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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, March 16, 2012, at 10 a.m.

Senate

THURSDAY, MARCH 15, 2012

The Senate met at 9:30 a.m and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The guest Chaplain, Dr. Winford L. Hindrex, senior pastor of the Ardmore Baptist Church, Winston-Salem, NC, offered the following prayer:

Let us pray.

Awesome Creator, sovereign Lord of our great Nation, You must have been excited when You first dreamed of creating—out of nothing—this beautiful, complex world with all its natural beauty: birds of the air, fish of the sea, animals of the Earth, and humans to care for all of this and to love You infinitely.

Loving, visionary God, infuse in these women and men, known as the United States Senate, Your dream of our Nation here and now in the 21st century. Give to them not only a vision of how things can be, but also give to them the nitty-gritty know-how to make Your dream a reality for every person in this great land. And dare we say it, may they and all of us make You excited yet again as we partner with You to actualize Your dream for this Nation.

We pray in Your awesome, loving, creative Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 15, 2012.

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

THANKING SENATOR BURR

Mr. REID. Mr. President, we appreciate Senator BURR arranging for this good man to come and offer the prayer this morning. We appreciate that very much.

SCHEDULE

Mr. REID. Following leader remarks the Senate will be in morning business until 11 a.m., with the majority controlling the first 30 minutes and the Republicans controlling the second 30 minutes. Following morning business we will begin consideration of the IPO bill, H.R. 3606, the initial public offering for which those letters stand. At 2 p.m. there will be a rollcall vote on Groh, followed by Fitzgerald. These are trial judges in our Federal court system. Additional votes are possible today.

MEASURE PLACED ON THE CALENDAR—S. 2191

Mr. REID. Mr. President, I am told that S. 2191 is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2191) to amend the Americans with Disabilities Act of 1990 to prohibit the attorney general from administering or enforcing certain accessibility regulations relating to pools at public accommodations or provided by public entities.

Mr. REID. Mr. President, I would object to further proceedings on this matter at this time.

The ACTING PRESIDENT pro tempore. The bill will be placed on the calendar.

RECOGNIZING BARBARA MIKULSKI

Mr. REID. Mr. President, on Saturday Senator BARBARA MIKULSKI becomes the longest serving woman in

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

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the history of the U.S. Congress. We will mark that occasion on Wednesday when her family and friends will be present here in the Capitol. I have prepared detailed remarks for that occasion, but I thought it was important that we note very briefly here today this milestone in the history of our country.

Last January BARBARA MIKULSKI surpassed Margaret Chase Smith from Maine as the longest serving woman in the Senate. On Saturday, March 17, she will surpass Congresswoman Edith Nourse Rogers from Massachusetts as the longest serving woman in Congress.

SMALL BUSINESS

Mr. REID. Mr. President, this week the Senate has demonstrated that when Democrats and Republicans cooperate, we are capable of achieving significant results for this country. We passed a transportation bill that will create or save almost 3 million jobs—and these are American jobs—and rebuild our Nation's crumbling infrastructure. Yesterday we chartered a course to confirm 14 new judges in the short term and a path for getting more done following that, and this is important because our Federal courts are overworked and understaffed.

We agreed that Congress should continue its work to improve the economy. To that end, the Senate will move today to a piece of legislation that will improve innovators' access to capital and give startups the flexibility they need to hire and to grow. This bill passed the House by an overwhelming margin. President Obama supports this measure, and both Democrats and Republicans are eager to get to work to pass it next week.

In addition to the small business capital legislation, Democrats will also advance a proposal to help American businesses sell more of their products overseas. Reauthorization of the Export-Import Bank—or Ex-Im Bank, as it is called—will help small businesses export globally. Not only will it help small businesses, it will help large businesses such as Caterpillar and Boeing. These companies really need this to continue the job creation they have been involved in now for the last several years. As an example, last year Ex-Im Bank financed almost 300,000 private sector jobs at more than 3,600 different American companies in more than 2,000 communities throughout America. Foreign governments often provide the financing for companies that compete with American businesses. We need to do this to be more competitive. Ex-Im Bank levels the playing field by being available to help American exporters when private lending is not available. Unless we reauthorize the bank, it will hit its lending limit this month, eliminating support for American exporters.

The Export-Import Bank has always had strong bipartisan support, and the Democrats' legislation reauthorizing this measure has the firm backing of the Chamber of Commerce and organized labor. This is a strong combination that equals one result; that is, jobs.

Advancing these two items—the Ex-Im Bank and the small business capital bill—will continue the important bipartisan work we have done this week to get our economy back on track.

I am pleased that Democrats and Republicans in the Senate have been able to find common ground. President Franklin Roosevelt said:

> Competition has been shown to be useful up to a certain point and no further, but cooperation, which is the thing we must strive for today, begins where competition leaves off.

I think we have shown this week that achievement comes when Members all strive, as President Roosevelt said, not to compete but to cooperate.

RESERVATION OF LEADER TIME

Mr. REID. Would the Chair announce the business of the day.

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 11 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half hour and the Republicans controlling the second half hour.

Mr. REID. Mr. President, I note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONSUMER PROTECTION

Mr. BLUMENTHAL. Mr. President, consumer protection has been a priority for me throughout my career, as I know it has been for the Presiding Officer. Both he and I served together as attorneys general, and now as Senators he and I have worked to give consumers a voice against companies that harm them through deceptive and dangerous or abusive practices.

This month we recognize consumers in two ways. National Consumer Protection Week, recognized the week of March 4 through 10, is led by government and nonprofit groups and its focus is to encourage consumers to take full advantage of their consumer rights and make better informed decisions for themselves in the marketplace. This month we also recognize that many of the same consumer issues affecting Americans every day in their lives impact consumers in every corner of the world. So today we celebrate World Consumer Rights Day.

Every day ought to be Consumer Rights Day because, as President Kennedy once said, we are all consumers and we are consumers every day of every year. Organizations here in America such as Consumers Union and other consumer groups around the world celebrate World Consumer Rights Day as members of Consumers International, the nonprofit organization representing over 220 consumer groups in 115 countries.

Today also marks the 50th anniversary of a very special day in American history for American consumers. On March 15, 1962, President Kennedy sent a message to Congress calling for a national commitment to protecting consumer interests. Fifty years ago today, President Kennedy spoke about the consumer right to safety, to be informed, to choose, and to be heard. These rights are the foundation of what we now know as the Consumer Bill of Rights. The Consumer Bill of Rights has grown to include eight specific guarantees: the right to satisfaction of basic needs; the right to safety; the right to be informed; the right to choose; the right to be heard; the right to redress; the right to consumer education; and the right to a healthy environment.

Today, I wish to propose another right, a ninth right: the right to privacy. There is a growing need to defend individual rights to privacy in a multitude of areas. This country was founded—its basic bedrock—on a desire for personal privacy, on the right to be left alone. It is the reason people came to this country, avoiding unwanted and unwarranted intrusion on their personal space and on their rights and liberties. They came here out of a desire for religious freedom, economic liberty, and the security of their person and property against intrusion. It is a unique, bedrock American right—the right to privacy. Concerns about governmental invasion of personal privacy go back literally to the founding of our Republic and the protections guaranteed under the third amendment when the British lodged troops in our homes without permission, and the fourth amendment, when they searched our homes and seized goods and property from them.

I have heard numerous complaints from Connecticut residents who are concerned about their privacy. They are concerned about Federal and State intrusion into women's health care decisions. They are concerned about government efforts to combat terrorism through tracking of individuals by a GPS or cell phone tower location. Those potential invasions of privacy are by the government, by official

forces. But people today are also understandably and rightly concerned about corporate intrusion into their privacy. They are concerned about companies crawling the Web to collect consumers' personal information and selling it to marketers. They are concerned that mobile device apps can access and acquire the device owner's photos and address book without his or her knowledge or consent. They are concerned that credit scores are being created from their use of medications, and that those scores are being used to set personal health insurance premiums. They are concerned about companies that are compiling dossiers on their use of social media sites and blogs and selling those reports to prospective employers. They are concerned because they are powerless to prevent the distribution of their contact information to marketers who then deluge them with advertisements in the mail and by e-mail, and they are concerned about companies who don't secure their personal data and the damages that result from improper breaches and disclosures with the risk of identity theft and worse.

The Constitution was written to protect Americans from government intrusions into their privacy. I understand the difference between government intrusions and private sector invasions. But if the government were treating its citizens the way some companies are treating their customers, people would be outraged. They would be up in arms. They would be dumping tea in the Boston Harbor. The Supreme Court has just ruled that it is not OK for the government to track people via GPS in their car without a warrant, so why would it be OK for a company such as OnStar to track drivers who canceled their subscriptions and sell that information on their movements to marketers?

Americans—many of us, and others—were questioning the PATRIOT Act and its provisions that allow government to access records of what books citizens borrowed from the library and what Web pages they visited while they were there. Yet, companies are tracking consumers' every movement on line, through dozens—even hundreds—of cookies that are secretly installed on consumers' computers whenever they visit a Web site. We would be horrified if the government as a routine matter monitored pictures people take and who they interact with. Yet, according to news reports, mobile devices and apps are doing exactly that.

I believe it is time we protect Americans from intrusions into their personal privacy by companies or educational institutions or others who may not be part of the government. Big Brother or Big Sister no longer need wear a police uniform or a badge or a military uniform. It may well be under the guise of a corporate seal or insignia, and I believe it is time we protect against those intrusions, as well as others. In fact, it is a bipartisan concern. One of the few areas where there is agreement in Congress is the need for better protection of consumers for online privacy. We may differ on the substance; we may disagree as to what the contours and the specifics should be. I am concerned about this issue and I am encouraged by the bipartisan support for attention to it. I was heartened by the President's recent call for a consumer privacy bill of rights—a great beginning, a very positive step forward. I believe our approach to privacy must be comprehensive and robust.

As a threshold matter, companies that collect or share information about consumers should be required to get consumers' affirmative opt-in consent for collecting or sharing that data. Not an opt-out but an opt-in—specific, informed consent. That should apply online as well as offline. We have seen a lot of attention paid to Internet tracking and behavioral advertising. I think we ought to protect consumers from privacy invasions that come from the mail or over the phone. They particularly affect our seniors. If a company wants to collect, aggregate, share, sell, or by any other means, it should get consumers' permission; otherwise, it shouldn't be permitted.

We also need to pay attention to the collection of information through consumers' use of mobile devices. As we have seen recently, some mobile apps or operating systems are capable of tracking not just consumers' Web browsing but also their text messages, what they photograph, who they contact. Mobile devices need a system-wide, do-not-track option to allow consumers to control the distribution of their information.

Finally, the consumers' right to privacy also must encompass the right to prevent unauthorized distribution of that information. To that end, we need to establish requirements for companies that possess consumers' personal information to ensure they have security features in place to prevent data breaches. Those protections must be accompanied by remedies, by fines and penalties that make those rights and protections real so that consumers have a private right of action as well.

Congress is working on these issues. There have been numerous hearings and legislation has been proposed. Having the President add his voice to the call for privacy will only help. As with food safety, product safety, and Wall Street reform, companies themselves are demonstrating the need for legislation and some of them are joining in this effort very constructively.

So as we mark the 50th anniversary of President Kennedy's call to action, let us heed the importance of his message to Congress. He said: ''As all of us are consumers, these actions and proposals in the interests of consumers are in the interests of us all.''

We should be proud in this body of having continued the fight for consumer protection. It should be full-throated and full-hearted.

Americans went West to the Presiding Officer's State and to other States seeking open spaces, economic opportunities, as well as personal opportunities, including the right to privacy and being alone. That American right—that American spirit—is very much with us today. It is 50 years after President Kennedy first articulated it, but I believe it is as real and necessary today as ever.

Thank you, Mr. President. I yield the floor, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

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

JOBS ACT STRATEGY

Mr. MCCONNELL. Mr. President, I would like to start out this morning by saying I am glad we are turning to the bipartisan jobs bill that passed the House last week by such a lopsided margin. Here is a chance not only to help entrepreneurs build their businesses and create jobs but to show we can work together around here to get things done on a bipartisan basis.

Unfortunately, some of our friends on the other side do not seem to like that idea very much. Apparently, they would rather spend the time manufacturing fights and 30-second television ads than helping to create jobs.

First, they tried to even keep us from bringing up this jobs bill for debate in the Senate. Now we read they are trying to figure out ways to make this overwhelmingly bipartisan bill controversial. They want to pick a fight rather than get this bill to the President's desk, and then they are going to use the same strategy on a number of other bills.

Their plan is not to work together to make it easier to create jobs but to look for ways to make it easier to keep their own; then use it for campaign ads in the runup to the November elections.

If we are looking for the reason this Congress has a 9-percent approval rating, this is it. One day after we read a headline in the Congressional Quarterly about Democrats moving to slow a jobs bill that got 390 votes, we see a story today about how the No. 3 Democrat in the Senate is scheming to spend the rest of the year hitting the other side. It goes on to list all the ways he plans to do it, and then it says this:

None of these campaign-style attacks allow for the policy nuances or reasoning behind the GOP's opposition, and some of the

bills stand no chance of becoming law. But that's not really the point.

So at a moment of economic crisis, the No. 3 Democrat in the Senate—the Democrat in charge of strategy over there—is sitting up at night trying to figure out a way to create an issue where there is not one, not to solve our Nation's problems but to help Democrats get reelected.

I would like to have printed in the RECORD the Politico story I just referred to entitled ''Schumer schemes to hit GOP'' and ask unanimous consent to do so.

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

[From Politico, Mar. 14, 2012]

SCHUMER SCHEMES TO HIT GOP

(By Manu Raju)

NEW YORK.—Sen. Chuck Schumer believes he has found a political weapon in the unlikeliest of places: the Violence Against Women Act.

Republicans have several objections to the legislation, but instead of making changes, Schumer wants to fast track the bill to the floor, let the GOP block it, then allow Democrats to accuse Republicans of waging a ''war against women.''

It's fodder for a campaign ad, and it's not the only potential 30-second spot ready to spring from Senate leadership these days.

From his perch as the Democrats' chief policy and messaging guru, Schumer wants to raise taxes on people who earn more than $1 million, and many Democrats want to push the vote for April 15, a move designed to amp up the ''income inequality'' rhetoric just in time for Tax Day.

Schumer has a plan for painting Republicans as anti-immigrant as well. He's called the author of the Arizona immigration law to testify before his Judiciary subcommittee, bringing Capitol Hill attention to an issue that's still front and center for Hispanic voters.

None of these campaign-style attacks allow for the policy nuances or reasoning behind the GOP's opposition, and some of the bills stand no chance of becoming law.

But that's not really the point.

The real push behind this effort is to give Democrats reasons to portray Republicans as anti-women, anti-Latino and anti-middle class. In the aftermath of a fight over a payroll tax cut for American workers and an Obama contraception policy, Democrats are ready for this next set of wedge issues.

''If a party chooses to alienate the fastest-growing group of people in the country [Latinos] and the majority of people in the country, women, they do so at their peril,'' Schumer said Wednesday. ''This is an important issue.''

The move carries some risk. The economy is still struggling, with the jobless rate above 8 percent and millions seeking work. Gas prices are skyrocketing. And Schumer himself said last Sunday that Democrats would focus like a ''laser'' on the economy, a comment Republicans giddily pointed out as Senate Majority Leader Harry Reid (D-Nev.) pushed for judicial confirmations this week.

Schumer and Reid have also shown little interest in bringing forward a budget resolution this spring, saying that overall spending levels have already been agreed upon. That has opened them up to Republican charges they are steadfastly avoiding tough votes on the budget in favor of election-year point scoring.

Republicans see the latest chatter in the Senate as a political ploy by Democratic leaders to steady the ship in the face of a shaky political landscape.

''Sounds like all politics all the time,'' said Sen. John Cornyn (R-Texas), a member of his party's leadership who also serves on the Judiciary Committee. He added that Republicans would point out the ''cynical nature of what they're trying to do that it's not based on substance.''

Cornyn added: ''We'll be prepared to address their false narrative.''

The political strategy also risks inflaming partisan tensions. Arizona Republican Sens. Jon Kyl and John McCain criticized Schumer for calling for a hearing on their state's tough law that gives law enforcement new powers to target prospective illegal immigrants, a subject of a Supreme Court challenge.

Both men said they had no idea Schumer was inviting former state Sen. Russell Pearce—the author of the law—to testify at a hearing next month.

''Generally, senatorial courtesy indicates you talk to the member states,'' McCain said Wednesday. ''I have never seen Sen. Schumer do anything unless it had a political agenda.''

Schumer's office rejects the contention, saying that the New York Democrat notified Cornyn, the ranking Republican on the subcommittee, weeks before the offer was made public.

''This is a sunlight hearing,'' Schumer said Wednesday. ''The more the public hears some of these views from the people in Arizona, the more they'll ask for a more moderate position.''

Still, Schumer said there are moments of bipartisanship in which the two sides can come together, and he rejects the notion that Democrats are skirting efforts to prop up the economy, pointing to the passage of a highway bill Wednesday and expected approval of a House-passed small-business bill. Schumer said on the floor Wednesday that he hoped it was a ''moment of greater comity.''

But it may not last longer than a few days.

As soon as next week, the Senate may begin debating a bill to update expired provisions in the 1994 Violence Against Women Act, which provides assistance to victims of domestic abuse and other crimes. The bill, offered by Senate Judiciary Chairman Patrick Leahy (D-Vt.), was approved last month in his panel on a party-line vote, a sharp shift from seven years ago when the bill sailed through his committee.

''Not to reauthorize this is a tragedy,'' Sen. Dianne Feinstein (D-Calif.) said Wednesday. ''This is one more step in the removal of rights for women.''

Iowa Sen. Chuck Grassley, the top Republican on the panel, said while he supports a reauthorization of the law, he has concerns with the Democratic bill because it would lead to the issuance of thousands of additional visas under the U-Visa program, which gives illegal immigrants who are victims of crimes a chance to gain legal status if they cooperate with law enforcement.

On top of that, Grassley said it would fail to resolve immigration fraud and said grant money given to victims has not been adequately tracked. At the committee meeting last month, Grassley also raised concerns about language in Leahy's bill to broaden some of the law's provisions to those in same-sex relationships.

In response, Grassley introduced his own bill that included stricter criteria for U-Visa eligibility. But Democrats rejected that bill saying it would gut a key Justice Department enforcement office and undermine the protections in the law.

Republicans said Wednesday they might move their own bill once the issue heads to the floor. And they pushed back on Democratic criticisms that they were being insensitive to women.

''It's a politically popular bill, and if you try to improve it, or change it, and make it more efficient, then the complaint is you don't care about the issue,'' said Sen. Jeff Sessions (R-Ala.), a member of the committee. ''Nothing can be further from the truth.''

But Schumer added, that if the Republicans take positions that turn off voters, it'll be their own fault.

''When the Democrats let the extreme left run the show, we lose out. We've learned that lesson the hard way on many occasions,'' he said. ''When Republicans let the hard right run the show, they lose out.''

Mr. MCCONNELL. It lays out the Democratic strategy. The American people need to know what is going on in the Democratic-controlled Senate and, frankly, so should posterity. Fifty years from now, I would like an American doing a research project to look back at what is outlined in this Politico article so they can understand what this Democratic-controlled Senate is like, so they can understand what their priorities are. What did this country's leaders do to make America stronger for the next generation? Read this Politico piece. It provides a unique insight for future generations of Americans to understand what this Senate has done for the country. They can decide for themselves what they think of it and what its legacy should be.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

STARTUP COMPANIES

Mr. WARNER. Mr. President, I rise to speak on some of the issues that were just addressed by the Republican leader; that is, the legislation we will hopefully turn to next about creating jobs.

There are a lot of occasions when legislation comes to the floor of this Senate where I, similar to many Members, have a view on it, and we kind of weigh in on our positions. But this legislation, as it comes forward, is something for which I have more than just an intellectual or political or philosophical viewpoint. This legislation actually involves the business I was in for nearly 20 years.

I was proud of the fact that starting in the early 1980s—up until the time I was elected Governor of Virginia—I was involved, originally as an angel investor and then as a venture capitalist, in helping start companies across this country. I am proud to have been involved as a venture capitalist in funding almost 70 companies—those companies that grew to now employ tens of thousands of Americans.

As the Acting President pro tempore and some of the folks realize, a lot of those companies I was involved with were involved in telecommunications. I was the cofounder of Nextel, although I cannot seem to turn my cell phone off at the appropriate times. But I think that background gave me some sense of what it means to find a management team to find the capital and get a company started, to allow it to grow, create jobs, create economic prosperity.

This issue around capital formation, encouraging startups, encouraging entrepreneurs, is an issue on which we ought to be able to come together.

I see my good friend, the Senator from Kansas, who I know is going to speak in a few moments after I am finished. He and I have worked together on legislation called the Startup Act that has been endorsed by tech councils across the country, has been endorsed by and builds upon the work of the Kauffman Foundation, has been endorsed by and builds upon the work of the President's Council on Jobs and Competitiveness.

This ought to be an area where we can find common ground. Some of the ideas we are going to be discussing in this legislation are not only ideas Senator MORAN and I have worked on but I know Senator COONS and Senator RUBIO and Senator TOOMEY and Senator SCHUMER have worked on, also Senator TESTER, Senator MERKLEY, and Senator BROWN. There is a list, actually, in terms of the sponsors or cosponsors on a number of these bills—a number not in the single digits but literally in the dozens, probably in excess of 20 and, for the most part, almost every one of these pieces of legislation is bipartisan.

Why do we need to do this? Because if we look where the jobs have been created in America over the last 20 years, for the most part we find, unfortunately, the job growth from companies that are in the Fortune 1000 has been flat, if not slightly negative.

So while we applaud and support America's largest businesses because of increased productivity, because of globalization, those are not the companies adding jobs.

While every Member of the Senate, when they stand, stands and applauds small business—and I know my colleagues on the floor support small business, the traditional small businesses—the butcher shop, the retailer, the hardware store—there has not been much job growth amongst those companies as well.

So where have the jobs come from? The jobs have come from startup businesses, the kinds of businesses where an entrepreneur tries to scrape up a little bit of capital and takes an idea to market. Nearly 80 percent, according to the Kauffman Foundation, of all the new jobs created in America in the last 20 years have come from these firms.

We oftentimes think of these firms as technology firms. Many of them are—the Facebooks and Googles. But there are also the companies that span the reach of all kinds of different areas—the Lululemons, in terms of clothing stores, or Under Armour, a company that is in Maryland. These are the kinds of companies we need to do more to support in their growth, particularly right now when our economy is still struggling.

So what are we trying to do in this legislation? To my mind, there are three or four areas these bills need to address.

First of all, we need to make it easier for these startup companies to raise capital. Over the last decade, a lot of the traditional sources of capital raising have actually diminished, particularly since the financial crisis. The number of venture capital firms that exist, that fund companies, has actually decreased.

The ability for a company to go public—for which, perhaps, we got a little too excessive in the late 1990s, when we saw dot.com companies rush to go public and then that dot.com bubble burst and those companies failed—but that access to the public markets has been seriously constrained, partially because of added regulations, partially because of added reporting requirements, and partially because there has been a recognition that going public may not have been the right route for all these companies.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. WARNER. Mr. President, I ask unanimous consent for an additional 5 minutes.

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

Mr. WARNER. The result is, many of these startup companies end up having to sell to a larger company, and many of the ideas and many of the job-creation opportunities are then constrained.

We need to make it easier for these companies to access capital. Some of the ideas that are going to be proposed in the legislation will do that. Some of the reforms to reg A, reg D—trying to look at raising the number of investors a startup company can have before they have to report—all are sensible, appropriate incentives to help these startup companies get going.

I understand the very important requirements put in place by the so-called Sarbanes-Oxley legislation a few years back, but the cost of going public for startup companies now, on average, is $3 million to $4 million. Those costs are not costs that many of these startup companies can absorb. So some of the sensible reforms that have been proposed by Senator TOOMEY and Senator SCHUMER that I have been a proud cosponsor on, on a so-called on-ramp for startup companies, I think make sense as well.

There are also other tools we can use to help startup companies as they try to access capital.

We have seen a dramatic transformation of the Internet over the last 20 years. Every business, every part of our life has been changed. There is now the ability to use the Internet as a way for small investors to get the same kind of deals that up to this point only select investors have gotten that have been customers of some of the best known investment banking firms, where we can now use the power of the Internet, through a term called crowdfunding. There has to be appropriate investor restraints under this and investor protections, but crowdfunding using the Internet is another source of capital.

I hope that will be included in the legislation we are looking at, and I wish to commend Senator BENNET and Senator MERKLEY and Senator BROWN for working hard on that.

But there are other pieces of this legislation we have to take on if we are going to compete and win in this global competition for talent and ideas and have these jobs created in America. That is why I was so proud to work with Senator MORAN in our startup legislation that says attracting capital is one part of making a company successful. Another part of making a company successful is winning the worldwide competition for talent. Unfortunately, time and again what we are doing in this country is losing that competition for the best talent. There are literally tens of thousands of jobs that are going unfilled right now because we do not have enough American-born scientists, engineers, and mathematicians with graduate degrees.

Because we have the world's best system of higher education, we train many of the world's best and brightest. But with our current immigration policies, we train those folks at the Virginia Techs, the University of New Mexicos, get them that Ph.D. in engineering, and then we send them home when they have an opportunity to get a job in this country. We cannot talk to a tech company anywhere in America that says we are losing the competition for talent.

So what does our legislation do? We actually do what tech firms have called for for years, which is, in effect, to staple that green card to those individuals who get not a bachelor's degree but a master's or Ph.D. in the science, technology, engineering or math field, the so-called STEM fields, if they have a job opportunity in America.

