U.S. operations. Not surprisingly, the CFTC often shies away from enforcement, in the face of these regulatory obstacles.

That is why I am offering a proposal to allow CFTC to require foreign boards of trade to register with CFTC, which would give CFTC the enforcement authority it needs.

Here are the benefits of this amendment:

First, the registration process itself would give CFTC the authority to impose appropriate regulatory requirements as a condition of registration.

Second, a formal registration process would assure that foreign boards of trade all follow the same set of rules.

Third, the registration process would provide a much clearer basis for CFTC decisions to refuse or withdraw permission to foreign boards of trade wishing to allow American traders on their exchange.

Finally, and most importantly, all of CFTC's existing enforcement authorities apply to registered entities under the Commodity Exchange Act.

This amendment would therefore allow CFTC to enforce its own statute with regard to foreign exchanges operating in the United States.

This is a very moderate, practical amendment to assure that we give CFTC the authority to enforce the statutory provisions already in the proposed legislation. It would only provide the CFTC with equivalent authority to that held by virtually all foreign futures regulators—including the British.

I have worked for many years to bring about meaningful regulation of the derivatives markets, and that is why I am so pleased that Senators LINCOLN and DODD have brought forward the strongest derivatives regulatory proposal considered by this Congress.

But as we crack down on traders in our markets, we must be ever vigilant to assure that traders sitting on Wall Street do not avoid our regulations by trading on electronic exchanges with computer servers in London, or Dubai, or Singapore.

This amendment would improve the London loophole provisions in the Dodd-Lincoln bill, by making those provisions more easily enforceable.

It is the final piece necessary to close the London loophole, ensuring that our government has what it needs to protect American markets from manipulation and excessive speculation, no matter where U.S. energy commodities are traded.

I ask my colleagues to support this amendment.

Mr. DODD. Mr. President, I ask unanimous consent that on Wednesday, May 12, following any leader time, the Senate then resume consideration of S. 3217, and that the time until 10 a.m. be for debate with respect to the following three amendments, with the time equally divided and controlled between the leaders or their designees; that at 10 a.m., the Senate proceed to vote in relation to the amendments in the order listed, with no amendments in order to the amendments prior to a vote, with 2 minutes of debate prior to the succeeding votes and with the succeeding votes limited to 10 minutes: Merkley amendment No. 3962, Corker amendment No 3955, Hutchison-Klobuchar amendment No. 3759, as modified; provided further, that the next two amendments in order would be the Landrieu-Isakson amendment regarding risk retention and the Snowe-Landrieu amendment No. 3918.

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

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

SECRET HOLDS

• Mr. BYRD. Mr. President, I recently declined to sign a letter that is circulating, in which certain Senators pledge not to place ''secret'' holds on legislation and nominations. The letter features a very broad promise by the signers to refrain from asking the leadership to delay Senate consideration of a matter, without a full public explanation of the request.

When a small minority—often a minority of one—abuses senatorial courtesy and misuses anonymous holds to indefinitely delay action on matters, then I am as adamant as any of my colleagues in insisting that Senators should come to the Senate floor and make their objections known. When abuses of this courtesy have occurred, I have supported efforts by others, and proposed some of my own, to ignore holds after a certain period of time. I am ready to support such efforts again.

But I also believe that there are situations when it is appropriate and even important for Senators to raise a private objection to the immediate consideration of a matter with the leadership and to request a reasonable amount of time to try to have concerns addressed. There are times when Senators put holds on nominations or bills not to delay action but to be notified before a matter is coming to the floor so that they can prepare amendments or more easily plan schedules. These are courtesies afforded to all Senators. In many cases, there is nothing nefarious or diabolical about reasonable requests for holds. Certainly, public disclosures are not necessary every time Senators want to slightly alter the Senate schedule for the coming week. Certainly, public disclosures are not necessary every time Senators request consultation or advanced notification on a matter coming to the floor.

I appreciate that some Senators may be frustrated with what they believe are abuses of the Senate rules, but I also hope that Senators will endeavor to understand—before they suggest pledges or propose less than well-reasoned changes—that the rules, precedents, customs, practices, traditions, and courtesies of the Senate have been forged over hundreds of years and after much trial and experience. After all, the benefit of this experience is to preserve the institutional protection of all Senators and their efforts to fairly represent the people of their States. The Senate is not the House of Representatives and was never intended to function as such. The Senate's purpose is to carefully and critically examine, not to expedite.

Unfortunately, when the Senate rules and customs are abused and Senators become frustrated, it can lead to ill-considered changes, and sometimes the pendulum can swing too far. Let us try to keep the institutional purpose of the Senate uppermost in mind. The Nation certainly requires the extended debate and deliberation that those time-honored rules, precedents, and customs are designed to guarantee.•

LRA DISARMAMENT AND NORTHERN UGANDA RECOVERY ACT

Mr. LEVIN. Mr. President, for more than 20 years, a group called the Lord's Resistance Army, or LRA, has operated in central Africa, perpetrating some of the most horrific acts of violence one can envision. The LRA began as a rebel group saying it drew its guidance from the Ten Commandments, but in the two decades since it began, it has routinely violated those commandments in the most gruesome and unimaginable ways. Its continued campaign of violence calls out for Congress and the United States to act.

Recently the United Nations uncovered the latest of the LRA's violent acts, the rounding up and massacring of more than 100 innocent villagers in a remote part of the Democratic Republic of the Congo. The New York Times reported on May 1 that U.N. officials had learned of the massacre, which occurred in February. U.N. officials interviewed several witnesses, including one woman whose lips were cut off by LRA rebels, who told the woman she was talking too much.

The LRA's actions were described in brutally clear terms in a recent Human Rights Watch report entitled ''Trail of Death.'' In it Human Rights Watch investigators describe the typical tactics, techniques, and procedures of this terrible group of people:

> The LRA used similar tactics in each village they attacked during their four-day operation: they pretended to be Congolese and Ugandan army soldiers on patrol, reassured people in broken Lingala (the common language of northern Congo) not to be afraid, and, once people had gathered, captured their victims and tied them up. LRA combatants specifically searched out areas where people might gather—such as markets, churches, and water points—and repeatedly asked those they encountered about the location of schools, indicating that one of their objectives was to abduct children. Those who were abducted, including many children aged 10 to 15 years old, were tied up with ropes or metal wire at the waist, often