We allow that intellectual capital and talent to actually reside and help create jobs. What we do as well is create a new category—in effect, an entrepreneur's visa. We have a very narrow category within our immigration policies right now that allows certain immigrants who want to come, invest in other companies in this country, and hire Americans, to get access to a visa. We would expand that category.

So if an individual can demonstrate that they have raised capital and are willing to hire a number of Americans, why do we not allow them to start that job in America rather than going somewhere else to do it? So I believe we put

in place small changes to our immigration policies that will, again, allow us to compete.

Our startup legislation looks at how we can encourage our universities because we need capital, we need talent, but we also need the intellectual capital, and that comes from ideas. Our universities across this country do a good job of doing basic research. Our universities do not do as good a job as they could and should in moving those ideas from the laboratory into the marketplace.

I know my time is about to expire so I will wrap up. What we do in our legislation as well is we do not add additional funding, but we take a small sliver, fifteenth-tenths of 1 percent of our existing research and development dollars, and actually use that as incentive funds to get ideas out of the laboratory into commercialization.

So I know we are going to move to this legislation shortly. I do believe there were a number of Members, particularly newer Members, who have been working on this legislation across the aisle. That was an attempt to put together a broad bipartisan bill. I am not sure that is going to come to pass on the Senate floor, unfortunately, because on this issue I do agree with the Republican leader. This should not be Republican or Democratic legislation. This should be a bipartisan piece of legislation that would actually encourage startups to get the capital, to get the talent, to get the ideas, so we can actually make sure we move forward on job creation.

The data is clear. The jobs over the last 20 years have come from these kinds of startup companies, the kind I was proud to help fund in my 20 years of identifying funding and working on these startup ventures. We need to do all we can to support them. We need to move this legislation as quickly as possible. My hope is that we can move beyond the rather narrowly drawn capital formation legislation that we are going to look at and look at these other areas around crowdfunding, around appropriate visa policies, around commercialization of intellectual capital to move these forward.

I am going to yield the floor for my friend and colleague, someone who has been a leader on this issue as well, someone whom I know has been crisscrossing the country—over the last couple of days, recently, he came back from Austin, TX, where he was celebrated as a startup guru—and that is my friend, the Senator from Kansas. Let me also acknowledge the Senator from South Dakota who has been a leader, particularly on the regulation D reform.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized.

Mr. THUNE. I ask unanimous consent to enter into a colloquy with my colleague from Kansas, Senator MORAN.

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

Mr. THUNE. Mr. President, I do appreciate the opportunity to join with my colleague, Senator MORAN from Kansas, to speak in support of the bill that is before us, H.R. 3606, the Jumpstart Our Business Startups, or JOBS Act. The JOBS Act is a bipartisan bill that passed the House of Representatives by a vote of 390 to 23. It has also been endorsed by the White House.

Small businesses are the engines of our economy, but government redtape is currently preventing these businesses from creating even more jobs. This commonsense bill would enable small businesses in South Dakota and across the country to better access much needed capital so they can make investments and add employees.

There is no reason it should not receive similar support in the Senate. Creating jobs should be one of our top priorities in the Senate. We owe it to the American people and to small businesses across this country that are counting on us to do something that will make it easier, less expensive, and less difficult to create jobs.

Too often what we see coming out of Washington, DC, are policies that put up obstacles and barriers and impediments to our small businesses, making it more difficult and more costly to create jobs. We see that daily with regulations coming out of many of the agencies in Washington, DC. The Senator from Kansas and I have been on the floor previously talking about regulations proposed by the Department of Labor—85 pages worth of regulations—that would, in a very prescriptive way, tell farmers and ranchers how young people can work in their farming and ranching operations.

It is amazing to me the level of detail to which those regulations go and how prescriptive they are with regard to something that has historically in this country and traditionally been very much a part of our heritage; that is, the young people growing up on farms, being involved in those farming and ranching operations, making them profitable. We have a Federal agency now that thinks it knows better. So these 85 pages of regulations came out and suggested that there are certain things young people on farms and ranches should not do—not only suggested them, it says they cannot do. They cannot herd cattle from the back of a horse, cannot work around grain bins and stockyards, cannot work with animals that are more than 6 months old, cannot work at elevations or heights more than 6 feet.

These are all things the Department of Labor, in its infinite wisdom, has determined they know better about farming and ranching operations in this country than do the people who work there. It would transform the way in which family farm and ranch operations are conducted. It adds additional cost and barriers to these farmers and ranchers who work so hard to make a living. They are the quintessential small businesses in our country. They work hard. They have a tremendous work ethic. They are people who make their living on the land, and all they simply ask from their government is that they not impose these types of barriers and regulations and impediments to them doing what they do best; that is, to feed the world and to create a strong and vibrant farm economy.

So the JOBS bill that is before us takes us in a different direction than all of the regulations I just referred to, which makes it more difficult and more expensive for people in this country to create jobs and to grow their businesses. This package of bills that came over from the House of Representative, which, as I mentioned, passed by a vote of 390 to 23—there were only 23 dissenting votes in the House, an overwhelming bipartisan majority in support of this legislation. And it is because these are such commonsensical things—so commonsensical that the White House has endorsed most of these bills, if not all of these bills.

They passed in the House of Representatives individually before they were packaged into this particular piece of legislation that was sent to us by that 390-to-23 vote. They were passed individually by huge votes. There is a piece of legislation, a bill that was passed in the House of Representatives, that Senator TOOMEY has the companion bill in the Senate that passed 421 to 1.

We had one of those bills that passed in the House of Representatives by a voice vote and the legislation—the bill I have as a part of this package passed in the House of Representatives by a vote of 413 to 11 last November. That was also included in this JOBS bill that has come over to us now from the House.

So what we want to do is make it easier for small businesses, which literally are the engine and the backbone of our economy, to create most of the new jobs in our economy; to do that, to create jobs, to invest capital, to put their capital to work, and to make our economy grow. So I would just say, by way of introduction, that I hope we cannot only get to this bill, get on this bill, but move quickly to pass it through the Senate, and get it on the President's desk because we do not have a lot of time to waste.

We all know what the statistics are. We know the high unemployment rate we have seen, the sluggish economic growth. We need to get this economy growing again. We need to make it easier, not harder, for small businesses to create jobs and to get access to capital. Many of these bills in this package—this small business jobs package—really do focus on the issue of capital

formation and allowing small businesses to have easier access to the capital that will allow them to grow their companies and to grow jobs.

So what I would like to do—my colleague from Kansas is here. As I said, he is someone who, as a member of the Senate Banking Committee, has been a leader on this legislation and on many of these issues, and a leader, as I mentioned earlier, in fighting regulations coming out of Washington, DC, that make it harder and more difficult and more expensive to create jobs, in particular, as I mentioned earlier—we had this discussion a couple of weeks ago with regard to these Department of Labor regulations impacting family farms and ranchers—just one of many regulations, the proliferation of regulations coming out of Washington, DC, that consistently are overreaching in terms of their impact and what they do to create additional burdens for our small businesses.

So I would like to yield to my colleague from Kansas for his observations and thoughts with regard to the JOBS bill that is before us, and what we as a Senate ought to be doing to try to create better conditions and a more favorable environment for our small businesses to create jobs.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. MORAN. I thank the Senator from South Dakota. I am pleased that we are here finally on a topic of significant importance to the country. We have heard for a long time about the necessity of creating jobs, of creating an opportunity for Americans to succeed. In fact, I would guess that is the primary motivation for why many of us serve in the Senate: so that every generation, those who follow us, but those even today have the opportunity to pursue the American dream.

I think our goal is not to create a circumstance in which no one fails, but the goal is to create a circumstance in which many succeed. So while it has been very disappointing that the Senate has failed for so long to get to the important topic that we should be addressing, job creation, we are finally here today.

I commend the leaders of both parties for reaching an agreement that allows us to begin the discussion and ultimately, hopefully, pass the JOBS bill in a form just like the House passed a few days ago.

I came to this issue of job creation and innovation and entrepreneurship with a realization that this Congress is failing—this administration is failing to address the issue of the deficit and the financial condition of our country. I believe my kids and those Americans who follow us are going to be in much worse shape because the administration and Congress have failed to address the issue we face today, which is our country is broke. We are spending money we do not have.

We cannot seem to resolve that issue in a way that puts us on a path toward a balanced budget. I will not ever walk away from my belief that is necessary. I will continue to work as a member of the Senate Appropriations Committee and in every capacity I have to see that we get our spending under control and that we are on that path toward balancing the budget. Because of the failure of the administration and the leadership of the Senate to address this issue of the deficit, I started looking for ways in which we could approach the deficit in perhaps a way that is easier for us to grasp, easier for us to deal with.

And that is job creation, because the more people who are working the more taxes that are collected and the more money comes into the coffers of the U.S. Treasury to pay down this tremendous debt. These two issues are actually related. I have tried to figure out how to explain to Kansans why the deficit matters in whether they have a job or can pursue a better job. The answer is that no business is going to expand, grow, or invest in capital and plant and equipment and hire new people if they are concerned that the United States might be the next Greece—the next country in which our creditors decide that we are no longer capable of paying back this tremendous debt that has accrued over a long period of time now and escalated in the last few years.

The goal of paying down the debt is certainly worthy in and of itself. But if we can do that, we also have the opportunity to create an environment in which business feels comfortable in hiring more employees and adding plant and equipment and investing in their business and growing it.

Today we come to the floor in support of the JOBS bill, as passed by the House of Representatives, in hopes that the Senate will do so in short order. It is the opportunity we have to make a tremendous difference so that Americans can, today and in the future, pursue that American dream.

We, over a long period of time, have created many impediments toward the success of that job creation. The Senator from South Dakota talked about the regulatory environment, and we have highlighted on the Senate floor a major overreach that fundamentally alters the way we live our lives back home in Kansas in regard to family farms. Farming and ranching in our State is a family operation. Yet the Department of Labor believes it is their role to tell parents what that relationship should be with their own children and their ability to work on their own family farm. It is just an example of this mindset in our Nation's capital that exists today that says we know better than the American people, better than the moms and dads, about the families, about what is the role for a young person working on a family farming operation in Kansas and across the country. That is an example.

Those regulations are there today and they are being proposed all the time. In my view, if the Federal Government believes it has this significant role to play in defining the relationship between moms and dads and working on a farm, what can't the Federal Government tell us back home what we can and cannot do? If they can go so far as to—I guess I should say, who more than a parent cares more about the safety of their own children, whom they are working side by side with or working with a neighboring farm? This is but one example in which we have decided that the government knows best, the Department of Labor knows better than moms and dads.

Once we reach that kind of conclusion, then there is nothing off limits for the Federal Government to say we know better than the citizens of our country. That is a misguided approach to the Federal Government, the role that we are to play. But it is a handicap and hindrance toward the ability of the American people, the entrepreneurs, and those who believe in the free enterprise system—it is an impediment to them ever pursuing that opportunity to create jobs and an economy that encourages job creation.

I appreciate earlier Senator WARNER, the Senator from Virginia, being on the floor talking about legislation he and I are working on called the Startups Act. We continue to believe there is a great opportunity for entrepreneurs. In fact, research from the Kaufman Foundation shows that startups less than 5 years old have accounted for nearly all of the net jobs created in the United States from 1980 to 2005. In fact, startups create 3 million new jobs every year.

What we are about today is a portion of this legislation that Senator WARNER and I have introduced, the Startups Act, about the capital formation provisions of the bill. We have been working with Senators COONS and RUBIO and others to blend these provisions into the Startups Act, but a portion is now on the Senate floor. I am here to commend the opportunity that we have today to pursue that portion of job creation. It is not enough, but it is certainly a great beginning point for us in the Senate to follow the lead of the House of Representatives and create an opportunity for capital formation.

This legislation creates tax incentives that will spur investments in startups, reduce the regulatory burden and barriers that make it harder for startups to grow, and win the battle for us to see that the United States remains a highly competitive, innovative, entrepreneurial environment in which businesses succeed. I suppose what we say about businesses succeeding—it is not about necessarily the business success but about the consequences of that success, which is that Americans will have jobs, the opportunity to put food on the families' tables, save for their kids' education, save for their retirement, and meet the responsibilities we have as parents and members of the family.

I join the Senator from South Dakota in my strong support for moving forward and passing this JOBS legislation. I also ask the Senate to consider further legislative initiatives, such as the one Senator WARNER and I have, to make sure we do more to create that circumstance, that opportunity in America, where everybody has that opportunity to succeed, and that many will.

Mr. THUNE. Will the Senator yield for a question on jobs and the economy?

Mr. MORAN. Yes.

Mr. THUNE. I appreciate the Senator's legislation. I hope it is acted on. It is a rare day indeed when you have legislation that has bipartisan support, and in the case of the JOBS bills, also supported by the White House. That is a tremendous rarity here and one we ought to take advantage of. We should move the JOBS package quickly. I hope the Senator's bill will enjoy similar bipartisan support and will be something we can act on as well.

These are the types of things that right now I think the American people—certainly the people of South Dakota and the people of Kansas—want to see us focus on. They want us to do things that will make it easier, less expensive, and less difficult to create jobs in the country and put people back to work and grow this economy and provide more opportunities for Americans.

The question I have for the Senator from Kansas, because it bears directly on the issue of the economy and has to do with regulations and policies coming out of Washington, is this: We are talking about a package of legislation that would enable access for job creators and small businesses to the capital they need to invest and grow their business and create jobs. It is enabling, in a sense, allowing better conditions for capital formation, especially for small businesses, which is where most of the jobs are created. There are other things the Federal Government is not doing that it should be doing to help the economy grow and drive down input costs for people in the country.

I want to refer to the issue of fuel prices. In a State such as mine, where you have an agricultural economy, it is very dependent upon energy, in terms of diesel fuel, fertilizer, and all those things that are incredibly dependent upon energy. It is also a rural State with a pretty big geography, where people have to drive long distances. When you see gas approach the $4 range—and in my State, it is not there yet, but in other States it is—that is a very serious impediment.

There are things we ought to be doing to open more domestic production, to allow people who want to invest in energy to do so. We have lots of laws and regulations that make it more difficult, that prohibit it. We have what I would call some low-hanging fruit or easy opportunities to do that. The Keystone Pipeline is one that would bring about 800,000 barrels a day into this country, where it would be processed and refined and put Americans to work and lessen the dependence we have on foreign oil.

I am curious how that impacts a State such as Kansas and how it impacts job creation and small businesses, when we talk about Federal policies that have a direct bearing on our economy and people's everyday lives, and particularly with regard to small businesses, which we are talking about today.

Mr. MORAN. Mr. President, I have no doubt that the ability to have an economic recovery and create jobs is, in so many ways, determined by what happens with our actions in regard to an energy policy and the development of our own resources.

Certainly, while we are here to talk about jobs today, there is a national security, military stance issue that is, unfortunately, related to our strong dependence upon foreign energy supplies. This Congress, this administration, in my view, needs to get out of the way and let the private sector begin the process of meeting our country's energy needs.

When we talk about high prices and complain about the price at the pump, what we are complaining about is that the supply is insufficient to meet the demand. The supply is not increased and the demand goes up, and the resulting consequence is increasing prices. You can remedy that by increasing the supply of energy in this country. We have a vast array of those resources that, because of the regulations, environment, and the policies of the Federal Government, we are unable to pursue. The market would send the message that we need more supply, but the regulators are in the way of making that happen.

In a State such as ours, as the Senator from South Dakota says, we have to drive long distances. Agriculture is dependent upon natural gas for fertilizer and fuel, for irrigation, and diesel fuel matters to us; and we have many industries that consume energy in the creation of manufactured products. Every time the price goes up, the ability to create a new job goes down.

This country desperately needs an energy policy that is focused on the production of energy, using our own resources to meet our own country's needs. It is a significant and critical component if we are going to get the economy back on track and have jobs created.

Mr. THUNE. Mr. President, I say to my friend, I believe sincerely—and I think he does—that we need a real all-of-the-above strategy. We ought to be developing all forms of American energy, homegrown energy, domestic energy. I appreciate it when the President of the United States seizes upon that slogan and talks about supporting an all-of-the-above strategy, but his policies tell another story. If you look at things the Senator raised, such as increasing our domestic supply, homegrown production, there are a series of things that would do that. Approving the Keystone Pipeline would be the first one. It is right there—20,000 shovel-ready jobs. It is a $7 billion initial investment, with 800,000 barrels of oil coming to us from Canada, as opposed to coming from Venezuela and Hugo Chavez and the Middle East. It is such a no-brainer hanging out there for us to immediately act on.

Unfortunately, the administration said no to that. They also said no to development in Alaska, no to offshore development, no to oil shale development, no to streamlining permits, and no to new leases. All have been put off limits, which are the very things that would increase the supply and thereby address the issue the Senator mentioned, which is that we have too much demand chasing too little supply and, therefore, too high of a price, which bears on the pocketbooks of every single American, every small business, every family.

We need a real all-of-the-above strategy, not just lipservice to it, which is what we get out of this administration. It is an example——

[Disturbance in the Gallery.]

The ACTING PRESIDENT pro tempore. The Sergeant at Arms will restore order in the Senate.

Mr. THUNE. This is an example of where public policy directly influences economic outcome. There is no way you cannot argue that more supply would lead to lower prices at the pump. For sure, more domestic supply would lead to more American jobs. That is what we are talking about today with jobs in the economy. That is why this issue bears directly on it.

I appreciate my colleague from Kansas pointing out the impact it has in his State on small businesses, farmers, and ranchers, who generally have to drive long distances.

I will wrap up by simply saying again that we need to focus like a laser on jobs. That is why I was pleased we were able to get the majority leader and, after some time our leader to move to jobs. We have lots of strategies mentioned that were going to be considered on the Senate floor.

The real issue in the minds of the American people, in terms of getting people back to work, is putting policies in place that will enable and make it easier and less difficult and less costly to create jobs.

Briefly, in addition to the bill the Senator from Kansas talked about—his bill—my legislation, which is included in the JOBS package, passed by 413 to 11. What it does is makes it easier for small and growing businesses to solicit investors to help them raise the capital they need to create jobs and, in the process, help our economy grow.

Specifically, it would remove a regulatory roadblock that is currently preventing small businesses from reaching out to potential accredited investors and thereby allowing these job creators to more easily raise capital from accredited investors nationwide.

This is commonsense legislation that will enable small businesses and start-up companies to better access the capital they need to expand and create jobs.

My provision has a lot of support from American job creators around the country. The Small Business and Entrepreneurship Council called it ''a long overdue solution that will widen the pool of potential funders for entrepreneurs . . . to seek and secure the capital they need to compete and grow. . . . Our economy will improve once entrepreneurs are provided the tools, opportunities and incentives they need to hire and invest.''

There are 175 Democrats in the House of Representatives who have supported this bill as a stand-alone bill. It has been endorsed by the SEC's Advisory Committee on Small and Emerging Companies. When it was included in the broader JOBS bill in the House, it passed, as I said, by a vote of 390 to 23. If job growth is our priority here in the Senate, we should not delay on moving forward with this important job-creating legislation.

I thank my colleague from Kansas for joining me on the floor today to talk about the need to pass this JOBS Act and get it on the President's desk, as he said he wanted in his State of the Union Address back in January. It represents exactly what we should be doing here in Washington; that is, creating a stable and productive economic environment by easing regulatory burdens and unleashing economic potential without adding to the national debt.

The Senator from Kansas very ably addressed in his remarks earlier the importance of getting spending and debt under control, because that does also create conditions that are favorable to small businesses to invest. If there is uncertainty out there about what the Federal Government is going to be doing in terms of borrowing and spending, it creates a cloud under which it is very difficult for job creators to create jobs.

I hope that my colleagues here in the Senate will support this important piece of legislation and ensure job creators across the country have access to the capital they need to hire and invest and that we will start taking steps to address the impediments, the barriers, the obstacles that are in place right now to the development of domestic energy production that will ease the price at the pump and make it more affordable for small businesses to invest in this country.

Mr. MORAN. Mr. President, just to conclude, I would like to thank and commend the Senator from South Dakota for his leadership on these issues and again express my pleasure that we are finally taking up legislation that will make it easier for new businesses to raise capital, creating a phase-in period for small, growing companies to comply with government regulations that will help young businesses expand and could ease the decision to go public, and, finally, to update our securities laws that have been in place since the 1930s to reflect a 21st-century marketplace so they can expand access to capital for entrepreneurs to grow their businesses. And all this is done with the goal of creating the circumstance where many will succeed.

I thank the Chair.

Mr. THUNE. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Delaware is recognized.

Mr. COONS. I thank the Chair.

(The remarks of Mr. COONS pertaining to the introduction of S. 2194 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. COONS. I thank the Chair, and I yield the floor.

Mr. REID. Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

JUMPSTART OUR BUSINESS STARTUPS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 3606, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3606) to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 1833

Mr. REID. On behalf of Senator REED of Rhode Island, Senators LANDRIEU, LEVIN, BROWN of Ohio, and others, I have a substitute amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] for Mr. REED, for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, and Mr. HARKIN, proposes an amendment numbered 1833.

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

Mr. REID. On that amendment, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1834 TO AMENDMENT NO. 1833

Mr. REID. I have a first-degree perfecting amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1834 to amendment No. 1833.

The amendment is as follows:

At the end, add the following new section:

SEC. ___.

This Act shall become effective 7 days after enactment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1835 TO AMENDMENT NO. 1834

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1835 to amendment No. 1834.

The amendment is as follows:

In the amendment, strike ''7 days'' and insert ''6 days''.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion on the substitute amendment which has already been submitted at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the substitute amendment No. 1833 to H.R. 3606, an Act to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Harry Reid, Mary L. Landrieu, Ben Nelson, Carl Levin, Jon Tester, Mark Begich, Patty Murray, Mark R. Warner, Christopher A. Coons, Robert Menendez, Thomas R. Carper, Joseph I. Lieberman, Debbie Stabenow, Robert P. Casey, Jr., Jeanne Shaheen, Tom Udall, Jim Webb, Barbara Boxer.

AMENDMENT NO. 1836 TO AMENDMENT NO. 1833

Mr. REID. Mr. President, on behalf of Senator CANTWELL, for herself and Senator JOHNSON of South Dakota, Senator GRAHAM, Senator SHELBY, and others, I have an amendment at the desk to the language proposed to be stricken.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Ms. CANTWELL, for herself and Mr. JOHNSON

of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY and Mr. KIRK, proposes an amendment (No. 1836) to the language proposed to be stricken by amendment No. 1833.

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

Mr. REID. I ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1837 TO AMENDMENT NO. 1836

Mr. REID. I have a second-degree amendment that is also at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1837 to amendment No. 1836.

The amendment is as follows:

At the end, add the following new section:

SEC. ___.

This title shall become effective 5 days after enactment.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion with respect to the Reid for Cantwell, Johnson of South Dakota, Graham, Shelby amendment.

The PRESIDING OFFICER. The cloture motion having been presented under to rule XXII, the Chair lays before the Senate the cloture motion which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment No. 1836 to H.R. 3606, an Act to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Harry Reid, Ben Nelson, Mary L. Landrieu, Carl Levin, Jon Tester, Mark Begich, Patty Murray, Mark R. Warner, Christopher A. Coons, Robert Menendez, Thomas R. Carper, Joseph I. Lieberman, Debbie Stabenow, Robert P. Casey, Jr., Jeanne Shaheen, Tom Udall, Jim Webb, Barbara Boxer.

MOTION TO COMMIT WITH AMENDMENT NO. 1838

Mr. REID. Mr. President, I have a motion to commit the bill with instructions which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to commit the bill (H.R. 3606) to the Committee on Banking, Housing and Urban Affairs with instructions to report back forthwith with an amendment (No. 1838).

The amendment is as follows:

SEC. ___.

This Act shall become effective 3 days after enactment.

Mr. REID. I ask for the yeas and nays on that motion.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1839

Mr. REID. I have an amendment to my instructions at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1839 to the instructions (amendment No. 1838) to the Motion to Commit H.R. 3606.

The amendment is as follows:

In the amendment, strike ''3 days'' and insert ''2 days''.

Mr. REID. I ask for the yeas and nays on that.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1840 TO AMENDMENT NO. 1839

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1840 to amendment No. 1839.

The amendment is as follows:

In the amendment, strike ''2 days'' and insert ''1 day''.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion on the bill, which is at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair lays before the Senate the cloture motion which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 3606, an Act to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Harry Reid, Ben Nelson, Jon Tester, Charles E. Schumer, Joe Manchin III, Patty Murray, Mark R. Warner, Christopher A. Coons, Robert Menendez, Thomas R. Carper, Joseph I. Lieberman, Debbie Stabenow, Robert P. Casey, Jr., Tom Udall, Jim Webb, Barbara Boxer.

Mr. REID. I ask unanimous consent that the mandatory quorum required under rule XXII be waived for the cloture motions just filed.

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

Mr. REID. Mr. President, let me take a moment to review what has transpired this morning.

Last week the House passed the pending small business capital formation bill by a vote of 390 to 23. President Obama has endorsed the bill very publicly; thus, this is a measure the Senate should consider expeditiously and pass in short order.

The Republican leader and I have had preliminary conversations about how to process this bill. Initial indications are that the Senate would not be able to agree to a time agreement providing for a limited number of amendments; so I proceeded today to ensure consideration of at least two amendments. So, on Tuesday, the Senate will vote first on the motion to invoke cloture on the Reed of Rhode Island amendment. That amendment is sponsored also by LANDRIEU, LEVIN, and BROWN of Ohio, which is a substitute, as I have indicated.

After disposition of that amendment, the Senate will next vote on a motion to invoke cloture on the bipartisan Cantwell, Johnson, Graham, Shelby Export-Import amendment. This Ex-IM Bank amendment is very important. The legislation just last year created 300,000 jobs and affected 2,000 communities in America. These jobs I am talking about are all American jobs.

After disposition of that amendment, the Senate would then vote on a motion to invoke cloture on the underlying bill. In the meantime, I am always open to unanimous consent agreements to aid in disposition of the bill. So I look forward—if there are things I can help with, I will be happy to do this.

I will say this. I spoke before my presentation here today to my friend from Colorado Senator UDALL. I have worked with him not for days, not weeks, not months but years on an issue that is extremely important to our country; that is, an issue to help credit unions, which have been so important to our country over the years.

During this economic meltdown we have had around the country, in Nevada credit unions have been a lifeblood for small businesses and individuals. We have tried and worked to get this matter on the floor. There is always some reason for not doing it. I understand the anxiousness of my friend from Colorado to have it on this bill. I will be happy to see if there is a way of doing this by consent, but there is no other way of doing it except by consent because it is not germane to the bill before us.

As I told him, I am starting today, on my own, to begin the procedural efforts to have this brought before the Senate. I think we have waited long enough. There is never a good time. There is always some reason of somebody that we have to do this now. This is a bill that presents problems for people because a number of the banks don't want this to happen. But I do, and I am going to do everything I can to have this brought before the Senate.

I will be happy to yield to my friend from Colorado. If he has any questions of me, I will be happy to respond to those or, if he has anything I can respond to in the way of any consent agreement that he wants or whatever, I am here at his disposal.

The PRESIDING OFFICER. The senior Senator from Colorado is recognized.

Mr. UDALL of Colorado. Mr. President, I would like to acknowledge the majority leader and the great work he has put forth on this important opportunity we have. I know the majority leader has some additional comments he would like to make. But I intend to stay after the majority leader concludes and make my case, once again, for why this is so important.

Mr. REID. Mr. President, through the Chair to my friend from Colorado, he has talked about the work I have done. I haven't done much. He has been the leader, and I have been with him all the way. This is truly his issue. He is right. I have supported him from the very beginning, and I admire his resilience. Each time he brings this up, he is pushed back for some other reason. Personally, as I told him today, it is to the point now where we are going to have a vote on this.

There will be people coming to me, Why are you doing this? We are going to have a vote on this. Democrats and Republicans are going to have to make a decision where they stand for American credit unions.

Mr. UDALL of Colorado. Mr. President, if I might, I am going to expound on what the majority leader just shared with the body.

The whole point of what we are going to do on the JOBS Act is to expand access to capital for businesses across our great country. But the legislation I have introduced on a bipartisan basis that also has a bipartisan twin in the House of Representatives is aimed at truly small businesses. I would like to explain a little bit more about what I mean.

What we would do is, in effect, lift a regulation. We have talked about deregulation in Washington, unleashing the creativity in our business sector. What this legislation would do is deregulate an industry that is raring to go to help small businesses.

Before I get into the specifics, I would like to thank my Republican cosponsors, who include Senators OLYMPIA SNOWE, RAND PAUL, and SUSAN COLLINS. The legislation in the House has been introduced by Republican ED ROYCE, with whom I served when I was a Member of the House, and he has over 40 Republican cosponsors in the effort on the other side of the Capitol.

In sum, this is a bipartisan, commonsense way to create jobs and help our small businesses without costing taxpayers a dime. When we add the elements in what we are trying to do, there are positives across the board.

The reason this is so important is that there continues to be a phenomenon in our country where small businesses are starving for credit, but the Federal Government is standing in the way of them procuring that credit. As I said to start my remarks, I am talking about the smallest of small businesses. These are the men and women who need $50,000, $100,000, maybe even $200,000 to move from their garage to a retail storefront, to renovate their sales floor or to upgrade or purchase equipment and, in the process, they will expand. Too often, frankly, they are too small to be worth the time of banks or they don't fit the lending guidelines of the bank's corporate headquarters. But credit unions are standing ready to lend money to these Americans to support their businesses and create jobs.

The leader just moved to the Jumpstart Our Business Startups Act; the acronym is the JOBS Act. That is appropriate. The House passed it last week. This bill is aimed at increasing the availability of startup companies by expanding and easing the process of undergoing an IPO. That is an acronym for initial public offering. That is a noble goal, especially as our economy still struggles to create jobs. But the problem is we are still leaving small businesses behind. Why is that? The JOBS Act is aimed at companies with revenue under $1 billion. Let me repeat that: $1 billion, with a B. These companies may well need help with an IPO, but I am talking about offering relief to Main Street.

In light of this, I am still committed—and I appreciate the majority leader's comments. I have been very persistent. I am still committed to allowing credit unions to increase the amount of money they can lend to small businesses and our bipartisan Small Business Lending Enhancement Act was the first amendment filed to this bill and I still hold hope that we will find a way to include it in the bill. We ought to pass it immediately. We would see immediate results if we did so.

Let me share a couple examples of why I think this is so important, and they are Colorado centric. I know the Presiding Officer makes a point to talk about his home State on an ongoing basis and to highlight Ohioans who make a difference. So let me talk about two small business owners in Colorado who made a difference with the help of credit unions.

Stacy Hamon owns the 1st Street Salon in Thornton, and Lisa Herman of Broomfield owns Happy Cakes Bakeshop in Denver's Highland Square. They were turned away from their banks. In the breach, credit unions arrived and they lent to these two small businesswomen and they were able to grow their businesses and hire their fellow Coloradans to help them in those business enterprises. They didn't need a billion-dollar IPO. They needed a small bridge loan. We could be making a huge difference in many communities with mere pennies on the dollar of what the JOBS Act is focused on. If my amendment were to be considered in this JOBS Act, it would actually help small businesses directly create jobs.

Credit unions, simply put, specialize in these small business loans to small business. In fact, the Federal Reserve has told us that many banks have quit considering loans such as those under $200,000 because they aren't worth the bank's time. Credit unions know these small business owners, and they have money to lend to them. Unfortunately, Federal law still limits the amount of small business loans a credit union can extend to these businesses to 12 percent of their assets. Over 500 credit unions nationally have had to stop or slow down their business lending because of this—I can't think of any other word but ''strange''—strange Federal limit on helping small businesses. It is hard to believe. Government is telling these financial institutions they can't help create jobs in their local communities, and that is why my bipartisan amendment would double the amount of money credit unions can offer to small businesses.

We have heard from the banks over the years they think it is unfair they have to compete with credit unions. But the fact is, it is not about banks or credit unions; it is about small businesses. I have to say these two different kinds of financial institutions serve very different small business populations. Credit unions serve the smallest of small businesses that often must resort to their credit cards, literally, to invest in their businesses and keep their cash flow going, but in the process they create jobs. These are business owners who have been, by and large, turned away by the banks. I am not talking about taking business away from anyone. I am suggesting, at the very least, we let the credit unions loan to these small business owners whom the banks don't want to do business with because they are too small.

Credit unions have been in existence for over 100 years, and today they only represent about 5 percent to 6 percent of all small business loans. Even if they were to increase their lending, if credit union lending were to increase and their market share were to double as a result, they would still only have 7 to 9 percent of market share, and banks would have nearly 90 percent of the markets for themselves.

Let me rebut another concern that has been expressed. The banks say this proposal is unproven or somehow an unsound way of increasing small business loans, but as I have said, the credit unions have been making small business loans since the early 1900s. There were not any limits on how much credit unions could lend until 1998. The credit union sector has a regulator, the National Credit Union Administration, and it has endorsed lifting or even eliminating the small business lending cap. It just makes sense to do this, and I cannot believe we are going to let these squabbles between the banks and credit unions keep job creators from going to work in the small small business sector.

There is a rush to pass the JOBS Act, which would help billion-dollar companies with their IPOs. But how about we take a little bit of time to help small business owners, such as Stacy and Lisa, by passing our bipartisan amendment? After all, if we are going to tell

the American people this bill is about increasing access to capital, let's start by helping the small business owners on Main Street that fuel our job engine. This is what we would do in Colorado. It is how we would apply our commonsense approach to business.

I plead with my colleagues to consider the important effect this would have. So, in summary, our bipartisan amendment is projobs, it is deregulatory, and it would not cost the taxpayers a dime. It would release $10 billion in capital across our country and, conservatively, 100,000 new jobs would be a result.

Let's take this up. Let's fuel the economic engine with the capital of our small business sector.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak until noon in a colloquy with the distinguished majority whip. Senator AYOTTE and a number of other Senators will join us during the next 30 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SYRIA

Mr. CORNYN. Mr. President, I know Senator DURBIN, Senator AYOTTE, and others will be coming to the Senate floor, but let me get it started. According to the United Nations, more than 8,000 Syrians have been murdered in attacks by the desperate regime of President Bashar al-Asad of Syria.

We continue to receive press reports on a daily basis about Asad's forces summarily executing, imprisoning, and torturing demonstrators who want nothing more than what we take for granted, which is to live in freedom in a democracy. This week we learned that dozens of Syrian women and children—some infants as young as 4 months old—were stabbed, shot, and burned by government forces in Homs. I know it is difficult for most of us to comprehend—and most of us would be so repulsed by it, we would not want to comprehend the kind of brutality Asad is perpetrating against his own people. Yet in the face of these atrocities, Russia continues to prop up the Asad regime by providing arms that are being used to slaughter these innocent Syrian civilians.

Russia is the top supplier of weapons to Syria and reportedly sold Syria up to $1 billion or more worth of arms just last year. Western and Arab governments have pleaded with Russia to stop supplying these weapons to the Asad regime, but it has refused so far.

Russia is not just passively supplying weapons to the Asad regime, it has recently admitted to having military weapons instructors on the ground in Syria training Asad's Army on how to use these weapons. Russian weapons, including high-explosive mortars, have been found at the site of atrocities in Homs.

This picture taken by Al Arabiya and Reuters reads:

> Russian Foreign Minister Sergei Lavrov, why don't you visit Homs to see your weapons and their effectiveness in the bodies of our children!

The Syrian people recognize Russia's role in their current misery, as reflected by this picture and by this statement to Russian Foreign Minister Sergei Lavrov. Rosoboronexport is Russia's official arms dealer. This company handles about 80 percent of Russia's weapons exports, according to its Web site, and it is spearheading Russia's continuing effort to arm the Asad regime, which, in my mind, makes them an accessory to mass murder.

I see the distinguished majority whip has come to the floor, and I want to give him a chance to make any appropriate remarks he cares to make and engage in a colloquy with him.

First, let me close my comments on this concern I have. Not only is Russia selling arms to Syria to kill innocent civilians, but you can imagine my shock and dismay when I found out that our own Department of Defense has a no-bid contract with this same Russian arms merchant that is helping arm the Asad regime.

This is a no-bid contract to provide approximately 21 dual-use Mi-17 helicopters for the Afghan military. As I said, this is a no-bid Army contract that was awarded last summer that is reportedly worth as much as $900 million. So the only thing I can conclude is that the U.S. taxpayer is providing money to a Russian arms dealer to purchase Russian helicopters for the Afghan military, and the very same arms merchant is arming President Asad's regime and killing innocent Syrians.

I, along with 16 of my colleagues, have sent a letter to Secretary Panetta expressing our alarm and concern over these arrangements, asking for further information and urging them to reconsider this contract with Rosoboronexport.

I want to stop on this point: We must keep the pressure on the Department of Defense to reconsider this contract and on the Russians to cease all arms sales to the Asad regime.

I am hopeful that the upcoming debate on the repeal of Jackson-Vanik will provide an opportunity for the Senate to further examine these serious issues.

Again, let me state my appreciation to Senator DURBIN, the distinguished majority whip, for his participation in expressing alarm and concern over these circumstances and ask him to make any comments he cares to make.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Mr. President, it is my honor to join my colleague and friend, the Senator from Texas. We are on opposite sides of the aisle, but we are on the same side of this issue.

Listen to what America has said about what is happening in Syria: Almost 8,000 innocent people have been killed in the streets of Syria by Bashar Asad, the dictator. The people who expressed their concern and objection to his policies are mowed down and killed in the streets, their homes are bombed, and nothing is being done. Sadly, the United States tried to engage the United Nations Security Council to join the Arab League and others condemning what Asad is doing to these innocent people. Our efforts were stopped by China and Russia.

The relationship between Russia and Syria is well documented. They have been close allies for many years. We also know they are providing about $1 billion in Russian military aid to the Syrian dictator to kill his own people in the streets. That is part of this.

I have to join Senator CORNYN in saying how concerned we were when we learned that one of the leading military exporters of Russia, Rosoboronexport, is not only doing business in Syria but with the U.S. Government. Now, I understand the history. We are buying Russian helicopters to help the Afghans defend their country against the Taliban. The helicopter of choice in Afghanistan today is, I believe, the old Soviet M–17 or M–18 helicopter. So our government is buying these Russian helicopters to give to the Afghan Government to fight the Taliban.

We are, in fact, doing business with the very same company and country that is subsidizing the massacre in Syria. It is right for us, as Members of Congress, to make that point to Secretary Panetta and the Department of Defense. I think it is also appropriate for us to ask why we are not converting the Afghan defense forces, their security forces, to another helicopter.

Can I be so bold as to suggest it be made in the United States of America since we are paying for it? Why aren't we doing that? Why aren't we creating jobs in America and training these Afghans on helicopters that come from our country, that are as good or better than anything the Soviets ever put in the air? I don't have a preference on an American helicopter. I don't have any producers in my State, so I am not into that particular bidding war. I would not get into it. But I do believe sending a word to the Russians immediately that our relationship of buying these helicopters for Afghanistan and subsidizing their military sales to Syria should come to an end. That is what this letter is about.

We cannot pass resolutions on the Senate floor condemning the bloodshed in Syria and ignore the obvious connection: Russian military is moving arms into Syria that are used to kill innocent people.

I noticed the Senator from Texas brought a photograph with him. This photograph I am going to show is one of a Russian warship, an aircraft carrier, docked at the Syrian port of Tartus on January 8 of this year. What we could not turn into a poster is the video clip showing the Russian warship

captains being greeted like royalty by the Syrian Minister of Defense who went out to welcome the ship. This Russian aircraft carrier was launched from a port used by the same export company.

I cannot go any further in saying that the particular company involved sent goods on this particular ship, but the fact is obvious. Russia has become a major supplier of military arms to the Syrian dictator who is killing innocent people. We are doing business with that same military company, Rosoboronexport.

It is time for us to step back and say to the Russians: We can no longer continue this relationship. If you are going to subsidize the killing of innocent people, we cannot afford to do business with you.

America, we have to acknowledge the obvious. No matter what they are paying, it is not worth the loss of innocent life in Syria.

I thank the Senator from Texas for joining me. I think we have 16 or 17 colleagues who are joining us in the bipartisan effort to raise this issue.

I hope the Russians will understand that once and for all they can't play both sides of the street, and we in the United States should draw the line.

I thank the Senator from Texas.

Mr. CORNYN. Would the Senator yield for a question?

Mr. DURBIN. Yes.

Mr. CORNYN. Is the Senator aware the very same arms merchant, Rosoboronexport, has also been documented selling weapons to Iran and Venezuela? As a matter of fact, according to one published report, as late as 2005, Rosoboronexport sold Iran 29 Tor-M1 anti-air missile systems worth $700 million. And Iran's Revolutionary Guard Corps successfully tested this anti-air missile system in 2007. It is also reported that in 2012, Russia will deliver T–72 tanks, BMP3 infantry fighting vehicles, and BTR–80A armored personnel carriers to Venezuela—just at our back yard in South America. Also, in the last 5 years in Venezuela, Hugo Chavez, a dictator with strong ties to Cuba and Fidel Castro, bought $11 billion worth of arms through Rosoboronexport.

I wonder if the Senator finds that surprising or alarming.

Mr. DURBIN. I say to the Senator from Texas, a point the Senator said earlier, and I think bears repeating at this moment in our dialogue, is that Rosoboronexport is a Russian state-controlled arms export firm. This is no so-called private company. This is a firm run by the Russian Government. As the Senator from Texas goes through the litany of countries they are supplying, he is going through a litany of countries that have never in recent times had the best interests of the United States at heart. If the Russians, through their government company, want to supply Iran—which we know is an exporter of terrorism not only in the Middle East but around the world and in the United States—if they want to supply them, if they want to supply sniper rifles and arms to the Syrians to kill their own people—why in the world are we doing business with them? There ought to be a line we draw at some point. We have no moral obligation to do business with a firm that is, in fact, supplying those who are killing innocent people and our enemies around the world.

I thank the Senator from Texas for raising those points.

Mr. CORNYN. Mr. President, I would also ask the distinguished majority whip whether he is aware of the testimony within the last couple of weeks before the Armed Services Committee of Secretary Panetta and the Chairman of the Joint Chiefs of Staff. The testimony focused a lot of attention on Iran, the principal state sponsor of international terrorism in the world today, and its destabilizing influence in the Middle East. Iran is seeking, as they are, a nuclear weapon which would at the very least create a nuclear arms race in the Middle East and a consequential destabilizing effect in that region.

I know the Senator is aware that Syria is one of the principal proxies for Iran. General Dempsey and Secretary Panetta both said if Syria were to go by the wayside, as various other countries have in the Arab spring, that it would be a serious blow to Iran's aspirations for hegemony in the Middle East and something that is dangerous to the peace and stability of that important region. I know the Senator is aware of the close relationship between Syria and Iran, and I wonder if the Senator cares to comment on that connection.

Mr. DURBIN. I would say to the Senator from Texas—and I am sure he has studied this, as I have—it is hard to parse out the elements in the Middle East and decide who is fighting for which team. But when it comes to Syria, they have consistently aligned themselves with Iran, and in that alliance Iran has been very supportive of Syria and Hezbollah, another terrorist group that is operating primarily through Syria. So that close connection is a matter of concern to me.

Our goal in the Middle East is to create stability and to stop the march of these dictators in the Middle East who are killing innocent people and denying them their most basic rights. We have tried everything short of military intervention, which I would not call for in the Syrian situation. But we have tried everything else—diplomatic and economic—to put pressure on Syria. We should continue to, and we should join with other nations and continue the efforts of the United Nations.

But we can't get this job done when Russia plays the roll of outlier, supplying both Syria and Iran with military arms and support. If they want to truly join us in a stable situation in the Middle East, they should tell Asad it is over—and it clearly is over. This man could never legitimately govern Syria from this point forward after killing so many innocent people.

I hope what we are doing today is suggesting to this administration and Secretary Panetta another avenue to let the Russians know that we find it unacceptable for them to supply arms to what is a destabilizing influence in that part of the world.

Mr. CORNYN. Mr. President, I can't recall whether I asked unanimous consent, but if I haven't done it up to this point, I ask unanimous consent that the letter we are referring to that 17 Senators sent to Secretary Panetta be printed in the RECORD at the close of these comments.

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

(See exhibit 1.)

Mr. CORNYN. Mr. President, I know there are other Senators and signatories of this letter who may well be coming to the floor to talk more about this issue, but I wish to express my gratitude to Senator DURBIN. It is important that the United States speak out on behalf of people who have no real voice in defense of their most basic human rights. I would point out that President Asad and his regime are not only killing innocent civilians, but also are being supplied by Russia, who also—maybe not coincidentally—vetoed the sanctions the U.N. was considering with regard to Iran.

So it is very important that we not only speak up on behalf of the people who have no voice and no defense, but also make sure the U.S. Government, at a very minimum, isn't doing business with the very same arms merchants that are supplying weapons to President Asad with which to kill innocent Syrians.

I am advised that Senator AYOTTE was planning on coming. She is a signatory to this letter and a member of the Armed Services Committee who shares many of these same concerns. However, she is not going to be able to come at this time. I am sure she will be coming to speak on this later.

So with that, I yield the floor, and I thank my colleague.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. I thank my colleague from Texas for speaking with me on this issue. We have been working on it together.

EXHIBIT 1

U.S. SENATE,
Washington, DC, March 12, 2012.

Hon. LEON R. PANETTA,
Secretary of Defense,
Washington, DC.

DEAR SECRETARY PANETTA: We write to express our grave concern regarding the Department of Defense's ongoing business dealings with Rosoboronexport, the same Russian state-controlled arms export firm that continues to provide the Syrian government with the means to perpetrate widespread and systematic attacks on its own people. According to the United Nations, over 7,500 Syrian civilians have reportedly been killed in the attacks by the desperate regime of

Syrian President Bashar al-Assad, and we continue to receive grisly accounts that his government forces are summarily executing, imprisoning, and torturing demonstrators and innocent by-standers.

Russia remains the top supplier of weapons to Syria, selling reportedly $1 billion or more worth of arms to Syria in 2011 alone. Its arms shipments to Syria have continued unabated during the ongoing popular uprising there. According to Thomson Reuters shipping data, since December 2011, at least four cargo ships have travelled from the Russian port used by Rosoboronexport to the Syrian port of Tutus. Another Russian ship that was reportedly carrying ammunition and sniper rifles, weapons which Syrian forces have used to kill and injure demonstrators, reportedly docked in Cyprus in January and then went on to deliver its cargo directly to Syria. In addition, recent reports from human rights monitoring organizations confirm that Russian weapons such as 240mm F–864 high explosive mortars have been found at the site of ongoing atrocities committed against civilians in Homs, Syria. In January of this year, Rosoboronexport reportedly signed a new deal with the Syrian government for 36 combat jets.

Even in the face of crimes against humanity committed by the Syrian government during the past year, enabled no doubt by the regular flow of weapons from Russia, the United States Government has unfortunately continued to procure from Rosoboronexport. It is our understanding that the DoD, through an initiative led by the U.S. Army, is currently buying approximately 21 dual-use Mi–17 helicopters for the Afghan military from Rosoboronexport. This includes the signing of a no-bid contract worth $375 million for the purchase of aircraft and spare parts, to be completed by 2016. Media reports indicate that the contract included an option for $550 million in additional purchases, raising the contract's potential total to nearly $1 billion.

While it is certainly frustrating that U.S. taxpayer funding is used to buy Russian-made helicopters instead of world-class U.S.-made helicopters for the Afghan military, our specific concern at this time is that the Department is procuring these assets from an organization that had for years been on a U.S. sanctions list for illicit nuclear assistance to Iran and in the face of the international community's concern is continuing to enable the Assad regime with the arms it needs to slaughter innocent men, women, and children in Syria. Other options are very Rely available as demonstrated by the fact that the first four Mi–17 helicopters that the U.S. Navy purchased for Afghanistan came through a different firm. We ask that the DoD immediately review all potential options to procure helicopters legally through other means.

U.S. taxpayers should not be put in a position where they are indirectly subsidizing the mass murder of Syrian civilians. The sizeable proceeds of these DoD contracts are helping to finance a firm that is essentially complicit in mass atrocities in Syria, especially in light of Russia's history of forgiving huge amounts of Syria's debt on arms sales, as occurred in 2005 during President Assad's state visit to Moscow.

President Obama has called on President Assad to step down, and he has declared that ''Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.'' As such, we urge you to use all available leverage to press Russia and Russian entities to end their support of the Assad regime, and that includes ending all DoD business dealings with Rosoboronexport, which is within your authority as Secretary of Defense. Continuing this robust business relationship with Rosoboronexport would undermine U.S. policy on Syria and undermine U.S. efforts to stand with the Syrian people.

This is a serious policy problem, and we ask for your personal attention to help solve it Thank you for your service to our nation and your dedication to the members of our Armed Forces.

Sincerely,

John Cornyn; Kirsten E. Gillibrand; Richard J. Durbin; Kelly Ayotte; Richard Blumenthal; James E. Risch; David Vitter; Sherrod Brown; Chuck Grassley; Marco Rubio; Jon Kyl; Robert Menendez; Roger F. Wicker; Robert P. Casey, Jr.; Mark Kirk; Ron Wyden; Benjamin L. Cardin.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. DURBIN. Mr. President, I have been in the House and Senate for a number of years. After a while, we detect certain trends. One of the things I am wary of, having seen over the years the abuses associated with it, are these freight train bills that seem as though they are moving so fast, with big majority support—bills that oftentimes will pass one Chamber or the other and come roaring into the other Chamber and maybe pass too quickly and usually with regret.

At a later point someone stops and reflects and says: We went too far. We didn't read into this all the things that could occur. We should have taken a little more time because at the end of the day a lot of innocent people suffer.

The Senate historically has been the Chamber—I served in the House, but the Senate historically has been the Chamber that has, as George Washington characterized it, been the saucer that cools the tea. As I said, I served in the House of Representatives, and with elections every 2 years, as the Presiding Officer knows, many Members of the House move quickly on issues because here comes another election campaign and Members don't want to miss an opportunity. The Senate, with longer terms and a different set of rules, tries to be more deliberate—sometimes too deliberate, I might add, but at least has that charge under our Constitution.

The reason I am raising this point is we have a bill that is coming over from the House, and the Republican leader has been frantic to bring this bill to the Senate floor. It is characterized by the Republicans as a House jobs bill. It is, in fact, a bill which relates to startups, new businesses, and the regulatory requirements of these businesses. The bill basically exempts a large number of new startup companies from basic regulation.

I have a letter that I ask unanimous consent be printed in the RECORD, dated March 13 of this year, by Mary Schapiro who is the Chairman of the Securities and Exchange Commission.

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

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 13, 2012.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: Last week, the House of Representatives passed H.R. 3606, the ''Jumpstart Our Business Startups Act.'' As the Senate prepares to debate many of the capital formation initiatives addressed by H.R. 3606, I wanted to share with you my concerns on some important aspects of this significant legislation.

The mission of the Securities and Exchange Commission is three-fold: protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy, and companies seeking access to capital should not be hindered by unnecessary or overly burdensome regulations. At the same time, we must balance our responsibility to facilitate capital formation with our obligation to protect investors and our markets. Too often: investors are the target of fraudulent schemes disguised as investment opportunities. As you know, if the balance is tipped to the point where investors are not confident that there are appropriate protections, investors will lose confidence in our markets. and capital formation will ultimately be made more difficult and expensive.

While I recognize that H.R. 3606 is the product of a bipartisan effort designed to facilitate capital formation and includes certain promising approaches, I believe that there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

DEFINITION OF EMERGING GROWTH COMPANY

The ''IPO On-Ramp'' provisions of H.R. 3606 provide a number of significant regulatory changes for what are defined as ''emerging growth companies''. While I share the view that it is important to reduce the impediments to smaller businesses conducting initial public offerings in the United States, the definition of ''emerging growth company'' is so broad that it would eliminate important protections for investors in even very large companies, including those with up to $1 billion in annual revenue. I am concerned that we lack a clear understanding of the impact that the legislation's exemptions would have on investor protection. A lower annual revenue threshold would pose less risk to investors and would more appropriately focus benefits provided by the new provisions on those smaller businesses that are the engine of growth for our economy and whose IPOs the bill is seeking to encourage.

CHANGES TO RESEARCH AND RESEARCH ANALYST RULES

H.R. 3606 also would weaken important protections related to (1) the relationship between research analysts and investment bankers within the same financial institution by eliminating a number of safeguards established after the research scandals of the dot-com era and (2) the treatment of research reports prepared by underwriters of IPOs.

H.R. 3606 would remove certain important measures put in place to enforce a separation between research analysts and investment bankers who work in the same firm. The rules requiring this separation were designed

to address inappropriate conflicts of interest and other objectionable practices—for example, investment bankers promising potential clients favorable research in return for lucrative underwriting assignments—which ultimately severely harmed investor confidence. In addition, H.R. 3606 would overturn SRO rules that establish mandatory quiet periods designed to prevent banks from using conflicted research to reward insiders for selecting the bank as the underwriter. I am concerned that the changes contained in H.R. 3606 could foster a return to those practices and cause real and significant damage to investors.

In addition, the legislation would allow, for the first time, research reports in connection with an emerging growth company IPO to be published before, during, and after the IPO by the underwriter of that IPO without any such reports being subject to the protections or accountability that currently apply to offering prospectuses. In essence, research reports prepared by underwriters in emerging growth company IPOs would compete with prospectuses for investors' attention, and investors would not have the full protections of the securities laws if misled by the research reports.

DISCLOSURE. ACCOUNTING AND AUDITING MATTERS

H.R. 3606 would allow emerging growth companies to make scaled disclosures, in an approach similar to that currently permitted under our rules for smaller reporting companies, and would provide other relief from specific disclosure requirements, during the 5-year on-ramp period. While there is room for reasonable debate about particular exemptions included in the disclosure on-ramp, on balance I believe allowing some scaled disclosure for emerging growth companies could be a reasonable approach.

H.R. 3606, however, also would restrict the independence of accounting and auditing standard-setting by the Financial Accounting Standards Board (''FASB'') and the Public Company Accounting Oversight Board (''PCAOB''). These provisions undermine independent standard-setting by these expert boards, and both the FASB and the PCAOB already have the authority to consider different approaches for different classes of issuers, if appropriate.

Moreover, H.R. 3606 would exempt emerging growth companies from an audit of internal controls set forth in Section 404(b) of the Sarbanes Oxley Act during the five-year on-ramp period. IPO companies already have a two-year on-ramp period under current SEC rules before such an audit is required. In addition, the Dodd-Frank Act permanently exempted smaller public companies (generally those with less than $75 million in public float) from the audit requirement, which already covers approximately 60 percent of reporting companies. I continue to believe that the internal controls audit requirement put in place after the Enron and other accounting scandals of the early 2000's has significantly improved the quality and reliability of financial reporting and provides important investor protections, and therefore believe this change is unwarranted.

''TEST THE WATERS'' MATERIALS

H.R. 3606 would allow emerging growth companies to ''test the waters'' to determine whether investors would be interested in an offering before filing IPO documents with the Commission. This would allow offering and other materials to be provided to accredited investors and qualified institutional buyers before a prospectus—the key disclosure document in an offering—is available.

There could be real value to permitting these types of pre-filing communications: it could save companies time and money, and make it more likely that companies that file for IPOs can complete them. Indeed, there are some SEC rules that permit ''test the waters'' activities already. However, unlike the existing ''test the waters'' provisions, the provisions of H.R. 3606 would not require companies to file with the SEC and take responsibility for the materials they use to solicit investor interest, even after they file for their IPOs. This would result in uneven information for investors who see both the ''test the waters'' materials and the prospectus compared to those who only see the prospectus. In addition, as with the provisions relating to research reports, it could result in investors focusing their attention on the ''test the waters'' materials instead of the prospectuses, without important investor protections being applied to those materials.

CONFIDENTIAL FILING OF IPO REGISTRATION STATEMENTS

H.R. 3606 would permit emerging growth companies to submit their registration statements confidentially in draft form for SEC staff review. This reduction in transparency would hamper the staff's ability to provide effective reviews, since the staff benefits in its reviews from the perspectives and insights that the public provides on IPO filings. It also could require significant resources for staff review of offerings that companies are not willing to make public and then abandon before making a public filing. SEC staff recently limited the general practice of permitting foreign issuers to submit IPO registrations in nonpublic draft form because of these concerns, and expanding that program to all IPOs could adversely impact the IPO review program.

CROWDFUNDING

H.R. 3606 also provides an exemption from Securities Act registration for ''crowdfunding,'' which would permit companies to offer and sell, in some cases, up to $2 million of securities in publicly advertised offerings without preparing a registration statement. For the past several months, the staff has been analyzing crowdfunding, among other capital formation strategies, and also has discussed these strategies with the Commission's newly created Advisory Committee on Small and Emerging Companies.

I recognize that proponents of crowdfunding believe this method of raising money could help small businesses harness the power of the internet and social media to raise small amounts of very early stage capital from a large number of investors. That said, I believe that the crowdfunding exemption included as part of H.R. 3606 needs additional safeguards to protect investors from those who may seek to engage in fraudulent activities. Without adequate protections, investor confidence in crowdfunding could be significantly undermined and would not achieve its goal of helping small businesses.

For example, an important safeguard that could be considered to better protect investors in crowdfunding offerings would be to provide for oversight of the industry professionals that intermediate and facilitate these offerings. With Commission oversight, these intermediaries could serve a critical gatekeeper function, running background checks, facilitating small businesses' provision of complete and adequate disclosures to investors, and providing the necessary support for these small businesses. Commission oversight would further enhance customer protections by requiring intermediaries to protect investors' and issuers' funds and securities, for example by requiring funds and securities to be held at an independent bank or broker-dealer.

Investors also would benefit from a requirement to provide certain basic information about companies seeking crowdfunding investors. H.R. 3606 requires only limited disclosures about the business investors are funding. Additional information that would benefit investors should include a description of the business or the business plan, financial information, a summary of the risks facing the business, a description of the voting rights and other rights of the stock being offered, and ongoing updates on the status of the business.

CHANGES TO SECTION 12(g) REGISTRATION THRESHOLDS

H.R. 3606 also would change the rules relating to the thresholds that trigger public reporting by, among other things, increasing the holder of record threshold that triggers public reporting for companies and bank holding companies. The current rules have been in place since 1964, and since that time there have been profound changes in the way shareholders hold their securities and in the capital markets.

Last spring, I asked our staff to comprehensively study a variety of capital formation-related issues, including the current thresholds for public reporting. At this point, I do not have sufficient data or information to assess whether the thresholds proposed in H.R. 3606 are appropriate. I do recognize that a different treatment may be appropriate for community banks that are already subject to an extensive reporting and regulatory regime.

RULEMAKING

H.R. 3606 requires a series of new, significant Commission rulemakings with time limits that are not achievable. For example, the rulemaking for the crowdfunding section has a deadline of 180 days, and it specifically requires the Commission to consider the costs and benefits of the rules. Given (1) that much of the data that would be used to perform such analyses is not readily available and (2) the complexity of such analyses, this time frame is too short to develop proposed rules, perform the required analyses, solicit public comments, review and analyze the public comments, and adopt final rules. I believe a deadline of 18 months would be more appropriate for rules of this magnitude.

I stand ready to assist Congress as it addresses these important issues. Please call me, at (202) 551–2100, or have your staff call Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551–2010, should you have any questions or comments.

Sincerely,

MARY L. SCHAPIRO,
Chairman.

Mr. DURBIN. The Securities and Exchange Commission is a Federal agency created under the administration of Franklin Delano Roosevelt after the Great Depression. When the stock market cratered in the Great Depression, Franklin Roosevelt stepped up and said: We need an agency that will oversee and regulate Wall Street so that people who would care to invest in American companies can have confidence they are investing in a company and a process that follows a rule of law. There will be transparency and disclosure by these companies on a regular basis, by formula, as to what they are earning, what they are losing, and what their assets may be.

That has continued for almost 80 years. The Securities and Exchange Commission has created in the process a credible market in the United States of America for the sale of equities and

securities. Now comes this bill from the House of Representatives, this so-called jobs bill, which wants to change that. They are suggesting when certain companies get started—startup companies—they be excused from requirements under the law from the Securities and Exchange Commission. The argument is that there is too much paperwork, too many regulations, and smaller startup companies can't get started because there are too many legal requirements.

Well, we first took a look at what they consider to be smaller companies getting started, and they define them as companies with $1 billion a year in annual revenue—$1 billion. Unfortunately, those who make over $1 billion in revenue in a year comprise only about 10 percent of American businesses. That means by definition they are characterizing 90 percent of American businesses and startups as small businesses that need a special break when it comes to regulation.

So over the years we got into a debate—whether it is the regulation of banks or the regulation of these startup companies or those that are going public, selling securities—over the years we got into a debate about whether the government has gone too far. Are there too many rules? I am open to that suggestion. I think we should be open to it. If there is a way to protect the public and investors and still create businesses in this country that generate jobs, I want to hear about them and I want to support them. But too often we go too far. When we go too far and are not careful, some terrible things occur.

The letter I have now entered into the RECORD from Mary Schapiro of the Securities and Exchange Commission addresses this bill. She said:

> While I recognize that H.R. 3606 is the product of bipartisan effort designed to facilitate capital formation and include certain promising approaches, I believe that there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

The administration has said they are open to the idea of changing some of these laws. What Mary Schapiro, the Chairman of the Securities and Exchange Commission, has suggested is that we put provisions in the bill in the Senate which will protect investors.

Yesterday I spoke about the testimony before the committee. I commend to my colleagues the statement of Professor John Coffee, Adolf A. Berle, professor of law from Colombia University Law School, at a hearing before the Senate Banking Committee on December 1, 2011.

Mr. President, I want my colleagues, many of whom have just seen a few press accounts of this bill, to consider carefully the statement made by Professor Coffee. He has analyzed this bill and raised some important questions about whether it goes too far.

I will be joining some of my colleagues in offering a substitute which improves the law for startup companies but also makes certain that we protect investors and makes certain as well that at the end of the day we don't end up with egg on our faces. How many times has Congress been called on, when the private sector runs amok, goes too far, and starts failing in every direction, to bail them out? We saw it most graphically with the bailout of the major banks not that many years ago. We have seen it in the past with the bailout of the savings and loan industry. We have seen it happen time and time again.

Who ends up holding the bag when government regulation is not adequate to make sure people don't go overboard? The American taxpayers. They end up holding the bag, not to mention innocent victims along the way.

I understand we have to change the law, but I am hoping we can change it in a constructive way. Opening the sale of stocks and securities to everyone who can pull up a chair and open a laptop is not in the best interests of investors across America. It is certainly not in the best interests of many Americans who would find themselves losing their life's savings and any investment funds they might have in the process. Making certain the people who sell these stocks are, in fact, registered and credible; making certain the statements they make can be backed with hard evidence as opposed to a promise; and making sure, as well, that we have, in the process of business undertaking, the safeguards in place so there will not be excessive—as I said yesterday—irrational exuberance that leads to the failure of any marketplace or securities—that, to me, is the best thing we can achieve.

I think these two items to which I have referred—both from Mary Schapiro, Chairman of the Securities and Exchange Commission, as well as Professor Coffee—establish the case for being careful. Let's not jump on this freight train and watch it as it plows into a barricade. Let's make certain that what we do is thoughtful, that it does engender economic growth but not at the expense of the integrity of America's financial markets or at the expense of innocent investors.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The senior Senator from Minnesota is recognized.

ORDER OF PROCEDURE

Ms. KLOBUCHAR. Madam President, I ask unanimous consent that Senators be permitted to speak as in morning business for the next 90 minutes, with the majority controlling the first 45 minutes—with Senators permitted to speak therein for up to 10 minutes each—and the Republicans controlling the final 45 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

Ms. KLOBUCHAR. Madam President, I am honored to be here today with the women Senators to talk about the reauthorization of the Violence Against Women Act—a law that has a history of passing this Chamber with broad bipartisan support.

I would note that there are many authors of this bill—I think up to something like 58 authors currently—and the women who are speaking today include myself and Senators FEINSTEIN, HAGAN, MURKOWSKI, SHAHEEN, MURRAY, and BOXER. Also sponsoring the bill are Senators COLLINS, SNOWE, MCCASKILL, GILLIBRAND, CANTWELL, LANDRIEU, MIKULSKI, and STABENOW. The bill is led by Senator LEAHY and Senator CRAPO. So we are here today to pledge our support for this bill and to ask our colleagues to move forward with this bill.

The Violence Against Women Act was a landmark bill when it first became law back in 1994. Back then, it started a sea change in attitudes about violence against women, and it sent a strong message to the country saying that sexual assault and domestic violence are serious offenses that will not be tolerated. We heard that message loudly and clearly in my State, and I am proud to say that our State has always had a strong tradition of standing against these crimes. In fact, no conversation in our State about domestic abuse would be complete without mentioning former Senator Paul Wellstone and his wife Sheila, whom we miss dearly. The Wellstones put so much time and energy into bringing these issues out of the shadows and taking a subject that many people considered at the time a ''family matter'' and saying: You know what, domestic violence is not something we can just sweep under the rug; it is a crime. It hurts families, it hurts children, and we are going to do something about it.

While I led the prosecutor's office in Hennepin County, MN, for 8 years, we put a lot of focus on the victims' needs and particularly the children's needs in domestic violence cases because it does not take a bruise or a broken bone for a child to be a victim of domestic violence. Kids who witness domestic violence are victims too. In fact, we had a poster on the wall in our office. It was a poster of a woman with a bandaid on her nose, holding a baby, and it said: Beat your wife and your kid will go to jail. Do you know why? The statistics show that kids who grow up in violent homes are 76 times more likely to commit acts of domestic violence themselves. It is a sobering number, and overall the statistics for these kinds of crimes are staggering. More than one in three women in the United States have experienced rape, physical violence, or stalking by an intimate partner in their lifetime. Every year, close to 17,000 people lose their lives to domestic violence.

So, once again, this is not just a family matter, this is a matter of life and death—and not just for the victims but oftentimes for the law enforcement officers who are all too often caught in the line of fire. I have seen this in my

own State. In fact, I saw it just a few months ago when I attended the funeral of Shawn Schneider, a young police officer in Lake City, MN.

Officer Schneider died after responding to a domestic violence call. A 17-year-old girl was being abused by her boyfriend. When Officer Schneider arrived at the scene, he was shot in the head. He literally gave his life to save another. I attended his funeral, and I still remember those three little children—the two boys and the little girl with the blue dress with stars on it—going down that aisle of the church. When you see that, you realize that the victims of domestic violence are not just the immediate victims, it is an entire family, it is an entire community.

We know all too well just how devastating domestic violence and sexual violence can be to victims, as well as to entire communities, which is why it was such a good thing that 6 weeks ago we passed a VAWA reauthorization bill out of the Judiciary Committee and that the bill has the support of 58 Senators, including 6 Republicans. I am glad this bill has continued to attract bipartisan support. I wish it was unanimous. Just 7 years ago, in fact, the reauthorization bill passed the House by a vote of 415 to 4, and it passed the Senate by unanimous consent with 18 Republican cosponsors. I know this year some of my Republican colleagues on the Judiciary Committee are not supportive of this bill, but it is my hope that while they may disagree with the bill, they will not stop this bipartisan bill from advancing. Combating domestic violence and sexual assault is an issue on which we should all be able to agree.

Many of the provisions in the reauthorization bill made important changes to current law. The bill consolidates duplicative programs and streamlines others. It provides greater flexibility in the use of grant money by adding more ''purpose areas'' to the list of allowable uses. It has new training requirements for people, providing legal assistance to victims. And it takes important steps to address the disproportionately high domestic violence rates in Native American communities.

The bill also fills some gaps in the system, and I am pleased to say it includes legislation I introduced with Senator KAY BAILEY HUTCHISON to address high-tech stalking—cases where stalkers use technology such as the Internet, video surveillance, and bugging to stalk their victims. The bill will give law enforcement better tools for cracking down on stalkers. Just as with physical stalking, high-tech stalking may foreshadow more serious behavior down the road. It is an issue we need to take seriously. We need the tools for our law enforcement to be as sophisticated as what is used by those who are breaking the law.

I know Senator FEINSTEIN is coming soon, and we have a number of women who are going to be speaking today. I want to remind everyone in this Chamber that domestic violence takes its toll. One of the most memorable cases I had was when our office prosecuted the case of a woman who was killed in Eden Prairie, MN. She was a Russian immigrant. Her husband was a Russian immigrant. They did not have many friends in the community. She was fairly isolated. She was most likely a domestic violence victim for many, many years. Well, one day this man killed his wife. He then took her body parts down to Missouri. He left some of the body parts there. And the entire time, he had their 4-year-old daughter in the car with him. He then drove back to Minnesota and confessed to the crime.

When they had the funeral, there was only me, our domestic violence advocate, the grandparents who had come from Russia, and this woman's identical twin sister. What had happened at the airport when they arrived was that this little 4-year-old girl—who had never seen her aunt, who had never seen her mother's identical twin sister—ran down that hallway when she saw her aunt for the first time and hugged her and said: Mommy, mommy, mommy, because she thought her mom was back.

It reminds us all that domestic violence is not just about one victim; it is about children, it is about family, and it is about a community.

We all know this bill has always enjoyed broad bipartisan support. The women of the Senate know it. There are already three Republican women on this bill and many others, I hope, to come. We believe in this bill. We ask our colleagues to support this bill.

I see my colleague Senator FEINSTEIN is here. I know as a member of the Judiciary Committee—she and I are the only two women members of the Senate Judiciary Committee—she has taken a lead on this issue for many, many years.

Thank you very much, Madam President.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I thank the Senator from Minnesota for her remarks. For a long time, I had been the only woman on the Judiciary Committee, and I am just delighted that she is there as well and that we share the same point of view with respect to this bill.

I rise today to urge the Republican leadership of the Senate to allow this piece of legislation that protects American women from the plague—and it is a plague—of domestic violence, stalking, dating violence, and sexual assault to come to the floor of this Senate for a vote.

I was in the Judiciary Committee, and I voted for the original Violence Against Women Act. It was authorized for 6 years. We reauthorized it. It served another 6 years. And now the bill is up for reauthorization. It came out, surprisingly, from the Judiciary Committee on a split vote. Unfortunately, that was a party-line vote. I might say, I was stunned by this vote because never before had there been any controversy—in more than a decade and a half, in all of this time—about this bill.

This act is the centerpiece of the Federal Government's effort to combat domestic violence and sexual assault, and it has positively impacted the response to these crimes at the local, State, and Federal levels, and I hope to show this.

The bill authorizes a number of grant programs administered by the Departments of Justice and Health and Human Services to provide funding for emergency shelter, counseling, and legal services for victims of domestic violence, sexual assault, and stalking.

As a matter of fact, I was thinking last night, when I was mayor of San Francisco back in the early 1980s, I started the first home for battered women, which is La Casa de las Madres. We were able to fund it because it was such a critical need. Women being battered had no place to go and therefore, often stayed in the home where they were battered again and again.

This bill also provides support for State agencies, rape crisis centers, and organizations that provide services to vulnerable women.

American women are safer because we took action. Today, more victims report incidents of domestic violence to the police, and the rate of nonfatal partner violence against women has decreased by 53 percent since this bill went into effect in 1994. These figures are from the Department of Justice. So here we have a 53-percent decrease in the rate of nonfatal partner violence.

The need for the services was highlighted in a recent survey by the Centers for Disease Control and Prevention, which found that, on average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States—24 a minute by an intimate partner in the United States. Over the course of the year now, that equates to more than 12 million women and men.

In California, my State, 30,000 people accessed crisis intervention services from one of California's 63 rape crisis centers in 2010 and 2011. These centers primarily rely on Federal Violence Against Women Act funding—not State funding—to provide services to victims in communities.

In 2009 alone, there were more than 167,000 cases in California in which local, county, or State police officers were called to the scene of a domestic violence complaint. Madam President, 167,000 cases—that is many.

Despite the fact that the underlying bill has 58 cosponsors from both parties, not a single Republican member of the Judiciary Committee voted to advance the legislation.

Now, the bill that came out of Judiciary does have some changes, and I want to talk about them for a moment. It creates one very modest new grant program. It consolidates 13 existing programs. It reduces authorization levels for all other programs by nearly 20 percent. And the savings—17 percent. The bill is reduced in cost by 17 percent. That is $136 million. It encourages effective enforcement of protective orders. That is a big problem. Women get protective orders, and they are violated because they are not enforced. And it reduces the national backlog of untested rape kits. It is a real problem if a jurisdiction cannot test a rape kit.

Yet there are some who refuse to support it because it now includes expanded protections for victims. Let me put this on the table. The bill's protections extend to lesbian and gay victims of domestic abuse. It includes undocumented immigrants who are victims of domestic abuse. The bill also gives Native American tribes better prosecutorial tools to fight crimes of domestic violence. In my view, these are improvements. Domestic violence is domestic violence.

I ask my friends on the other side, to the victim in a same-sex relationship, is the violence any less real, is the danger any less real because you happen to be gay or lesbian? I do not think so. If a family comes to the country and the husband beats his wife to a bloody pulp, do we say: ''Well, you are illegal. I am sorry. You do not deserve any protection?'' No, we do not. And 9–1–1 operators and police officers do not refuse to help victims because of their sexual orientation, or the country in which they were born, or their immigration status. When you call the police in America, they come regardless of who you are.

The Violence Against Women Reauthorization Act of 2011 is supported by 50 national religious organizations, including the Presbyterian Church, the Episcopal Church, the Evangelical Lutheran Church, the National Council of Jewish Women, the National Council of Catholic Women, the United Church of Christ, and the United Methodist Church.

I go back to my days as mayor of San Francisco when I saw over and over again, up close and personal, what happens because of domestic violence. I saw police getting killed when they intervened in situations involving domestic violence. We had a number of funerals for police officers in Oakland which I attended. It all stemmed from domestic violence.

To defeat this bill is almost to say that we do not need to consider violence against women, that it is not an important issue. It is. It is not a partisan issue. It never has been in this body, which is why, candidly, I am surprised I find myself on the floor urging that this bill be brought to the floor, because it has been historically, through two reauthorizations, and is a bipartisan bill.

You can't help but notice that this is not the first time a policy which would specifically imperil the health and safety of American women has compelled some of us to come to this floor and speak out on behalf of American women.

I hope that opposition to this bill is not part of a march, and that march, as I see it, over the past 20 years has been to cut back on rights and services to women. And I mean that most sincerely. I have never seen anything like it. When I came here, there were discussions about Roe v. Wade. When I first went on the Judiciary Committee, which was in 1993, I heard it. There were debates over Supreme Court opinions—Casey, et al.—and then there were debates over partial abortion. Then this year we fought against the Blunt amendment which would have effectively allowed employers to arbitrarily decline to provide critical preventive health care services for women.

You know, we had to fight for the simplest things. I think young women forget that it took until 1920 for women to get to vote in this country. It was only because women fought for it. And we have fought since the country was established for the right to vote, for the right to inherit property, for the right to go to school. Now we fight for our rights to have sufficient services from the government with respect to our health.

Now I am here to fight for a bill that strengthens laws and protects women against domestic violence and sexual assault. To me, this bill is a no-brainer. It has the support of both sides of the aisle. It is bipartisan. It saves lives. It is a lifeline for women and children who are in distress, who have no place to go or to stay and have to submit to domestic violence abuse. And no one can say I am exaggerating. Trust me, I have seen it. I have seen the bruised bodies up close and personal.

This bill has reduced the number of domestic assaults on women. The record indicates that. It should be continued. It is a no-brainer. I hope it is brought to the floor. I hope we maintain a bipartisan vote. I hope it is reauthorized.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Thank you very much. We have now been joined by the Senator from Washington Mrs. MURRAY, who has spent a long time fighting for domestic violence bills.

Mrs. MURRAY. I thank my colleague from California, Senator FEINSTEIN, for her longtime advocacy, and our colleague from Minnesota, Senator KLOBUCHAR, for leading the effort to reauthorize this critically important bill to protect women in this country from violence.

I was very proud to be here with the Senator from California back in 1994 when we first passed the Violence Against Women Act, or VAWA, as we call it. We created a national strategy for dealing with domestic violence, and since we took that first historic step, VAWA has been a great success in coordinating victims' advocates, social service providers, and law enforcement professionals to meet the immediate challenges of combating domestic violence.

This law has helped provide lifesaving assistance to hundreds of thousands of women and their families. It has been supported by Democrats and Republicans, along with law enforcement officers, prosecutors, judges, victim service providers, faith leaders, health care professionals, advocates, and survivors. VAWA has attained such broad support for one reason: It has worked. Since it became law 18 years ago, domestic violence has decreased by 53 percent. And while incidents have gone down, reporting of violence and abuse has gone up. More victims are finally coming forward and more women and families are getting the support and the care they need to move themselves out of dangerous situations. As a result of the language in this law, every single State has made stalking a crime. They have all strengthened criminal rape statutes.

We have made a lot of progress since 1994, but we still have a long way to go. Every single minute, 24 people across America are victims of violence by intimate partners—more than 12 million people a year—and 45 percent of the women killed in this country die at the hands of their partner. In 1 day last year, victims of domestic violence made more than 10,000 requests for support and services that could not be met because the programs did not have the resources.

That is why I was so proud to cosponsor and strongly support the Violence Against Women Reauthorization Act, and that is why I join my colleagues today in proudly expressing our hope that we can move this critical legislation when possible. This is a bipartisan bill which will advance our efforts to combat domestic violence, dating violence, sexual assaults, and stalking. It will give our law enforcement agencies the support they need to enforce and prosecute these crimes. It will give communities and nonprofits the much needed resources to support victims of violence and, most important, to keep working to stop violence before it ever starts.

This bill was put forward in a bipartisan fashion. It is supported by hundreds of national and local organizations that deal with this issue every day. It consolidates programs to reduce administrative costs. It adds accountability to make sure tax money is well spent. It is building on what works in the current law, improves what does not, and will help our country continue on the path of reducing violence toward women.

It should not be controversial. We reauthorized this law last time here in the Senate unanimously by voice vote, and President Bush signed it into law

with Democrats standing there with him. So I am hopeful that the bipartisanship approach to this issue continues today as we work to reauthorize this law once again because this should not be about politics. Protecting women against violence should not be a partisan issue.

I thank the Democrats and Republicans who worked together to write this bill. I am very glad it passed through committee. I stand ready to support this bill when it comes to the floor, and I truly hope we can get it to President Obama for his signature in a timely fashion so women and families across this country can get the resources and support this law will deliver.

Finally, many of us women have come to the floor so many times over the last few weeks to fight back against attempts to turn back the clock when it comes to women's health care, as the Senator from California just talked about. I am disappointed that these issues keep coming up, but I know I stand with millions of men and women across America who remain ready to defend the gains we have made over the last 50 years and who think we should be moving forward, protecting and supporting more women and families, and not moving backward. That is what this bill does.

I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from North Carolina.

Mrs. HAGAN. Madam President, I thank our Presiding Officer for bringing this forward, and the comments from the Senator from Washington and the Senator from California are really highlighting the issues we are talking about.

I am proud to join my colleagues to support the Violence Against Women Reauthorization Act. I stand here today during National Women's History Month to urge my colleagues to take swift action on a bill that is critical to the well-being of women, our families, and our country.

As Hillary Clinton declared more than 15 years ago in Beijing at the Fourth World Conference on Women, ''Human rights are women's rights, and women's rights are human rights. If we take bold steps to better the lives of women, we will be taking bold steps to better the lives of children and families too.''

It is disheartening in the last several months that petty partisanship and gamesmanship have held up policies critical to women's health, including this act. Since its original passage in 1994, the bill has made tremendous progress in protecting women from domestic violence, sexual assault, and stalking. The bill has transformed our criminal justice system and victim support services. It has encouraged collaboration among law enforcement, health and housing professionals, and community organizations to prevent and respond to domestic partner violence. It has funded programs such as services-training-officers-prosecutors grants, or STOP grants, which are used to provide personnel, training, technical assistance, and other equipment to better apprehend and prosecute individuals who commit violent crimes against woman.

Unfortunately, until Congress takes action on the Violence Against Women Reauthorization Act, the well-being of women across our country hangs in the balance. I see this as a serious lapse in our responsibility as Senators. As a mother of two daughters, I am here to tell you that this reauthorization cannot wait.

The rate of violence and abuse in this country is astounding and unacceptable. According to a 2010 CDC survey, domestic violence alone affects more than 12 million people each year. In the year leading up to the CDC study, 1.3 million women were raped. And this study showed these women are severely affected by sexual violence, intimate partner violence, and stalking, with one in four women falling victim to severe physical violence by an intimate partner. Domestic violence also has a significant impact on our country's health, costing our health care system alone over $8.38 billion each year.

The reauthorization of this act strengthens and streamlines crucial existing programs that really protect women. In fact, title V of the reauthorization includes a bill that I sponsored titled ''Violence Against Women Health Initiative,'' and this legislation consolidates three existing health-focused programs, while strengthening the health care system's response to domestic violence, dating violence, sexual assault, and stalking. This initiative fosters public health responses to domestic violence and sexual violence. It provides training and education to help health professional respond to violence and abuse, and it supports research on effective public health approaches to end violence against women.

Since my time in the North Carolina State Senate, where I served 10 years, I have been dedicated to combating violence against women. While I was a State senator, I led the effort to ensure that local law enforcement tested rape kits to convict the perpetrators of sexual assault. It was astounding to me to discover that after a woman had been raped and she had an examination where DNA was collected, that rape kit test would actually sit on a shelf in a sheriff's office or police station and would not be analyzed. Sadly, the evidence would only be analyzed if a woman could identify her attacker. What other victims in America have to identify their attacker before law authorities will take action?

When I first discovered this and brought it up, I was told there was not enough money for every rape kit to be tested. We soon found the money. But there are States today that still have these rape kits sitting on shelves unanalyzed.

For all the progress we have made, combating violence against women must continue to be a priority and must be a priority in every State in the country.

As I take the floor in support of the Violence Against Women Reauthorization Act, it is fitting to recognize one of our fiercest advocates for women's rights—my colleague and mentor Senator BARBARA MIKULSKI, who, on Saturday, will become the longest serving female congressional Member in history.

For more than 35 trailblazing years, Senator MIKULSKI has been a strong and unwavering voice for women, families, and the people of Maryland. She shepherded through the Lilly Ledbetter Act, which helps ensure that no matter your gender, race, religion, age, or disability, one will receive equal pay for equal work. She fought tenaciously for her important amendment to the health care reform legislation, ensuring that women's preventive care would be covered with no added out-of-pocket expense.

I thank Senator MIKULSKI for her mentorship, her leadership, and her fierce advocacy for women's rights. I look forward to continuing to work alongside Senator MIKULSKI and my colleagues to promote policies that support our women, our children, and our families and put them on a path to a brighter future. The Violence Against Women Reauthorization Act is central to that goal, and I urge my colleagues to take up this bill and pass it without delay.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, we have now been joined by Senator MURKOWSKI of Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Madam President, I am proud to be able to stand to speak about the Violence Against Women Act, joining with some of my colleagues on the floor.

This is legislation I have supported in the past and look forward to supporting again. As we talk about those issues women care about, it is no surprise to most that we are talking about what is happening with the price of gas or the cost to fill the car tank and we are talking about the quality of our children's education and we are talking about the Postal Service in Alaska. We had a military townhall, and I met with some military spouses. They were quite concerned that some of the facilities they access are perhaps in jeopardy. We care about the security of our jobs and our spouses' jobs, and our friends' and neighbors' jobs and all that goes into working in a small business. We certainly care about our country's fiscal situation and the very dire situation we are in.

There is something else we all care about, which is the violent assaults women often endure—sisters, daughters, neighbors. The Violence Against

Women Act is an important commitment to victims of domestic violence and sexual abuse. This is a promise that resources and expertise are available to prosecute those who would torment them. Also, it is a reason to believe that one can actually leave an abusive situation and transition to a more stable one. It is of the greatest importance that victims of domestic violence and sexual assault are confident there is a safety net available to address them and their immediate survival needs, as well as the needs of their children. Only on this level of confidence can one muster the courage to leave an abusive situation. These are some of the promises that are contained within the Violence Against Women Act.

There are additional reasons I feel as strongly as I do about the reauthorization of this act which relate to the safety of the people in Alaska. Unfortunately, as beautiful as the State is that I live in, our statistics as they relate to domestic violence and sexual assault are horrific. They are as ugly as they come.

Nearly one in two Alaskan women has experienced partner violence. Nearly one in three has experienced sexual violence. Overall, nearly 6 in 10 Alaskan women have been victims of sexual assault or domestic violence. In Alaska, our rate of forcible rape between 2003 and 2009 was 2.6 times higher than the national rate. Unfortunately, very tragically, about 9 percent of Alaskan mothers reported physical abuse by their husbands or partner during pregnancy or in the 12 months prior to pregnancy.

We have to do all we can to get a handle on these tragic statistics. As we know, they are more than just statistics; these are the lives of our friends, our neighbors, and our daughters. The Violence Against Women Act presents the tools to do so. In the villages of rural Alaska, oftentimes, victims of sexual abuse and domestic violence face some pretty unique challenges. Many of these villages have no full-time law enforcement presence whatsoever—nobody to turn to, no safe house, no place to go. A single community health aid must tend to every crisis within the community, including caring for victims of sexual assault and domestic violence. Oftentimes, they don't have the tools they need—the rape kits, the training.

Oftentimes, we will have a situation where weather can be an impediment to getting the victim on a plane and to a rural hub. In most of my communities—80 percent of them—there is no road out, no way to get out. If someone has been violated, and there is no law enforcement or shelter or nowhere to go, what do they do? Basically, the victim is stranded in their own community with the perpetrator for, potentially, days before help can arrive.

The Violence Against Women Act is a ray of hope for those victims of domestic violence and sexual assault within our villages. It devotes increased resources to rural and isolated communities, and it recognizes Alaska's Village Public Safety Officer Program as law enforcement so VAWA funds can be directed to providing a full-time law enforcement presence in places that currently have none. It establishes a framework to restart the Alaska Rural Justice and Law Enforcement Commission, which is an important forum for coordination between law enforcement and our Alaska Native leaders to abate the scourge of domestic violence and sexual assault.

I too believe the Senate needs to take up the Violence Against Women Act. I do feel strongly that we need to do it on a bipartisan basis. I am a cosponsor of the bill. Some of my colleagues do have some concerns. I have said we need to take these concerns into account so we can have—and we should have—an overwhelmingly bipartisan bill. This is too important an issue for women and men and families to not address it.

I know others wish to speak. I appreciate the indulgence of my colleagues.

Ms. KLOBUCHAR. Madam President, we thank the Senator from Alaska. How much time remains?

The PRESIDING OFFICER. Five minutes.

Ms. KLOBUCHAR. Madam President, I will yield our remaining time to Senators MIKULSKI and SHAHEEN.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I strongly urge that the Violence Against Women Act come up on the floor so we can look at the issues and debate them in an open and public forum. If people have amendments to either add or subtract from the bill or improve the bill, let's do it because this is a compelling situation.

I have been here since we passed the first bill in 1994. The original architect of it was Senator JOE BIDEN, who is now our Vice President. Why did we do it? It is a compelling need. One in four women will be the victim of domestic violence; 16 million children are exposed to domestic violence each year; 23 million will be a victim of physical or sexual violence—20,000 in my State of Maryland.

Since we created the legislation in 1994, the national hotline has received over 1 million calls when women felt they were in danger. So those 1 million people had a chance of being rescued. Who has the biggest request for passing the Violence Against Women Act? It is not only the women of America; it is also local police. One out of four police officers killed in the line of duty is responding to domestic violence calls. When they go to a home, they have a checklist to determine how dangerous the situation is. Is it simply a spat or a dispute or are they in a danger zone?

We debate big issues—war and peace, the deficit, and all these are important—but we have to remember our communities and our families. I think if someone is beaten and abused, they should be able to turn to their government to either be rescued and to put them on a safe path and also to have those very important programs early on to do prevention and intervention. We fund this bill. I stand ready to support the passage of the bill and putting the money in the checkbook to support it.

I will leave time now for other Senators. I will yield the floor, but I will not yield on this issue.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I am pleased to join my colleagues on the floor to support this crucial legislation to reauthorize the Violence Against Women Act. It provides essential services to women and families across the United States.

I have seen in my home State of New Hampshire where one program I wish to talk about funds Services, Training, Officers, and Prosecutors. It is called STOP. It provides law enforcement the tools they need to combat domestic violence. This was a lifesaving service for a women named Kathy, who was in an abusive relationship for 6 years.

Kathy was being abused as often as twice a week, frequently leaving her with black eyes and bruises. Once her partner Mark threw her down the stairs. Things worsened after the couple had their house foreclosed on. One day, Mark grabbed Kathy by the throat, lifted her off the floor and dropped her and began punching her again and again in front of their 3-year-old child. That was the last straw.

Kathy finally mustered the courage to contact a friend who helped her call the local police. Kathy obtained a temporary domestic violence restraining order and Mark was charged with assault.

As is often the case, the criminal and civil procedures overwhelmed and frustrated Kathy. At times, she even considered dropping the whole thing. But, fortunately, funding from the Violence Against Women Act made it possible for Kathy to have an attorney who could help her. Thanks to this assistance from STOP and the Violence Against Women Act, Kathy was able to obtain sole custody of her children, as well as support payments, and ultimately she was able to make a fresh start, free from abuse.

Some critics of this legislation have said that the Violence Against Women Act "has done little or no good for real victims of domestic violence." They have said that these funds "have been used to fill feminist coffers and to lobby for feminist objectives." I think Kathy would disagree.

This body should not be divided on this issue, and I am so pleased that Senator MURKOWSKI has joined us today. Ending the horrific, degrading and painful cycle of domestic abuse is an effort that must transcend party affiliation.

We know these programs work, and I know that we have a strong and effective leader in Susan Carbon, who is a former judge and now the Director of the Office of Violence against Women at the U.S. Department of Justice. Susan Carbon is from New Hampshire and in my time as Governor of New Hampshire, I was privileged to have Susan as a member of the Governor's Commission on Domestic and Sexual Violence, and she chaired our Domestic Violence Fatality Review Committee.

Susan has been in the trenches. She has seen what happens when women are unable to obtain help for themselves and for their families, and she knows that VAWA helps save lives. She needs these essential programs to be reauthorized as quickly as possible in order to continue her great work.

There are too many victims who need our help. It is time to tell them, ''We hear you and we know you're out there even if you're not speaking up right now. We want to help you find your voice.'' We have the chance to make a difference, and the American people are depending on us to act.

Madam President, I urge the leaders to bring the Violence against Women Reauthorization Act to the floor, and I implore my colleagues to unite around this important effort.

This body should not be divided on this issue. As I said, I am so pleased to have Senator MURKOWSKI join us on the Senate floor today to point out that this is a bipartisan issue.

The PRESIDING OFFICER. The majority's time has expired.

The Senator from California.

Mrs. BOXER. Madam President, it is hard to believe we are having this debate about protecting women from violence in 2012, but we are.

But then again, we have spent much of this year fighting attempts to limit women's access to contraception and preventive healthcare; we have seen a woman called names for fighting for women's health.

Here we are again on the floor because the women of the Senate are not going to stop standing up and speaking out to protect the health and lives of women in our country.

Let's be clear: The Violence Against Women Act has always been bipartisan. It has always had overwhelming support.

And I would know. In 1990, then-Senator JOE BIDEN came to me and asked me to be the House author of his bill, the Violence Against Women Act. At that time, violence against women was a silent epidemic and I was so grateful that he asked me to help bring this issue out of the shadows.

It was a slow but steady path to victory, and by the time it passed as part of the 1994 crime bill, I was a member of the Senate, proudly working by Senator BIDEN's side to get the votes we needed. It was one of my most memorable moments in the Senate. We finally had a law to help local law enforcement and the legal system combat violence against women and provide essential services for women struggling to rebuild their lives.

The results have been breathtaking. Since the Violence Against Women Act became law, incidents of domestic violence have decreased 53 percent, reporting of domestic violence has increased as much as 51 percent, and more victims are coming forward and getting life-saving help. One survey found that more than 67,000 victims were served by domestic violence programs—on one day alone.

So it was no surprise that in 2005 the Senate voted unanimously to reauthorize this important law. Not one Senator objected to its passage. It has always been bipartisan. So why the change now?

After all these years, after all the victims who have been helped and the criminals who have been prosecuted, why on Earth are some Republicans holding this up? What is it about this bill that they suddenly don't like?

Is it the funding for shelters to protect women from harm, abuse, even death? Do they object to provisions that ensure that abusive spouses will be arrested after committing family violence? Do they object to measures that declare that all people in the United States should have the same right to be free from crimes of violence motivated by gender? Do they oppose safety provisions that protect women on public transit and in public parks? Do they object to the fact that the bill consolidates programs within the VAWA office—reducing administrative costs?

It is hard to imagine that anything other than politics is at work here—and victims of domestic violence deserve better.

The women of America are watching us. They expect all of us—men, women, Democrats, Republicans and independents—to come together as we have before to stop domestic violence, to punish the perpetrators and help the victims rebuild their lives.

The PRESIDING OFFICER. The Senator from Arizona.

JOBS ACT

Mr. KYL. Madam President, let me return to the pending business before the Senate—the JOBS Act. At the same time, when millions of Americans are looking for work, we have an opportunity to do something in a bipartisan way that will actually help job creators and entrepreneurs.

Despite all the hype about economic improvements, we are still experiencing the slowest and weakest recovery since the Great Depression. More than 45 million Americans are on food stamps. Unemployment has been higher than 8 percent for 3 years. There are 700,000 fewer jobs today than when President Obama took office. I repeat: 700,000 fewer jobs today. On top of that, of course, gas prices are skyrocketing.

As I noted on Monday, I believe the President is painting a too rosy picture of the economy when he is out campaigning. He stated there have been 24 consecutive months of private sector job growth. But I would like to note how the numbers tell a different story. Economists generally agree that for employment to just hold even, about 150,000 jobs need to be created each month in order to employ the new people, the new entrants, into the job market or the workforce, and these include people such as those who have recently graduated, those who have concluded military service or other family obligations. Again, about 150,000 each month need to be created just to stay even.

The logical question to ask is, How many of the last 24 months saw a job growth above 150,000? The answer is, only 10 of those 24 months. In other words, job creation has been high enough to keep pace with the new force entrants only 10 months out of the last 2 years. In fact, private sector job creation was actually lower this last February than it was in January. This is according to a chart on the President's own campaign Web site.

So we clearly need better public policy to put people back to work—legislation that will actually spur job creation. Practically every bill that has come to the floor in the last 3 years has been labeled a jobs bill, but to an Orwellian effect. Even bills such as ObamaCare and Dodd-Frank, which imposed massive new costs on businesses, were called jobs bills by their supporters. But, finally, with the JOBS Act now pending, we have a rare occasion to pass a bill that Republicans and Democrats agree will help create jobs.

The House overwhelmingly passed the bill 390 to 23—majorities in both parties, and the President has issued a Statement of Administration Policy endorsing the legislation. So this is something we should move forward with. The JOBS Act will demonstrate to entrepreneurs and job creators that we value what they do, that we want to make it easier for them to innovate, to gain access to capital to grow and to lift others up as they become more successful.

America has many dynamic companies and fast-growing businesses with the potential to create many more. The people behind successful companies are driven by the satisfaction that comes from creating and innovating and solving problems, and in many cases they are making products or providing services that improve our quality of life. This is a good thing. It deserves our support.

Good public policy—hurdles to opportunity, on the other hand—can help people accomplish their goals, and this bill will help to solve some of this by getting those hurdles out of the way. For example, the JOBS Act will help to cut some of the redtape that burdens startup companies. One of the best overhauls is a reduction in the costly regulatory burdens contained in the infamous Sarbanes-Oxley section 404(b) accounting rules. Reducing this burden means growing companies can spend

less time on paperwork and more time on raising capital and growing their businesses. These are companies that have the potential to be the next Groupon, Yelp, or LinkedIn—three companies that didn't exist a decade ago and all of which recently had initial public offerings.

Here is what the Chamber of Commerce had to say in support of the House-passed bill.

> The JOBS Act would enhance capital formation needed to build new businesses, expand existing businesses and create jobs. . . . [It] would put into place several important and in some cases overdue reforms that would incentivize initial public offerings (IPOs).

Part of the beauty of this bill is we don't even know who will benefit from its policy reforms. It applies to everybody. It is the opposite of the crony capitalism that provided government funds to companies such as Solyndra and General Motors. Indeed, this is legislation that will demonstrate what the private sector can do when government promotes freedom and opportunity. It will show we don't need government to try to create jobs or make ham-fisted attempts to play venture capitalist.

Because this is such good bipartisan legislation, it is deeply troubling to hear it is being stalled right here in the Senate. The front-page headline of the Congressional Quarterly this morning reads: ''Democrats Move to Slow 'Jobs' Bill.''

The article notes that passage appears unlikely this week as Democrats try to add controversial provisions to the bill which do not have broad bipartisan support.

If this bill does not pass, or if the Senate Democrats add poison pills, it will be quite obvious this is part of a broader political strategy—one that relies on a ''do-nothing Congress.'' That is the campaign theme the President has been running on.

If Congress actually does something in a bipartisan way that helps many Americans, well, it will undermine his narrative. He is relying on congressional dysfunction to keep that narrative going, and that is why we have to rise above it.

Yes, this is a cynical conclusion, but if this bipartisan bill is derailed, it will be hard to draw any other. It was our understanding, when we all agreed to go to the bill, it would be considered under regular order. This bill is too important to play procedural games, such as filing cloture and filling the parliamentary tree and the like.

I urge my colleagues not to stall this bill or to jeopardize its passage with partisan provisions. Let's get this bill to the President's desk. Our first priority should be helping Americans get jobs, not strategizing to save the President's job.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I ask unanimous consent to speak as in morning business for 12 minutes.

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

SUNSHINE WEEK

Mr. GRASSLEY. Madam President, this is Sunshine Week—a week that is observed annually to point out the public's business ought to be public and that government, except in the cases of national security, should be open to public inspection. This week coincides with the birthday of James Madison, the Founding Father known for his emphasis on checks and balances in government and advocacy of open government.

Open government and transparency are essential to maintaining our democratic form of government. Although it is Sunshine Week, I am sorry to report that contrary to the proclamations President Obama made when he took office 3 years ago—and he made them, in fact, within hours after his swearing in—that 3 years later the Sun still isn't shining on the public's business in Washington, DC. So there is a real disconnect between the President's words and the actions of his administration.

On his first full day in office, President Obama issued a memorandum on the Freedom of Information Act. This memo went to the heads of executive agencies. In it, the President instructed these executive agencies to ''adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in the Freedom of Information Act, and usher in a new era of open government.''

We all know actions speak louder than words. Unfortunately, based on his own administration's actions, it appears the President's words about open government and transparency are words that can be ignored. If not ignored by the President—and maybe well-intended on the part of the President—being ignored down to the bowels of the bureaucracy.

Given my experience in trying to pry information out of the executive branch, and based on investigations I have conducted, and inquiries by the media, I am disappointed to report that President Obama's statements about transparency are not being put into practice. In other words, it is a little bit like ''business as usual.'' I had the same problems when we had Republican Presidents. But based upon the President's pronouncements after his swearing in, I expected things to be totally different in this administration, and I don't find them to be any different. Federal agencies under the control of the President's political appointees have been more aggressive than ever in withholding information from the public and from the Congress.

Throughout my career, I have been actively conducting oversight of the executive branch, regardless of who controls the Congress or what party controls the White House. When the agencies I am reviewing get defensive, and when they refuse to respond to my requests, it makes me wonder what they are trying to hide. Over the last year, many of my requests for information from various agencies have been turned down again and again either because I am ranking member or because I am not chairman of the Judiciary Committee. Agencies within the executive branch have repeatedly cited the Privacy Act as a part of the rationale for their decision not to grant requests even though the Privacy Act explicitly says it is not meant to limit the flow of information from the executive branch to the Congress.

This disregard by the executive branch for the clear language of the law is disheartening, and so it is quite appropriate during Sunshine Week we bring out the truth. Citing another example, since January 2011, Chairman ISSA and I have been stonewalled by Attorney General Holder and by other people in the Justice Department regarding our investigation of Operation Fast and Furious. This deadly operation let thousands of weapons ''walk'' from the United States into Mexico.

Despite the fact the Department of Justice inspector general possesses over 80,000 relevant documents, Congress has received only around 6,000 in response to a subpoena from the House Oversight Committee. Even basic documents about the case have been withheld by the Justice Department. Yet the Department insists on telling us—and before they tell us, they seem to tell the press—that they are cooperating with Senator GRASSLEY and Congressman ISSA. The Sun must shine on Fast and Furious so the public can understand how such a dangerous operation took place and what can be done to prevent such stupid actions of our government in the future.

I have also worked hard to bring transparency to the Department of Housing and Urban Development. This is an executive branch agency that desperately needs more sunshine. Over the past 2 years, I have been investigating rampant fraud, waste, and abuse at public housing authorities throughout the country. I have discovered exorbitant salaries paid to executive staff, conflicts of interest, poor living conditions, and outright fraud, waste and abuse of taxpayer dollars. Many of these abuses have been swept under the rug, and Housing and Urban Development has been slow at correcting the problems.

HUD cannot keep writing checks to these local housing authorities and then blindly hope the money gets to those Congress intended to help. I will continue to work to bring sunshine to the Department of Housing and Urban Development as well.

In April of last year, I requested documents from the Federal Communication Commission regarding a valuable regulatory waiver it granted to a company called LightSquared. LightSquared was attempting to build a satellite phone network in a band of spectrum adjacent to global positioning systems.

The problem is that LightSquared's network causes interference with critical GPS users such as the Department of Defense, the Federal Aviation Administration, and NASA.

The FCC responded to my document request by saying they don't give documents to anyone but the two chairs of the committee with direct jurisdiction over the Federal Communications Commission. How idiotic. Because that means that if someone is not chairman of a committee—in other words, if a person is in the 99.6 percent of the Congress which does not chair a committee—with direct jurisdiction, then as a Member of Congress they are out of luck and can't fulfill their responsibilities of constitutional oversight and can't be a check, as envisioned by Madison writing the Constitution, on the executive branch of government.

In this letter to me from Chairman Genachowski, he told me he would make his staff available even if I didn't get the documents. So I could interview the staff. But when I took him up on his offer and asked him to interview members of his staff, my request was refused.

Once again, actions speak louder than words. People can get away with lying, and there is stonewalling, pure and simple. It seems obvious that the FCC is embarrassed and afraid of what might come from uncovering the facts behind what the Washington Post called the LightSquared debacle. If there is nothing to hide, then why all the stonewalling? The FCC seems determined to stonewall any attempt at transparency.

But it is not just the executive branch that needs more transparency. The judiciary should be transparent and accessible as well. That is why over a decade ago I introduced the Sunshine in the Courtroom Act, a bipartisan bill which will allow judges at all Federal courts to open their courtrooms to television cameras and radio broadcasts. By letting the Sun shine in on Federal courtrooms, Americans will have an opportunity to better understand the judicial process.

The sunshine effort has no better friend than whistleblowers. Private citizens and government employees who come forward with allegations of wrongdoing and coverups risk their livelihoods to expose misconduct. The value of whistleblowers is the reason I continue to challenge the bureaucracy and Congress to support whistleblowers.

For over two decades, I have learned from, appreciated, and honored whistleblowers. Congress needs to make a special note of the role whistleblowers play in helping us fulfill our constitutional duty of conducting oversight of the executive branch. The information provided by whistleblowers is vital to effective congressional oversight. Documents alone are insufficient when it comes to understanding a dysfunctional bureaucracy. Only whistleblowers can explain why something is wrong and provide the best evidence to prove it. Moreover, only whistleblowers can help us truly understand problems with the culture at government agencies.

Whistleblowers have been instrumental in uncovering $700 being spent on toilet seats at the Department of Defense. These American heroes were also critical in our learning about how the FDA missed the boat and approved Vioxx, how government contracts were inappropriately steered at the General Services Administration, and how Enron was cooking the books and ripping off investors.

Similar to all whistleblowers, each whistleblower in these cases demonstrated tremendous courage. They stuck out their necks for the good of us all. They spoke the truth. They didn't take the easy way out by going along to get along or looking the other way when they saw a wrongdoing.

I have said it for many years—without avail, of course—I would like to see a President or this President of the United States have a Rose Garden ceremony honoring whistleblowers. This would send a message from the very top of the bureaucracy to the lowest levels about the importance and value of whistleblowers. We all ought to be grateful for what they do and appreciate the very difficult circumstances they often have to endure to do so, sacrificing their family's finances, their employability, and the attempts by powerful interests to smear their good names and intentions.

I have used my experience working with whistleblowers to promote legislation that protects them from retaliation. Legislation such as the Whistleblower Protection Act, the Sarbanes-Oxley Act, and the False Claims Act recognize the benefits of whistleblowers and offer protection to those seeking to uncover the truth. For example, whistleblowers have used the False Claims Act to help the Federal Government recover more than $30 billion since Congress passed my qui tam amendments in 1986.

These laws are a good step; however, more can be done. For example, the Whistleblower Protection Enhancement Act will provide much needed updates to Federal whistleblower protections. I am proud to be an original cosponsor, and I believe the Senate should move this important legislation immediately. This bill includes updates to the Whistleblower Protection Act to address negative interpretations of the Whistleblower Protection Act from both the Merit System Protection Board and the Federal Circuit Court of Appeals.

I started my remarks by quoting James Madison, the Founding Father who is one of the inspirations for Sunshine Week. Madison understood the dangers posed by the type of conduct we are seeing from President Obama's political appointees. Madison explained that:

> [a] popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both.

I will continue doing what I can to hold this administration's feet to the fire, to protect whistleblowers, to get the truth out, and to save the taxpayers' money.

I hope my colleagues will help work with me so we can move toward restoring real sunshine, in both words and actions, in Washington, DC.

I yield the floor.

The PRESIDING OFFICER (Ms. McCASKILL). The Senator from Alaska.

ENERGY PRICES

Ms. MURKOWSKI. Madam President, there is a lot of discussion about energy going on. The President spoke about it this morning.

It is nice to hear us all saying the same thing; that this country should have an all-of-the-above energy policy. It is a phrase I have used for years now, and I suppose it is the highest form of flattery to have that scooped by others and carried. But I think it is important for us to remember that policies have to translate from mere words into action. With the President's comments today, unfortunately, I am not convinced he is intending to help turn our all-of-the-above policy into reality.

I think if he was serious about doing that, he would acknowledge that there is far more our country can do to increase our supply when it comes to oil and oil production. I think he would admit that with oil prices above $100 a barrel, gasoline edging up every day close to $4 a gallon, this is not a political opportunity for anyone; this is a legislative imperative—a legislative imperative—for us all. The question that needs to be asked is, What can we do?

I would agree with the President that there is no one silver bullet. There is no one quick fix. We can't snap our fingers and have the price at the pump go down. But I think it is important to talk honestly about what is going on with supply and with production in this country.

With much discussion over these past several months about the Keystone project out of Canada and that pipeline, it continues to amaze me, it makes me crazy to think we have an opportunity to have our closest neighbor and our best trading partner supply us with oil instead of receiving oil from OPEC. Keystone could come online very quickly, bring oil to our refineries and to our gas tanks. If the administration supports construction of a pipeline from Oklahoma to Texas, as they have suggested, I don't see why we can't allow construction of a pipeline from Alberta and North Dakota and then all the way down. I am confident there are enough construction workers who are ready and waiting to start on both ends. When you say it needs more consideration, more review, I would remind people this has been a project that has had at least 4 years of environmental review.

So this is one of those choices that I think is pretty clear and pretty stark.

Most Americans, I believe, would much rather get their oil from Canada than from OPEC. Yet some of what we are seeing come out of this Congress from Members of the Senate, the suggestion is that instead of going to Canada, we should go, tincup in hand, to Saudi Arabia and ask them for increased production. I can't imagine—I cannot imagine why it would be more preferable to producing more American oil or allowing more oil from Canada. This is a pretty clear choice for me. But, again, it is an argument we continue to have, and we don't seem to be making the necessary headway on it.

Earlier this week, the President said the best we can do about gas prices is reduce our dependence on foreign oil, which will reduce the price of gasoline over time. One year ago, he said producing more oil in America can help lower our oil prices. But, again, that is talk that is going on right now and talk that is not necessarily matching reality.

Yesterday, I was involved in two hearings of the Appropriations subcommittees. In one, we had a Department of Interior official who confirmed that the oil production on Federal lands is down and not up. There has been a lot of conversation, a lot of discussion about how we in this country are seeing more oil and gas production than ever before. But the fact is, we are seeing an increase in oil; we are seeing an increase in natural gas. But we are not seeing it on our Federal lands. We are seeing these increases on State lands and on private lands. When it comes to onshore oil, we have actually gone down by 14 percent from last year. When it comes to offshore oil, we have gone down from 17 percent last year. So to suggest somehow that we are doing astonishingly, when in fact in the area where the Federal Government does have some ability to incent some production, we are seeing production decrease.

We also heard confirmation in a hearing yesterday that producers are leaving the Federal lands—which, again, are the only lands the administration has control over—not because the resources are necessarily greater somewhere else but because of Federal taxes, of the Federal royalties, the bureaucracy, the permitting process that make State and private lands more attractive. It was quite clear in the testimony that it does indeed cost more to produce on Federal lands, and they do worry about that migration to go to State lands and private lands.

This is a chart I have about the number of applications for permits to drill on Federal lands. If we look at the timeline, we are going up and up and up. This is 2001, during the Bush administration, when we increased 92 percent. We hit 2008, and the number of permits to drill that have been approved during this administration is down 36 percent. Again, this is in the area where the Federal Government has control. So please, I think we need to get beyond the idea that we are allowing drilling everywhere.

America's largest untapped oilfields onshore and offshore are still off-limits. In Alaska, we have more than 40 billion barrels of oil that are trapped beneath Federal lands, and the administration is making clear they intend to keep much of that off-limits to development.

Again, we have money buried in the ground, literally, in Alaska, ready, waiting, and willing to advance not only the resource for American consumption, bringing the jobs, but also bringing important revenues to our Treasury.

I think it is quite apparent that supply matters. Again, I mentioned the request from one of our colleagues that we go to Saudi Arabia for 2.5 million barrels per day. I don't think that is an appropriate policy on which we should embark.

Since at least the mid-1990s, our colleagues on the other side of the aisle have claimed that since oil exploration takes a long time to bring online, we shouldn't do it. It was the senior Senator from Massachusetts who, back in 2002, said:

> If you open the refuge today, you are not going to see oil until about 2012, maybe a couple years earlier.

Here we are at 2012. If we had started then, we wouldn't perhaps be having this discussion now. This argument has gone on for so long that even Jay Leno is making jokes about it on TV. It is amazing to me that we continue to say it is going to take too long to bring on, so we shouldn't start today.

I have two separate bills that allow access to the nonwilderness areas of ANWR, the 1002 area, to be carefully opened for development. That field would bring on roughly 1 million barrels of oil to market each day. Right now, had this not been blocked back in 1995, that would have been good for American workers, good for the price of oil, good for the Federal Treasury, and I believe it could have been conducted and completed without impact to the environment.

When we talk about our abilities, I think it is fair to say we do have a lot of oil in this country, and we can bring more of it to market. If we were to increase our domestic production by the 2.5 million barrels a day that has been suggested that we get from Saudi Arabia, if we were to access Alaskan oil along with the Keystone oil, that would double world spare capacity and insulate us almost entirely from OPEC.

When we talk about a way we can move ourselves as a nation away from the stranglehold OPEC holds over us, I think it is important to consider what our options are.

I know we will have more to add on this later. Some of my colleagues are coming to the floor later to speak on this matter. But at this time I yield the floor for my colleague from Louisiana, the energy breadbasket down there in the gulf.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I am happy and honored to join my colleague from Alaska, and also our colleague Senator BARRASSO to talk about a vital issue, U.S. energy—doing something about the price at the pump, including by accessing more of the vital U.S. energy we have right here within our shores.

As the Senator from Alaska has said, at least I give the President kudos for using the right language, saying the right things, even if his policies have not caught up with that yet. He is talking about an ''all-of-the-above'' energy strategy, something we have been advocating for years.

He is also talking about a release from the Strategic Petroleum Reserve. I disagree with that policy, but at least it acknowledges that supply matters. If we increase supply we would lower the price.

I think the important way we need to do that, of course, is to produce more energy at home. A lot of Americans do not realize it, but we are the single most energy rich country in the world, bar none. No one else comes close. When we look at all of our energy resources compared to all of the energy resources of other countries, we are the richest country in terms of energy resources.

Why don't most Americans think of ourselves that way? It is because we are the only country in the world that takes well over 90 percent of those resources and puts them off-limits. Through Federal law, particularly under this Obama administration, America says no. No.

The Obama administration says no. No, you can't drill off the east coast. No, you can't drill off the west coast. No, you can't touch the eastern gulf, at least for now. No, you can do little to nothing offshore Alaska. No, you cannot touch the Alaska National Wildlife Refuge. No, we are going to do less instead of more on Federal land. And, no, we are going to reexamine hydraulic fracturing, which is a key process to the development of our rich shale resources even though there is no scientific basis for that attack on hydraulic fracturing.

This administration has said no; no, in terms of policy. The President is saying ''all of the above.'' The President is admitting supply matters. But the policy has not caught up, and it has to catch up.

What am I thinking of? On the Outer Continental Shelf we are rich in resources, in oil and gas. Yet President Obama's 5-year plan, which he is required to submit under law—his 5-year plan for developing that Outer Continental Shelf is only half as much as the previous 5-year plan. We are backing up. We are headed in the wrong direction, not the right direction of accessing more of our own energy.

Permitting in the Gulf of Mexico, where I live—since the BP disaster,

permitting first stopped but now has started again, but only at a trickle, and we are still 30 percent to 40 percent below the pace of permitting compared to before the incident. We need to get back to that pace of permitting and then surpass it.

Federal lands, the area that the Federal Government controls most directly—production activity on Federal lands is down from a few years ago. It is not up; it is down 14, 17 percent offshore and onshore—less than a few years ago.

Of course, the Keystone Pipeline was mentioned. That is not quite U.S. energy, but it is as close as we can get to that. It is dependable Canadian energy from a very firm, strong ally. President Obama is saying no to that.

I am happy to hear that his rhetoric has changed in an election year. But when are those policies going to change—on the Outer Continental Shelf, on permitting in the gulf and elsewhere, on Federal land, on the Keystone Pipeline? That is what needs to change.

We need to say yes to solid, dependable American energy. It will increase our energy independence. It will increase our supply and stabilize prices at the pump. It will build great American jobs, jobs which, by the way, cannot be outsourced to China and India if they are domestic energy jobs. It will even bring more revenue into the Federal Government, lowering the deficit and debt.

Let's say yes. Let's say yes, yes to that. I know my colleague, Senator BARRASSO, is vitally interested in these issues as well. I turn to him, through the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I agree with my colleague from Louisiana who is an expert in these areas and spent so much time on energy and the need for affordable energy. People are noticing the pain at the pump and saying: Why is this? They don't have to look any further than the President's policies, the President's efforts, in my opinion, to make it harder for us to explore for energy. What does he try to do?

In a Reuter's report this morning, ''U.S.-Britain to agree to emergency oil stocks release'' from the Strategic Petroleum Reserve. This is there for emergencies, for disruption of supply, not for a political disaster.

What the President has on his hands now is a political disaster. The fact is, the price at the pump has gone up about a penny a day for about the last 30 days. People are paying more. They realize if they are trying to also deal with bills and mortgage and kids, it is much harder. It is a direct impact on their quality of life. Yet the President continues, as he has done today, to give speeches about gasoline prices and to blame everyone other than himself.

It is discouraging to see the President looking to the Strategic Petroleum Reserve. He tapped it last year, 30 million barrels. At that time he drew down our Strategic Petroleum Reserve and still has not refilled it. So any effort to draw down from it today will take it down even further, again putting us more at risk for a true supply disruption.

Those are the things we are facing today as a nation, a President with a poorly planned energy approach and having to rely on something that was placed there for true emergencies. But the President continues to make his claims as he did today and he did last week. One of his claims is that America only has 2 percent of the world's oil reserves. The truth is, proven and undiscovered oil resources total seven times that amount. The President does not seem to want to face that fact.

The President claims an ''all-of-the-above'' energy strategy, but the truth is the President's policies truly seem to be hostile to low-cost domestic fuels, especially gasoline and other products from oil. We saw this when the Secretary of the Interior was a Member of the Senate and said he would oppose offshore exploration for gas even at $10. He said using less gasoline will lower prices.

Isn't that a supply and demand issue? The President ignores supply. We need to increase supply. One of the ways to do that is by exploring more offshore, on Federal land, and in Alaska, and by bringing supply from Canada to the United States with the Keystone XL Pipeline instead of saying to Canada: No, sell that to China.

Continuing to look at the incredible needs of this Nation for fuel, our ability to increase supply, and the President's efforts to do just about everything else, people at home are concerned.

I visit with people every weekend in Wyoming. I did last weekend; I will again this weekend. I hear what my colleague from Louisiana is hearing, what my colleague from Alaska is hearing; that is, there are lots of opportunities to increase the supply, opportunities that are available and should be used in this country. We are so dependent on overseas, so dependent on OPEC, so dependent on long shipping routes coming through the Strait of Hormuz. Our solution? Take care of the problem at home. Work on energy security for our Nation.

The Democrats' proposal—and we heard it from Senator SCHUMER from New York, who said: Just ask Saudi Arabia to produce more, 2 million barrels more a day.

Rely on a country far away? OPEC countries whose interests are not necessarily our own? That is not the solution for America. The American people want energy security which begins at home. North American energy security includes the availability of oil from Canada, the availability of oil offshore on Federal land as well as in Alaska. It is time for the President to adopt those proposals and those approaches rather than talking about his approach which leads people who listen and listen carefully to realize he is intentionally distorting the facts and misleading the American people in speech after speech.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. RUBIO. We are as in morning business; is that correct?

The PRESIDING OFFICER. The Senator is correct.

HUMAN RIGHTS

Mr. RUBIO. Madam President, first, I want to thank my colleagues for coming to the floor today and talking about the issue of energy and energy independence and the rising cost of energy. It is critically important. I wish to talk about something else, if I could, for just a few minutes, something I think is of critical importance, eternal importance; that is, the issue of human rights.

As Americans, we have to remind ourselves our Nation was founded on the principles of human rights. If we read back to the earliest documents, the Declaration of Independence first says very clearly at the outset that one of the founding principles that led to the creation of this Nation, and the Republic and Constitution that followed that, was the notion that all of us are created equal. Every human being on the planet who was ever born, ever will be born anywhere in this world, was born with certain rights, and the source of those rights is our Creator.

Think about that for a moment. That is not a common belief. For almost all of our history people believed our rights as people came not from our Creator, they came from the government, from our leaders. Our rights are what the government allows us to have. That is not what founded our country. This country was founded on the very powerful idea that the source of our rights and our value as a human being came from our Creator.

Of course, that manifested itself in all sorts of things in this country, a constitution, for example, that in recognition of those rights created a system of government that said the job of the government was to protect these rights, not to grant them. And, of course, the American miracle has plenty of witnesses, myself included, and is well documented in the annals of history, particularly in the last half century, the American century, the 20th century, which is shown as an example to the world. Yet the issue of human rights continues to be a central one around the world and one of the places where I think an American example can make the biggest difference.

One of the issues that has interested me since I got to the Senate—my background before I got here just a year ago was in State government, and before that it was in local government. One of the great things about being in the Senate is you have access to sources of information and individuals with information that I didn't have before. One of the issues that has fascinated me on a global scale is how human rights are still summarily violated all over the planet and how, in fact, these powerful ideas that are at the core of our founding as a country are still not widely accepted in many parts of the world.

This is a great time of year to be in Washington. People are on spring break, and they are bringing their kids up here to learn about our Republic. So I think it is a great time to remind ourselves that one of the things that made us different from the rest of the world is that we are one of the few countries on the planet that really believe that every single person who has ever been born has rights they are born with. We take that for granted. If you have been born here and lived here your whole life, you think that is the way it is everywhere. It is not. There are so many societies and countries around the world where people are told: You don't have any rights unless we give you rights. Unless your government or your leaders or your laws give you certain rights, you don't have these rights. In America, we almost take that for granted because we believe we are born with these rights. And the American example to the world has been what can happen when you actually believe that every single human being has worth and value and rights that they are born with and that you have no right to deny them.

Sadly, there is no shortage of examples around the world where those fundamental rights are violated. I think no nation on this planet has a larger obligation to speak out against it than ours. So what I intend to do over the next few weeks is come to the floor and highlight some of these egregious human rights violations because I think they go to the core of our exceptionalism. They go to the heart of who we are as a people and as a nation. They go to the center of what makes us different from other countries around the world and in many respects are at the heart of what is in debate at this very moment in the world.

As we enter this new 21st century, there are a handful of nations across the globe that do not want the issue of human rights to be central. They don't want this issue to be on the front burner because they don't believe in these things. What they seek is a new international order where the violation of human rights is nobody's business.

You see that today in Syria, where people are being murdered, where unarmed civilians are being pursued and shelled by an army, where there are horrifying examples of human rights violations on a daily basis. At least two countries—Russia and China—have taken the position that it is nobody's business, and one of those countries is the topic I want to talk about today; that is, China—an emerging power on the world stage that some people I think falsely claim will replace America on the world stage. I think that is an exaggeration.

By the way, we welcome the economic progress China has made. I think it is great news that there are millions of people in China who a decade ago were riding around on a bike and now have a car. Only a decade ago millions of people were living in deep poverty and today are part of the middle class. I think that is fantastic. But don't get ahead of yourself in believing that China is going to replace America on the world stage. This is still the richest, most powerful country in the world. This is still the most important economy on the planet, and our people are as smart and as creative as they have ever been, and that is not going to change.

But I think we have to look at China because if, in fact, they are this rising power, if they are going to be a growing influence on the international stage, we have to ask ourselves, What is their commitment to human rights? Sadly, it is not a very good one.

If you look at the issue of Tibet, it is a perfect example. These are peace-loving people who have sought a certain level of autonomy. They want to preserve their culture and their way of life. They have gone as far as to say: We are OK being under Chinese rule, but we want to protect some of the things that are innate and indigenous to our own culture and values. And China is systematically trying to erase their culture and their heritage through processes of re-education, through the jailing of people, through the oppression of people, through the destruction of a free press and systems of communication. It manifests itself today. I think yesterday was the latest incident of people in Tibet setting themselves on fire. By the way, we should not encourage that. It is horrifying to see that. We hope it stops. It just leads to an understanding of the level of desperation that exists in Tibet.

Let me ask you a question. If China is a growing influence on this planet, are these the values that are going to replace American values on the world stage? Are these the values that are going to replace our belief that all individuals were created equal, with certain rights that come from their Creator? Are we prepared to retreat from the world stage and allow that to happen without at least speaking against it?

We should not be surprised that China stands by and says: Do nothing. Don't even sanction. Don't even put out a nasty letter about Syria. We should not be surprised because a nation that doesn't care about the human rights of their own people is never going to care about the human rights of others. As Americans, the question we have is, Are we prepared to retreat from the world stage and, in fact, allow nations such as that to play a growing role in the world? Are we prepared to silence our own voice at the expense of their voice? I hope not.

So when we debate in this Chamber about issues of economic policy, we are debating issues about America's influence in the world. And I would say to you that if America is diminished on the world stage, whether it be by choice or by accident, if we fail to confront the issues this nation faces and we choose to decline, it won't be just the Americans who pay the price, it will be people all over the world, including the people who live in Tibet, because then there will be no voice on this planet that condemns human rights violations the way we do, because there will be no nation in the world that can prove that, in fact, you can have a functional society where the innate worth and the value and rights that our Creator gives every human being are respected. That is what is at stake when we debate America's influence and America's standing in the world.

Over the next few weeks, I hope to come to this floor and continue to highlight these egregious violations of human rights. Tragically, there is no shortage of them. In the weeks to come, we will talk about the problems of human trafficking that exist in our own country, in our own hemisphere, and all around the world. We will talk about the violations of religious liberties that exist in societies all over the planet. We will talk about how women have no rights whatsoever in many of these countries. There are some nations where a woman is counted as one-fourth of a man in terms of their worth or their ability to speak out. We will talk about other countries where people are systematically jailed, as they are in our own hemisphere, for putting out pamphlets that criticize the government. We will talk about what is happening in Syria and Tibet.

Human rights is at the core of who we are as a nation. It is at the core of our identity as a people and as a power on the global stage. It is an issue that doesn't belong to the right or to the left, to Republicans or Democrats; it is an issue that should unite us all in this Chamber and in this country, and we hope to be an effective voice in that regard in the years that God permits me to serve here in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

GROH NOMINATION

Mr. ROCKEFELLER. I thank the good Senator from Missouri for her courtesy.

Madam President, I rise today to express my very strong support for the confirmation of Gina Marie Groh to serve as a U.S. district judge for the Northern District of West Virginia.

Gina Groh is absolutely qualified for this position and deserving of every Senator's support. She has more than 22 years of legal experience, of which 14 have been devoted to serving the people of West Virginia, first as a prosecutor and now as a trial judge. In these roles, Judge Groh has exhibited a superior intellect and an unwavering commitment to fairness and to justice. Lawyers describe her as meticulously prepared as a judge, and they describe her as somebody who administers justice in a timely and equitable manner. Because of her superior qualifications, she was reported out of the Judiciary Committee by an unopposed voice vote and has been waiting patiently for 5 months for an up-or-down vote.

Judge Groh will be ready for the job on the day she assumes the bench, provided, of course, that she passes through this body. She knows how to make tough decisions. She knows how to issue thoughtful opinions and to protect the rights and liberties that are guaranteed to all Americans under our laws and our Constitution.

I am very proud to urge all Senators to support Judge Groh's nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

FITZGERALD NOMINATION

Mrs. BOXER. Madam President, I rise today to support the nomination of Michael Fitzgerald as the Senate prepares to vote on his confirmation to become a district court judge. I had the great privilege of recommending Mr. Fitzgerald to President Obama for nomination. He is a respected member of the Los Angeles legal community. He will make an excellent addition to the Central District of California.

Mr. Fitzgerald served as a Federal prosecutor, where he handled cases involving international drug rings and money laundering, including what was at the time the second largest cocaine seizure in California history. Since he has left the U.S. Attorney's Office, Mr. Fitzgerald has been in private practice handling complex criminal and civil cases. He received a rating of ''unanimously well qualified'' by the American Bar Association.

He is a historic choice, and a vote on Mr. Fitzgerald's nomination is long overdue. He was voted out of the Senate Judiciary Committee unanimously 133 days ago on November 3, 2011. It really should not take this long to confirm such a highly qualified nominee as Mr. Fitzgerald, especially because this seat has been designated a judicial emergency. So we have a seat that has been designated a judicial emergency, and we have a highly qualified gentleman who is ready for this challenge and who was voted out of the committee unanimously last year, 133 days ago.

I want to close with great hope that we will confirm Mr. Fitzgerald. With that, I want to, in advance—and I hope I am proven right—congratulate him and his family on this momentous day. I urge my colleagues in the Senate to join with me in voting for this highly qualified nominee.

Thank you very much, Madam President.

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

The assistant bill clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF GINA MARIE GROH TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NOMINATION OF MICHAEL WALTER FITZGERALD TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

The assistant bill clerk read the nominations of Gina Marie Groh, of West Virginia, to be United States District Judge for the Northern District of West Virginia; and Michael Walter Fitzgerald, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. Under the previous order, there will be 15 minutes for debate equally divided in the usual form.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the order? I had understood I was to be recognized at 1:45. Am I incorrect?

The PRESIDING OFFICER. There will be 15 minutes for debate equally divided in the usual form.

Mr. LEAHY. I am pleased that the Majority Leader and the Republican leader came to an understanding yesterday and a path forward so that we can finally consider the two judicial nominations the Senate will vote on today. With a judicial vacancies crisis that has lasted years, and nearly one in 10 judgeships across the Nation vacant, the Senate needs to continue to work to have a positive impact and reduce judicial vacancies significantly before the end of the year.

In light of the agreement reached between the leaders, the Senate will finally be allowed to consider the nomination of Judge Gina Groh of West Virginia. Judge Gina Groh currently serves as a Circuit Judge in the 23rd Judicial Circuit for the State of West Virginia, the first female circuit judge in the eastern panhandle region of West Virginia. She is one of only three women serving as a circuit judge throughout the state. Judge Groh was nominated to the state court in 2006 on the recommendation of a bipartisan merit selection panel, and won a successful retention election in 2008. Prior to joining the bench, Judge Groh served for eight years as state prosecutor and nine years in private practice. Her nomination, which has the support of both of West Virginia's Senators, Senator ROCKEFELLER and Senator MANCHIN, and was reported with the support of every Democrat and every Republican on the Judiciary Committee last October. She has been waiting for this confirmation vote for more than five months while her nomination has been stalled along with so many others.

The Senate will also finally be able to consider the nomination of Michael Fitzgerald to fill a judicial emergency vacancy in the Central District of California. His nomination has the strong support of his home state Senators, Senators FEINSTEIN and BOXER. If confirmed, Mr. Fitzgerald will be the first openly gay man confirmed to the Federal bench in the state of California. Mr. Fitzgerald has worked in private practice for more than two decades, and before that, served as a Federal prosecutor. The ABA's Standing Committee on the Federal Judiciary unanimously rated him ''well qualified'' to serve on the U.S. District Court, its highest possible rating. His nomination was reported unanimously by the Judiciary Committee last November. He has been waiting four and one half months for this vote.

Unlike the 57 of President Bush's District Court nominations confirmed within a week of being reported by the Judiciary Committee during President Bush's first term, these qualified, consensus nominees have been needlessly stalled from final consideration. The application of the ''new standard'' the junior Senator from Utah conceded Republicans are applying to President Obama's nominees continues to hurt the people of West Virginia and California, who should not have to wait any longer for judges to fill these important Federal trial court vacancies.

The nominations of Judge Groh and Mr. Fitzgerald are two of the 22 circuit and district court nominations ready for Senate consideration and a final confirmation vote. They were all reported favorably by the Judiciary Committee after thorough review. All but a handful are by any measure consensus nominations. There was never any good reason for the Senate not to proceed to votes on these nominations. It should not have taken cloture petitions to get agreement to schedule votes on these qualified, consensus judicial nominations. In addition to the two nominations we consider today, another 10 of the nominations on which agreement has now been reached have been stalled for months and were reported last year.

Among the nominees included in the leaders' agreement are two outstanding

women nominated to fill vacancies on important circuit courts that have been delayed since last year—Stephanie Dawn Thacker of West Virginia, nominated to the Fourth Circuit, and Judge Jacqueline Nguyen of California, nominated to fill one of the many judicial emergency vacancies on the Ninth Circuit. Ms. Thacker, an experienced litigator and prosecutor, has the strong support of her home state Senators, Senators ROCKEFELLER and MANCHIN. Judge Nguyen, whose family fled to the United States in 1975 after the fall of South Vietnam, was confirmed unanimously to the district court in 2009 and would become the first Asian Pacific American woman to serve on a U.S. Court of Appeals. Both were reported unanimously by the Judiciary Committee last year and both should be confirmed by the Senate without additional damaging delays.

All 22 of the nominees awaiting a vote by the Senate are qualified judicial nominees. They are nominees whose judicial philosophy is well within the mainstream. These are all nominees supported by their home state Senators, both Republican and Democratic. The consequence of these months of delays is borne by the nearly 160 million Americans who live in districts and circuits with vacancies that could be filled as soon as Senate Republicans agree to up or down votes on the 22 judicial nominations currently before the Senate awaiting a confirmation vote.

We must continue with the pattern set by yesterday's agreement to make progress beyond the 14 nominations in that agreement and beyond the 22 nominations currently on the calendar. There are another eight judicial nominees working who have had hearings and are working their way through the Committee process. In addition, there are another 11 nominations on which the Committee should be holding additional hearings during the next several weeks. By working steadily and by continuing the resumption of the regular consideration of judicial nominations I hope the understanding between the leaders signals, we can do as we did in 2004 and 2008 to ensure that the Federal courts have the judges they need to provide justice for all Americans without needless delay. In those presidential election years, we worked together to reduce judicial vacancies to the lowest levels in decades.

Our courts need qualified Federal judges, not vacancies, if they are to reduce the excessive wait times that burden litigants seeking their day in court. It is unacceptable for hardworking Americans who turn to their courts for justice to suffer unnecessary delays. When an injured plaintiff sues to help cover the cost of his or her medical expenses, that plaintiff should not have to wait three years before a judge hears the case. When two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute.

We 100 Senators stand in the shoes of over 300 million Americans. It is good to see the Senate agreeing to end the partisan stalling and schedule votes on these long-delayed and much-needed judges.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, this week the judicial confirmation process was a bit off track. The 17 threatened cloture motion votes were unnecessary. I am pleased the majority leader determined to not move forward with that plan.

The Senate has now returned to its regular order of processing judicial nominations in a careful and deliberate manner—just exactly what we ought to do when we are talking about confirming people to lifetime appointments. This means nominees are called up, debated, and voted upon, just as we have been doing. In fact, we have done that 131 times for President Obama's judicial nominees. Of course, on rare occasions, as within the traditional rules and practices of the Senate, there will be difficulty in moving forward with consent to proceed on just a very few.

So I view what happened yesterday not as some deal but as a rejection of a political stunt in favor of returning to regular order, as we are doing today. I have worked with the chairman and members of the Judiciary Committee, as well as my colleagues throughout the Senate, to ensure nominees are treated fairly, and I will continue to do so.

In the meantime, I am pleased the Senate has turned to the JOBS bill. It is imperative that the Senate keep its focus on what the people back at the grassroots level think we ought to be working on—jobs, the economy, energy, and other critical issues facing our Nation.

Today we turn to two judicial nominations under regular order and the procedure of the Senate: Gina Groh, who is nominated to be a U.S. district judge for the Northern District of West Virginia, and Michael Fitzgerald, who is nominated to be a U.S. district judge for the Central District of California.

Earlier this week, I heard remarks blaming the judicial vacancy rate on Republican obstructions. What was failed to be discussed—not even mentioned—was that 44 of the judicial vacancies have no nominee. Of the 35 judicial vacancies designated as judicial emergencies, the President has failed to submit a nomination for 19 of those seats. So what about the other 16? What about the other 39 of the 83 I just mentioned? It is a fact of life; we can't proceed to process judicial nominations if the President doesn't send them to us. So the President needs to hurry if he wants to get some consideration.

That has been the pattern for most of this administration—failure or delay in submitting nominations to the Senate. For example, look at the nomination of Gina Groh, a nomination we are considering today. Yes, her nomination has been before the Senate for 5 months, but this seat became vacant in December 2006. President Bush submitted a nomination for this seat on May 24, 2007. That nominee never even had a hearing but languished in committee for 19 months before being returned to the President. This is just 1 of 53 nominees of President Bush's who were subjected to what some have characterized as a ''pocket filibuster'' or otherwise went unconfirmed.

Even after President Obama's election, it took until May 19, 2011, for him to nominate Ms. Groh. The President took 848 days to submit the nomination—nearly 2 years and 4 months. I have to ask, Where was the nomination? Where was the outrage of the other party during all of this time of dillydallying around at the White House?

Again, we are moving forward under regular order and procedures of the Senate. This year, we have been in session for about 28 days, including today. During that time, we have confirmed nine judges. That is an average of about one confirmation for every 3 days. With the confirmation today, the Senate will have confirmed 72 percent of President Obama's judicial nominations.

Gina Marie Groh is nominated to be United States District Judge for the Northern District of West Virginia. Judge Groh graduated summa cum laude with a B.A. from Shepherd University in 1986, and with a J.D. from West Virginia University College of Law in 1989. From 1989 to 1998, she worked as a litigation associate for three separate firms. From 1989 to 1991, she was with Steptoe & Johnson and then she moved to Mell, Brownwell & Baker, where she worked until 1995. Finally she worked at Semmes, Bowen, & Semmes until 1998. During this period, her practice primarily involved civil litigation, including workers compensation and personal injury defense.

From 1998 to 2006, she served as an Assistant Prosecuting Attorney. She served in this capacity with the Berkeley County Prosecuting Attorney's Office until 2002 and then with the Jefferson County Prosecuting Attorney's Office. As an assistant prosecutor, she primarily prosecuted felony cases on behalf of the State of West Virginia. While with the Jefferson County Attorney's Office, she also represented the county government in civil matters. While an assistant county prosecutor, she estimates she tried about 500 cases to verdict.

In December 2006, Governor MANCHIN appointed Judge Groh as a circuit judge in the 23rd Judicial Circuit of West Virginia. In November 2008 she was elected to the same position. As a judge serving on a court of general jurisdiction, she presides over a variety of civil and criminal cases and manages the grand jury in Morgan and Jefferson counties, which meets three

times per year in each county. She estimates that she has presided over 93 cases that have either gone to verdict or judgment. In addition, she has issued orders in over 3,400 cases.

Michael Fitzgerald is nominated to be United States District Judge for the Central District of California. He is a 1981 graduate of Harvard University and received his J.D. in 1985 from the University of California, Berkley—Boalt Hall—School of Law. After graduating from law school, Mr. Fitzgerald clerked for the Honorable Irving R. Kaufman on the United States Court of Appeals for the Second Circuit.

From 1986–1987, he was an associate at O'Donnell & Gordon where he represented individuals and small companies in civil litigation. In 1988, he became an Assistant United States Attorney where he served on the Organized Crime and Drug Enforcement Task Force/Major. With the task force he primarily prosecuted cocaine rings. He also worked with a money laundering task force comprised of IRS criminal agents and Los Angeles Police Department narcotics officers. From 1991–1995 he worked as an associate at Heller, Ehrman, White & McAuliffe LLP, on commercial litigation.

In 1995, Mr. Fitzgerald joined the Law Offices of Robert L. Corbin, P.C. as an associate attorney, and became a partner in 1998, when the firm was renamed Corbin, Fitzgerald & Athey LLP. Initially he represented small businesses and individuals in small to medium-sized civil cases, as well as a variety of criminal cases in Los Angeles Superior Court. He also was involved in federal civil and criminal cases. For the past six years, the focus of his firm has been representing clients who are under investigation by federal agencies. These investigations have concerned securities, defense contracting, environmental law, health care, antitrust, tax and financial crisis.

Mr. Fitzgerald reports that he has appeared in court regularly for most of his career. However, since 2004, he has only appeared in court occasionally. He has tried 26 cases to verdict.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, when I hear concerns that the Republican delays are all the fault of President Obama, it sort of makes me think of some of the dialogue from the movie ''Casablanca''. I should tell my colleagues that there are 83 vacancies, sure. Several of them are without a nomination because this President is trying to work with home State Senators, including 24 vacancies involving a Republican home State Senator who hasn't agreed to anybody. There are seven nominations on which the Senate Judiciary Committee cannot proceed because Republican Senators haven't returned blue slips indicating their support. We had somebody else who we were going to consider in Committee. Two Republican Senators had returned blue slips; they withdrew them and we had to take that name off the agenda.

So we try to protect Republicans' rights in the committee and, suddenly, we are at fault because they are blocking people who have gone through unanimously. Well, none of these complaints would give any excuse for failure to move on nominees that went through with every single Republican, every single Democrat voting for them.

Instead of being voted on in a week, as 57 did during President Bush's first term, these nominees sit here for month after month after month.

Mrs. FEINSTEIN. Mr. President, I rise to speak today on the nomination of Michael Walter Fitzgerald, a highly qualified nominee to the United States District Court for the Central District of California.

The vacancy Mr. Fitzgerald would fill has been declared a judicial emergency by the Judicial Conference of the United States. The Central District is the ninth-busiest court in the country in terms of filings per judgeship, and it has several vacancies that need to be filled.

I wish it had not taken four and a half months to see Mr. Fitzgerald confirmed, but I am very grateful that the Senate is able to make progress on his nomination today.

I urge my colleagues to support this nomination.

Mr. Fitzgerald was born in Los Angeles in 1959 and attended California's public schools. He received a scholarship to attend Harvard College, from which he graduated magna cum laude in 1981.

After graduating from Harvard, Mr. Fitzgerald taught at Anaheim High School. He then attended Boalt Hall Law School at the University of California, Berkeley, where he was managing editor of the Industrial Relations Law Journal and graduated Order of the Coif in 1985.

Following law school, he clerked for Judge Irving R. Kaufman on the U.S. Court of Appeals for the Second Circuit.

Mr. Fitzgerald has over 25 years of experience practicing law. After one year in private practice he became an Assistant United States Attorney in the Central District of California, where he served from 1988 through 1991.

During that time, he served on the Organized Crime and Drug Enforcement Task Force and with the Major Narcotics Section. He led an investigation that resulted in the seizure of 2,241 pounds of cocaine and the conviction of a major drug trafficking kingpin.

Since his service as a federal prosecutor, Mr. Fitzgerald has worked as an attorney in private practice, first at the law firm Heller Ehrman White & McAuliffe and now at Corbin, Fitzgerald, and Athey LLP.

He has represented plaintiffs and defendants in civil cases, as well as criminal defendants. He also has represented major corporations and corporate officials in investigations by the Securities and Exchange Commission and the Department of Justice. For example, he represented a senior Boeing manager in a Federal grand jury investigation, as well as Bank of America.

He also has been active in pro bono work. For example, Mr. Fitzgerald represented an FBI special agent, Frank Buttino, who had security clearance revoked after his sexual orientation was revealed to his FBI superiors. The case resulted in a settlement, in which the FBI revoked its policy of treating sexual orientation as a negative factor in security clearance determinations.

Mr. Fitzgerald also served as a deputy counsel on the Rampart Independent Review Panel, which was appointed by the Los Angeles Police Commission to investigate a major corruption scandal in the Rampart Division of the Los Angeles Police Department. He also served as a counsel to the Special Advisor to the Webster Commission, which investigated the L.A.P.D.'s response to the L.A. riots in 1992.

In short, Mr. Fitzgerald has an impressive record—strong academic credentials, an appellate clerkship, service as a Federal prosecutor, and over two decades in private practice.

Mr. Fitzgerald is also the first openly gay nominee to a California Federal Court—an important milestone on the road to equality.

I am confident he will be a superb addition to the district court, and I urge my colleagues to support his nomination.

Mr. LEAHY. Mr. President, I believe we have reached the time for the vote. Am I correct?

The PRESIDING OFFICER (Mr. SANDERS). The Senator is correct.

The question is, Will the Senate advise and consent to the nomination of Gina Marie Groh, of West Virginia, to be United States District Judge for the Northern District of West Virginia?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. HATCH), and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

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

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 49 Ex.]

YEAS—95

Akaka	Baucus	Bingaman
Ayotte	Begich	Blumenthal
Barrasso	Bennet	Blunt

Boozman
Boxer
Brown (MA)
Brown (OH)
Burr
Cantwell
Cardin
Carper
Casey
Chambliss
Coats
Coburn
Cochran
Collins
Conrad
Coons
Corker
Cornyn
Crapo
Durbin
Enzi
Feinstein
Franken
Gillibrand
Graham
Grassley
Hagan
Harkin
Heller
Hoeven
Hutchison
Inhofe
Inouye
Isakson
Johanns
Johnson (SD)
Johnson (WI)
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lugar
Manchin
McCain
McCaskill
McConnell
Menendez
Merkley
Mikulski
Moran
Murkowski
Murray
Nelson (NE)
Nelson (FL)
Paul
Portman
Pryor
Reed
Reid
Risch
Roberts
Rockefeller
Rubio
Sanders
Schumer
Sessions
Shaheen
Shelby
Snowe
Stabenow
Tester
Thune
Toomey
Udall (CO)
Udall (NM)
Vitter
Warner
Webb
Whitehouse
Wicker
Wyden

NAYS—2

DeMint
Lee

NOT VOTING—3

Alexander
Hatch
Kirk

The nomination was confirmed.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, first of all, we had a good week. We have worked together on issues and gotten a lot done. We have one more vote. That will be the last vote this week. The next vote will be Tuesday before the caucus.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Michael Walter Fitzgerald, of California, to be U.S. District Judge for the Central District of California.

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

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

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. HATCH), and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

The result was announced—yeas 91, nays 6, as follows:

[Rollcall Vote No. 50 Ex.]

YEAS—91

Akaka
Ayotte
Barrasso
Baucus
Begich
Bennet
Bingaman
Blumenthal
Boozman
Boxer
Brown (MA)
Brown (OH)
Burr
Cantwell
Cardin
Carper
Casey
Chambliss
Coats
Coburn
Cochran
Collins
Conrad
Coons
Corker
Cornyn
Crapo
Durbin
Enzi
Feinstein
Franken
Gillibrand
Graham
Grassley
Hagan
Harkin
Heller
Hoeven
Hutchison
Inouye
Isakson
Johanns
Johnson (SD)
Johnson (WI)
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lugar
Manchin
McCain
McCaskill
McConnell
Menendez
Merkley
Mikulski
Moran
Murkowski
Murray
Nelson (NE)
Nelson (FL)
Portman
Pryor
Reed
Reid
Risch
Roberts
Rockefeller
Rubio
Sanders
Schumer
Sessions
Shaheen
Shelby
Snowe
Stabenow
Tester
Thune
Toomey
Udall (CO)
Udall (NM)
Warner
Webb
Whitehouse
Wicker
Wyden

NAYS—6

Blunt
DeMint
Inhofe
Lee
Paul
Vitter

NOT VOTING—3

Alexander
Hatch
Kirk

The nomination was 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.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

JUMPSTART OUR BUSINESS STARTUPS ACT—Continued

The PRESIDING OFFICER. The junior Senator from West Virginia is recognized.

Mr. MANCHIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

GROH NOMINATION

Mr. MANCHIN. Mr. President, I rise to applaud the confirmation of Judge Gina Marie Groh to the U.S. District Court for the Northern District of West Virginia.

As then-Governor of West Virginia, I was honored to have the first female from the Eastern Panhandle, with the highest of credentials, Judge Groh, brought to my attention. I was so proud to appoint her to the 23rd Judicial District in 2006, and she has served with great distinction ever since.

I am also very pleased my colleague and friend Senator JAY ROCKEFELLER saw the same qualities in Judge Groh that I did and recommended her for this prestigious position on the Federal bench. I thank him for his steadfast support.

I wish to take this opportunity to reiterate some of Judge Gina Groh's fine qualities and the reasons I know she will be an exceptional judge on the U.S. District Court for the Northern District of West Virginia.

Judge Groh is a well-respected and recognized member of her community in the Eastern Panhandle of West Virginia, as I have known her for many years. In addition to being the first female circuit judge to serve in the Eastern Panhandle, Judge Groh is only the third female circuit judge to be selected in all of West Virginia.

Prior to her circuit court appointment, Judge Groh served as assistant prosecuting attorney at the prosecuting attorney's offices in Berkeley County and Jefferson County, WV. During her 8 years as prosecutor, she established a strong record of protecting her fellow West Virginians by tirelessly pursuing convictions for such crimes as murder, robbery, rape, child abuse, drunk driving, and drug-related offenses.

Judge Groh has not only excelled professionally but has also risen to become a true pillar of her community in the Eastern Panhandle of West Virginia. She dedicates her time to countless foundations and serves on a number of boards. For many years, she has worked for such programs as Robes to School and the Meals with Love Ministry and has been very involved with her alma mater, Shepherd University, serving both with the Wellness Center and as a member of the alumni board.

Judge Groh graduated summa cum laude from Shepherd University in 1986, with a bachelor of science degree. She earned the university's highest academic honor as a McMurran Scholar, in addition to serving as editor-in-chief of the newspaper and vice president of her graduating class. Judge Groh went on to earn her J.D. from West Virginia University's College of Law in Morgantown, WV.

I believe Judge Groh's experience, intellect, leadership, impartiality, and deep roots in the community make her a prudent choice for the vacancy in the Northern District of West Virginia. She exemplifies not only the qualities of a talented jurist but also the high moral character and sense of justice necessary to make a great judge.

I know it has been exasperating for Judge Groh and her family waiting for this confirmation, knowing that she came out of the Senate Judiciary Committee without any opposition. It has been very difficult that we as a body have gotten to the point of slowing down these nominations, and I believe very strongly our system needs to be changed so we can get quality judges such as Judge Gina Groh on the bench as quickly as possible so they can work to protect the people of the United States.

Again, I thank my colleagues for confirming an exemplary candidate for the U.S. District Court for the Northern District of West Virginia, Judge Gina Marie Groh.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the House of Representatives has just passed H.R. 3606, which is styled as a capital formation bill, but it is fundamentally flawed. As more and more people have looked closely at the bill, they have found more and more problems with it—problems that could roll back key consumer protections and dramatically decrease the transparency of our capital markets.

One of the fundamental misconceptions in this bill is that we can have robust capital formation without good

investor protections. My view is we can't have one without the other; that the strength of our market is the reliance investors have that they will have the right information and know enough about the entity they are investing in to make judicious, sound economic judgments. The Cantor bill would roll back many investor protections, would deny investors critical information that is essential to making sound judgments, and would ultimately not lead to the proposed goal of the bill—providing more access to capital, particularly for small, emerging companies.

Serious concerns have been raised about the Cantor bill by current and former regulators in the last 2 weeks: Mary Shapiro, Chairman of the Securities and Exchange Commission; the North American Securities Administrators Association; Arthur Levitt, former Chairman of the SEC and head of AMEX; and Lynn Turner, former chief economist of the SEC.

Some of the largest pension plans in the entire country have been weighing in through the Council of Institutional Investors, and these are the entities most people want to have invest in their companies as long-term investors. They have real concerns about the House action.

We have been getting phone calls and letters from a diverse array of consumer groups, such as the AARP, the Consumer Federation of America, the AFL–CIO, and SAFER, the Economists' Committee for Stable, Accountable, Fair, and Efficient Financial Reform.

Academic experts, such as Professor John Coffee of Columbia University School of Law, for one, have called the Cantor bill the ''Boiler Room Preservation Act'' because it will mean more pump-and-dump schemes, where people are pressured to invest in highly risky firms and products. Two other noted securities experts from Harvard University Law School and Business School, respectively, John Coates and Robert Pozen, have said the bill does more than, in their words, ''trim regulatory fat; parts of it cut into muscle.'' We need to slow down this process and get it right. H.R. 3606 can be improved and should be improved. That is why I—together with Senators MARY LANDRIEU, CARL LEVIN, SHERROD BROWN, JEFF MERKLEY, DANIEL AKAKA, SHELDON WHITEHOUSE, AL FRANKEN, TOM HARKIN, and DICK DURBIN—am introducing a substitute amendment to this bill today. We hope our legislation can serve as a base bill for the Senate to discuss and amend as we move forward.

What are some of the most serious flaws we are trying to address in the Cantor bill? First and foremost, this bill is unlikely to create jobs, despite the title the House has bestowed upon it. In fact, it may actually have the opposite effect. By weakening investor confidence, it could actually decrease the number of IPOs and lead to fewer investments in our capital markets.

Currently, our markets are considered the most transparent and liquid in the world, which has been one of its great strengths—the confidence that when an investor puts money into an American financial product and American market, he or she has detailed information about the current status and the prospects of that investment. Under the Cantor bill, our markets would become less transparent and more opaque. Fewer protections will be provided to investors. This could actually lead to fewer investors investing in the United States, since we are in a global economy or increasing competition with capital markets in London, Paris, Hong Kong, and Singapore—to name just a few.

Again, one of the great hallmarks of our markets, starting in 1933 with the securities legislation of the New Deal, was the feeling that investors would be protected, that there would be standards in place, information would be made available to them, and they could have confidence—as much confidence as they could get—in their investments. If we undermine that confidence, eventually we will undermine both our appetite and capacity to invest.

The Cantor bill has more problems. It tries to create a way that crowdfunding can be used to raise money for small enterprises, but it does this with very few protections for investors and would allow unregulated Web sites to peddle stock to ordinary investors without any meaningful oversight or liability.

Crowdfunding is a very interesting new approach to raising capital. Our colleagues, Senators MERKLEY and BENNET have spent a lot of time developing very positive legislation which balances improving small business access to capital, by tapping into social networks and small investors but, at the same time, gives those investors adequate protections. The House has not taken this approach. They have legislation that could, indeed, create a situation where crowdfunding is plagued by fraud, by manipulation, and by people who simply want to make a quick buck and move on, hoping they will just disappear into the Internet.

The Craigslist or eBay model may work to enable people to sell unwanted clothing, bikes, and other goods, but it certainly doesn't work for a financial security that requires a much more careful analysis than simply kicking the tires. People with more credit card debt than savings will be tempted to put their money into these mass-marketed, get rich schemes—money which they can't afford, in many cases. As the economy continues to grow, stocks will rise—we have seen some interesting and very positive developments on Wall Street over the last several weeks—but this ride up could be accompanied by bubbles with these types of crowdfunding schemes, where people are putting money in for a quick return based on, perhaps, the success of one or two companies but not having the information, not having the appropriate controls on the intermediaries so they can make a sound, valid investment.

There is another aspect of the House legislation, in addition to this crowdfunding approach, which is the House IPO on-ramp provisions. An IPO, of course, is an initial public offering. This approach, to try to streamline access to the public markets for emerging companies, has great merit. But once again, what has happened in the House bill is they have done this at the expense of necessary protections for investors.

Relaxing standards for very large, new public companies, when no evidence supports the idea those standards stand in the way of these IPOs and much evidence suggests the standards prevent serious accounting problems, is not the way to go. The basic essence of their approach—this on-ramp approach—is a very large company, with up to $1 billion in revenue, for a period of 5 years or so, can avoid some of the now standard requirements for public companies. This is not an targeted approach for small companies. Companies with $1 billion of revenue are substantial economic enterprises. The protections that have been put in place over the years not only protect the investors but also ensure appropriate audit procedures are in place. Ensuring appropriate managerial behavior for a company of that size should not be indefinitely waived or waived for a period of 5 years.

We could literally roll back the clock to pre-Enron, pre-WorldCom, where because of creative accounting, because of the lack of adequate audit procedures within the company, real abuses occurred. The result was Enron collapsed and their shareholders were left with virtually nothing. One of the more tragic ironies is that many of their shareholders were their employees who had their entire pensions invested in the company, particularly in the case of Enron. Ultimately, the pain to these people, caused by the lack of good standards—which have since been put in place—was significant. If we proceed on this, we might, once again, have a situation where we are repeating industry—and a history we have seen already.

Again, as the economy rebounds, as stocks rise, I think there will be a variable increase in new public offerings—IPOs. If we look at the data, the number of IPOs goes up and down. But the most significant factor is simply economic activity. As economic activity goes up, new companies have opportunities, IPOs go up. In this boom, there could be the temptation for these companies, given these new, very relaxed standards, to ignore the problem because they do not have to disclose them adequately or to deliberately mislead investors because there is no real check on what is being said. The relaxed standards in the House bill could allow companies to engage in deception, to raise and waste more investment money more quickly.

There is a way we can dial back this excessive legislation in a way that will provide capital formation but will also provide protections for investors, and I hope we can proceed in that manner. Increasing IPOs is a valuable goal, but it should be done much more cautiously, in my estimation, with reforms focused on much smaller companies than those with $1 billion in annual revenue, as is indicated in the Cantor bill.

During the course of three hearings in the Senate Banking Committee on these issues, it has become even more clear there are problems with the way shareholders are being counted. This is another aspect of the House bill that is problematic. They have indicated they would like to move beyond a number—500—which requires a company register under the 1934 Securities and Exchange Act with the SEC. This trigger is something that should be considered in terms of present-day standards. The House bill raises this trigger point to 2,000 very quickly, without dealing with the so-called beneficial owners problem. If the provision in the House bill was in force in the past, two-thirds of current public companies would not have been required to register under the 1934 Act. Let me say that again.

If you reach a certain number of shareholders, you are required to register and begin to give those shareholders required information on a quarterly basis. You are required to file other forms. You are required to be subject to other rules and regulations of the SEC.

If this new House standard of 2,000 shareholders was in place, two-thirds of current public companies would not have to register with the '34 Act. They would be operating in the dark. They would be operating with whatever minimal information they might be required to divulge to their shareholders under State corporate law or, in some cases, State securities law. That is an astounding number of companies.

Most investors take for granted that when you reach a critical size in the number of shareholders, et cetera, that you will begin to report. Again, these reports are the lifeblood of the investing community because they rely upon them for their information about what is going on in the company, and they rely upon them for the standards that company has to follow.

Over time, most investors as a result of registration under the '34 Act are entitled to receive regular disclosures. Again, these provisions raising up the level to 2,000 shareholders would undermine the other stated goal of the Cantor bill, to make it easier for companies to go public and easier to disclose information. In fact, some would describe this as sort of a bipolar piece of legislation.

On the one hand, they want to relax the standards for going public, and on the other hand they want to relax the standards and allow more companies to go private. I think we have to be careful in each instance to ensure that investors are protected, as well as capital formation is enhanced.

The House bill will eliminate an SEC rule on general solicitation, allowing companies to advertise risky, less regulated, unregistered private offerings to the public using, for example, billboards along highways, cold calls to senior living centers, or other mass marketing methods. It also will tear down protections that were put in place after the late 1990s Internet stock bubble burst that prevented conflicts of interest from tainting the quality of research about companies.

What we found in the wake of the dot-com bubble—with many protections in place that would be taken out by this legislation—was there were analysts who were touting companies at the same time other parts of their business were trying to sell those companies' shares. This conflict of interest with someone you hope is giving an objective opinion would be encouraged, not discouraged, under the House bill.

The Cantor bill would allow extremely large corporations to avoid SEC oversight. It also would allow banks, with even hundreds of billions of dollars in assets, to deregister and stop being subject to SEC oversight and critical investor protections.

Finally, the Cantor bill actually doesn't include provisions that are more likely to create jobs for Americans. For example, the House bill does not include reauthorization of the Ex-Im Bank. Time is of the essence, by the way, to get this Ex-Im Bank reauthorized. The bank's temporary extension expires at the end of May and is close to exceeding its operating level of $100 million by the end of this month.

Renewing the Ex-Im Bank's charter with increased lending authority is practically the only way of countering the predatory financing practices of other trading nations. We spend a lot of time on this floor pointing the finger at companies that are using their sovereign institutions to undermine American jobs, to get them overseas. Yet one of the major institutions in our country that helps American products to be sold overseas is literally in danger of going out of business. That is something that will, in fact, enhance job creations, and it is not in the House bill. In fact, it has been suggested that Ex-Im Bank activities supports almost 300,000 jobs in the United States each year.

It also doesn't include two other programs that would result in the creation of more jobs, and these two programs are particularly the result of the hard and aggressive and thoughtful work of Senators LANDRIEU and SNOWE. One program expands the capacity of the Small Business Investment Company program, SBIC. They have proposed legislation that would allow another $1 billion in equity-like financing for smaller, fast-growing firms. The other program would extend for 1 year the SBA's 504 refi loan program to help firms refinance commercial real estate into long-term, fixed-rate loans.

These modifications have created and saved hundreds of thousands of American jobs at no cost to the taxpayers. These are tried and true ways to increase jobs in America without running the risk of undermining the information that investors need to make sound choices about where to invest their dollars.

It is very tempting to suggest we simply have to cut a couple of regulations and jobs will expand. That was the theme that was rampant here during the Bush administration and, for a while, frankly, it looked like it was working. But then, with the sudden and colossal collapse, we knew that was not the path to long-term sustained job creation. Sound investment based on adequate information in companies that produce jobs in the United States is the way to proceed.

We need to listen to those individuals charged with the supervision of our capital markets, the SEC, and now we have both the current chairman and a former chairman saying the legislation the House proposed is a threat to all investors in this country. The stakes are high if we get some of these things wrong. We have been trying to focus on these issues intensely for the last few months to bring legislation to the floor that will balance capital formation with investor protections. You can't get one at the expense of the other. You have to have both.

So I encourage all my colleagues to take a close look at the Reed-Landrieu-Levin substitute. I believe it is a substantial improvement to the House bill. My colleague from Louisiana will speak and, once again, I must commend her passion for protecting investors, particularly small investors, and her passion for creating jobs through the SBA and other organizations as remarkable, commendable, and indeed exceptional.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I thank Senator REED and Senator LEVIN who have helped to lead this effort to make a bill that is coming over from the House much better and much safer for investors, as well as to generate opportunities for more capital to flow to some of the good and solid ideas that are out there in our marketplace to create jobs.

I am pleased to join these two Senators and about a dozen to date and potentially dozens more of our colleagues as people learn the differences—and they are substantial—between the House version of what they call an IPO bill and the Senate version we have worked on very diligently and carefully over the last 48 hours.

The three of us are prepared to vote against the House bill as it stands now. The only hope of getting our support, and many others here, is to try to amend the House bill. That is what our efforts are.

We are not trying to say no to everything that is in the House bill because there are some excellent ideas. Even the President himself and the White House and some of the Democrats voted for that bill because there are some good ideas in the bill, and some ideas that have come from some of the brightest entrepreneurs in our country. We are not trying to say no to those ideas. We are trying to say yes to those ideas, but do it in a way that protects investors—older investors, younger investors, sophisticated investors, and your average sort of nonsophisticated investors because the Internet has opened a whole new opportunity.

When these security laws were written 40 years ago, 50 years ago, 60 years ago and amended, the Internet wasn't what it is today. So that is why this crowdfunding bill—which is, in essence, a way for the Internet to be used to raise capital that is illegal generally today, and there are very specific rules about how people can raise capital for their businesses. Some of those regulations are too onerous; some of them are right on. But this whole idea of, oh, my goodness, now the Internet is here—look what opportunities could be. We can get our ideas to the marketplace without having to go through middlemen. We have a great idea, a wonderful patent. We want to be able to raise money. We are very excited about this. But there is a right way to do this and there is a wrong way to do this.

With the House bill, we know that we are on a little bit of rocky ground when they don't really have a name for it. They have called it everything from an IPO bill to a jobs bill to a capital expansion bill. What I am calling it today—and I will have a poster made over the weekend—is an ill-advised political opportunity bill. That is what IPO stands for, in my mind.

It is ill-advised because the safeguards that are required to make sure these new ideas happen the way they should are absent from their legislation. That is why, when I found out, surprisingly, that the Senate of the United States was getting ready to take that bill and just adopt it whole hog, I said: Absolutely not. We have to slow this down, try to amend it—not kill it but amend it. The reason is because there are very respected groups out there that started sending letter after letter after letter to the Senate urging us to do just that.

This isn't about a conservative-liberal fight. This is about the right regulations that are necessary before we take a good idea and mess it up. Crowdfunding is a good idea. It is an exciting idea. There are great entrepreneurs out there. The Internet could be a very powerful tool. But everyone knows if you enter into new territory without caution and care, you can fall off a cliff that you didn't even know was there. That is exactly what the House bill is going to do.

If you don't want to take my word for it, let's talk about what AARP says about it. This is the first letter. I am going to put a dozen letters into the RECORD in the next 10 minutes to try to get the attention of the people on the other side of the aisle. This is all an attempt to get their attention over the weekend, and I hope the press will write about these letters so when they come back on Monday they can say: Oh, my gosh. We have a good bill that came from the House, but there are some real flaws and we should fix it before we create another Wall Street debacle or before we see people ripped off again like we just went through in the last 6 years.

How short is our memory about investors getting stripped, going bankrupt because of exactly the same thing: just not being careful, not having the right rules in place, not having the right enforcements in place. This was like yesterday. That is why when the leadership said we were just going to take up the House bill, I said: Wait a minute. No, no, no.

This is what the AARP said, Joyce Rogers:

> I am writing to reiterate our opposition to the lack of investor protections in H.R. 3606—

Again, the House-passed, ill-advised political opportunity bill. That is what I am calling it. That is what it is—

> that soon will be considered on the floor of the Senate floor. AARP's primary concern is that this legislation undermines vital investor protections and threatens market integrity.

So AARP doesn't urge the Senate to kill the bill.

> AARP urges the Senate to take a more balanced approach, recognizing both an interest in facilitating access to capital for new and small businesses and in preserving essential regulations. . . . We believe the amendment to be offered by Senators Reed, Landrieu and Levin, moves closer to achieving this balance and deserves your support.

It goes on to say that sometimes the people who are taken advantage of are the elderly. So wake up, Senators from Florida. Wake up, Senators from Michigan. Wake up, Senators who have big senior populations. The AARP is against the House bill, the ill-advised political opportunity bill.

North American Securities Administrators Association—they sent a letter yesterday, from Jack Herstein. It is seven pages long. They go into great detail:

> On behalf of the North American Securities Administrators Association—

I don't think this is a liberal think tank. I think this is a very well respected, not a leftwing, regulate-everything-that-moves kind of group. I think that is correct. He says:

> I am writing to express concerns regarding several provisions, most notably our strong concern with the extraordinary step of preempting state law for ''crowdfunding'', contained in [the ill-advised political opportunity bill which was passed by the House.]
>
> State securities regulators support efforts by Congress to ensure that laws facilitating the raising of capital are modern and efficient, and that Americans are encouraged to raise money to invest in the economy. However, it is critical that in doing so, Congress not discard basic investor protections.

I am going to submit this letter, without objection, I hope, to the RECORD.

This is from the Council of Institutional Investors, ''a nonprofit, nonpartisan association of public, corporate and union pension plans.'' Let me repeat, not just union pension plans but public and corporate pension plans. They are writing with questions about the House ill-advised political opportunity bill, and it goes into great detail. I am putting this into the RECORD hoping people will actually read the CONGRESSIONAL RECORD.

Another letter to Speaker BOEHNER and NANCY PELOSI. This was delivered to the House. It may be a little different from the one to the Senate, so I would like to put that into the RECORD. These are very important letters received just recently. That is why I am asking people to wake up, pay attention.

Securities and Exchange Commission, March 13. This is to Chairman JOHNSON and Ranking Member SHELBY basically saying:

> Last week, the House of Representatives passed H.R. 3606. . . . As the Senate prepares to debate many of the capital formation initiatives addressed by H.R. 3606, I want to share with you some of my concerns on some important aspects of this significant legislation.

That is by Mary Schapiro, Chairman, outlining a dozen of her concerns because, of course, she thinks there is going to be a debate. She would expect a debate on a bill of this nature and magnitude and diversion from the ordinary. But we were not going to have a debate. We were just going to be told to take the House bill or leave it until a few of us said: No, slow this train down. This is no way to run a railroad.

We are not trying to kill the bill. We are not trying to delay. We are trying to have at least a 2- or 3-day debate on an important piece of legislation that, if it is not done right, is going to absolutely ruin the best chance we have had in decades to actually get capital into the hands of businesses.

Everyone here should now know me well enough as chair of the Small Business Committee to know I have spent literally nights, days, and weekends on the floor of this Senate trying to figure out ways to get capital into the hands of small businesses. Why would I stand here and try to stop that? I have spent my whole time as the Senate chairman of the Small Business Committee trying to do that. But, again, there is a right way to do that and a wrong way.

If we take the wrong path and fall off of a cliff, we are going to ruin the chance we have with this new Internet tool, this very exciting opportunity, and we are going to ruin our chance to get this done.

Who is going to suffer? The same people who suffer all the time, the small businesses and the exciting opportunities and entrepreneurs who need our help.

Any bill that is a major bill can stand the scrutiny of time before the public, and amendment. If it cannot stand that scrutiny, then I suggest there is something terribly flawed with it. That is what we are trying to provide, scrutiny.

This letter comes from the AFL–CIO, from Jeff Hauser, an e-mail:

America needs jobs. Yet Congress cannot enact such basic legislation as the reauthorization of the surface transportation bill—

Which we passed, but it has not been completed. He goes on to say:

Workers' retirement savings will be in greater risk of fraud and speculation if securities market deregulation once again is railroaded through Congress. Once again our economy will be at risk from the folly of policy makers promoting financial bubbles and ignoring the needs of the real economy. The AFL–CIO calls on Congress to set aside the politics of the 1 percent, the old game of special favors for Wall Street.

They are very strong in their language, probably a lot stronger than these other organizations. But I think they have reason to be. Many of their members were taken to the cleaners by scams on Wall Street. They have yet to recover. Their 401s have yet to recover. Even yesterday, or last week, in the paper I saw one of the big companies that failed. I think it was MF Global. Did you all see that in the newspaper? They failed. Of course, it was a terrible debacle. Lots of people lost money. But the CEO is walking away with a $7 million bonus.

People who work hard all day have a very hard time understanding how we in the Congress can allow the CEO to walk away with a bonus of $7 million when he bankrupted thousands of people. That is a good question. Are we going to do that again with this House bill? I hope not.

Let's put the AFL–CIO on record saying slow down.

This is the next message I want to put in from the secretaries of state—and I want to read off who they are: the secretary from Missouri, Robin Carnahan; the secretary from Massachusetts, William Falvin; the secretary from New Hampshire, William Gardner; the secretary from Mississippi—I believe is a Republican—Delbert Hosemann; the secretary from North Carolina, secretary of state Elaine Marshall; the secretary from Nevada, Ross Miller; the secretary of state from Indiana, Charles White; and the secretary of state from Illinois, Jesse White.

Jesse White says the same thing: Beware of the House bill. It is flawed. It has some good ideas in it, but those flaws need to be corrected.

That is what the Reed-Landrieu-Levin et al amendment does. We are not trying to kill these wonderful, exciting ideas. We are trying to fix it so it is better. I hope our Members on the other side will join us in doing that, and I would like to submit this to the RECORD.

There are two more. Actually, I am sorry, four more—we have so many. The next one is from my office of financial institutions from Baton Rouge, my commissioner, banking commissioner, who wrote me. He is generally in favor of some of the things in the House bill. But he said:

I am writing to urge you to oppose the preemption of Louisiana law to protect investors.

I would like to put that into the RECORD.

The American Sustainable Business Council. It is signed by David Levine. Again, I don't believe this is a left-leaning group. I think it is a pretty centrist organization. They urge us to take a hard look at the House bill.

Finally, Madam President, I want to have printed in the RECORD—this is when I got nervous: when I started receiving letters in my office from crowdfunders themselves against the House bill. The people who gave the idea to start up crowdfunding have now said the House bill is flawed. Here is what they say:

I write in favor of the bipartisan compromise CROWDFUNDING Act proposed recently by Senators Merkley, S. Brown, Bennet and Landrieu.

That is the crowdfunding act that is in this substitute.

Yesterday evening's introduction—

This was last week—

of the first bi-partisan Senate crowdfunding bill is a big step forward in our fight to get equity crowdfunding passed through Congress. I have been to Washington, DC 7 times since mid-November, discussing [this legislation]. The offices of the Senators on the Banking Committee have been very receptive to input from the entrepreneurial community and have adopted many of our suggestions.

But they go on to say:

This latest bill . . . is important because, unlike previous bills, for the first time we have a Senate bill with bipartisan sponsorship, a balance of state oversight and federal uniformity, industry standard investor protections, and workable funding caps. This bill has a legitimate chance at quieting those who were previously trumping up fears of fraud [and] bad actors. . . . To date the main issues the opposition raised were regarding fraud and state oversight.

What they are saying is we are the ones who helped invent this concept. We don't think the House bill is where it should be. We are supporting the Merkley-Bennet approach, which is in this bill.

Launcht, we hear you, and we are trying to respond.

Finally, Motaavi—again, a crowdfunder advocate. People, very entrepreneurial, coming up with these ideas saying the same thing.

I ask unanimous consent to have those letters printed in the RECORD.

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

AARP,
March 15, 2012.

Re Investor Protection, Market Integrity and the JOBS Act.

DEAR SENATOR LANDRIEU: On behalf of AARP, I am writing to reiterate our opposition to the lack of investor protections in H.R. 3606, the House-passed JOBS bill that soon will be considered on the Senate floor. AARP's primary concern is that this legislation undermines vital investor protections and threatens market integrity. The goal of facilitating access to capital for new and small businesses is a worthy one. However, we do not believe that the best way to create jobs is to weaken essential regulatory protections that were put in place to address specific marketplace problems that otherwise would still exist.

This debate is critical to older Americans, who with a lifetime of savings and investments are disproportionately represented among the victims of investment fraud. We share the concerns—raised by SEC Chair Mary Schapiro, the North American Securities Administrators Association (NASAA), law professors, investor advocates, and others—that absent safeguards ensuring proper oversight and investor protection, the various provisions in H.R. 3606 may well open the floodgates to a repeat of the kind of penny stock and other frauds that ensnared financially unsophisticated and other vulnerable investors in the past. The absence of adequate regulation in the past has undermined the integrity of the markets and damaged investor confidence while having no positive impact on job creation.

AARP urges the Senate to take a more balanced approach, recognizing both an interest in facilitating access to capital for new and small businesses and in preserving essential regulations that protect investors from fraud and abuse, promote the transparency on which well-functioning markets depend, and ensure a fair and efficient marketplace. We believe the amendment to be offered by Senators Reed, Landrieu and Levin, moves closer to achieving this balance and deserves your support.

We urge you to vote yes on the Reed-Landrieu-Levin amendment.

If you have any further questions, please feel free to contact me, or have your staff contact Mary Wallace of our Government Affairs staff.

Sincerely,

JOYCE A. ROGERS,
Senior Vice President,
Government Affairs.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, March 12, 2012.

Re Senate Companion to H.R. 3606

Hon. HARRY M. REID,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: On behalf of the North American Securities Administrators Association (NASAA), I am writing to express concerns regarding several provisions, most notably our strong concern with the extraordinary step of pre-empting state law for ''crowdfunding'', contained in H.R. 3606, the Jumpstart Our Business Startups Act, which was passed by the House of Representatives on March 8, 2011. While NASAA applauds Congress' desire to facilitate access to capital for new and small businesses, the version of the bill that passed the House is deeply flawed. The Senate must now address these problems.

State securities regulators support efforts by Congress to ensure that laws facilitating the raising of capital are modern and efficient, and that Americans are encouraged to raise money to invest in the economy. However, it is critical that in doing so, Congress not discard basic investor protections. Investment fraud is real, and it can be particularly pervasive in small exempted offerings.

Expanded access to capital markets for startups and small businesses can be beneficial, but only insofar as investors can be confident that they are protected, that transparency in the marketplace is preserved, and that investment opportunities are legitimate. State securities regulators are acutely aware of today's difficult economic environment, and its effects on job growth. Small businesses are important to job growth, and to improving the economy. However, by weakening investor protections and placing unnecessary restrictions on the ability of state securities regulators to protect retail investors from the risks associated with smaller, speculative investments, Congress is on the verge of enacting policies that, although intended to strengthen the economy, will in fact only make it more difficult for small businesses to access investment capital.

The JOBS Act that was passed by the House is a repackaging of what were originally seven bills, reorganized into a single bill, with six distinct Titles and twenty-one sections. While NASAA believes virtually every Title of this bill would benefit from greater scrutiny, we will confine our comments today to those Titles and Sections of H.R. 3606 that pose the most urgent risk to average, ''Main Street'' investors that are NASAA's principal concern.

TITLE I: THE REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES ACT

Title I contains a number of troubling provisions. It creates a new category of issuer referred to as an ''emerging growth company'', defined as a company with annual gross revenues of less than $1 billion in its most recent fiscal year. This status continues until five years after an initial public offering or until the issuer has an annual gross revenue exceeding $1 billion or is designated a ''large accelerated filer.'' Particularly troublesome to NASAA are the exemptions applicable to such companies: for example, they are exempted from Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX) which requires an independent audit of an assessment of a company's internal controls as well as the requirement to provide three (instead of two) years of audited financials statement in a company's registration materials. S. 1933 also allows brokers and dealers to publish research about emerging growth companies prior to an initial public offering, even where they will participate in the offering itself.

Title I would give all but the very largest companies direct access to average, unsophisticated investors without being required to provide the normal types of financial and risk disclosures applicable to public reporting companies. The typical retail investor, unlike larger business financiers, does not have the ability to conduct an independent investigation of an emerging growth company and make fully informed investment decisions. Such investors rely on published financial and research data. Section 404(b) of SOX was enacted in response to major accounting scandals that cost investors billions of dollars; rolling back these requirements for companies with annual gross revenues of less than $1 billion could, once again, have devastating consequences.

Similarly, weakening the standards applicable to research analysts and tearing down the Chinese walls implemented in response to the ''Global Settlement'' scandal could create a conflict of interest resulting in devastating losses for Main Street investors. These barriers were put into place in response to enforcement actions brought by a number of state and federal regulators. Leading brokerage firms agreed to severely limit interactions between equity research analysts and investment bankers, due to conflicts of interest that tainted the investment process. Recent experience teaches us now is the time to strengthen the protection of investors, not weaken these standards.

TITLE II: THE ACCESS TO CAPITAL FOR JOB CREATORS ACT

SECTION 201: MODIFICATION OF EXEMPTION

Sec. 201 of the JOBS Act would repeal the SEC's ban on general solicitation under Regulation D Rule 506 to allow general solicitation in transactions ''not involving any public offering, whether or not such transaction involves general solicitation or general advertising.''

Current law requires securities offered to the general public to be registered with the SEC. Regulation D was built upon the premise that certain offerings should be given special treatment because they are non-public, or ''private.'' This means that the investment is marketed only to people with whom the company has a preexisting relationship. Given their knowledge of the company and its operations, these investors are in a better position than the general public to gauge the risks of the investment. They, therefore, have less need for the protections that flow from the securities registration process. This concept of giving preferential treatment to private offerings is embedded throughout state and federal securities law, and a reversal of this fundamental condition of Rule 506 would have far-reaching repercussions.

The removal of the ''general solicitation'' prohibition contemplated by Section 201 would represent a radical change that would dismantle important rules that govern the offering process for securities. NASAA has repeatedly expressed its concern to Congress about allowing general solicitation in rule 506 (Regulation D) offerings. Since the enactment of the National Securities Markets Improvement Act of 1996, Regulation D, Rule 506 offerings have received virtually no regulatory scrutiny, and have become a haven for investment fraud. Moreover, unlike other types of Regulation D offerings, where the size of the offering is capped, the amount of money that an issuer can raise under Rule 506 is unlimited, and hence the opportunity for fraud on a massive scale is especially acute in this area. Given state experience with Regulation D offerings, and the significant fraud and investor losses associated with them, NASAA opposes Section 201.

Because many states already allow issuers to use general advertisements to attract accredited investors, NASAA does not oppose outright the underlying goal of Title II. However, NASAA believes such an expansion should be accomplished by the establishment of a new exemption with provisions to protect investors and the markets.

SECTION 201: EXPLANATION OF EXEMPTION (MCHENRY AMENDMENT)

During consideration of H.R. 3606 the House adopted an amendment to Section 201, sponsored by Rep. Patrick McHenry (R–NC) that will exempt from registration as a broker or dealer any trading-platform that serves as intermediary in an exempted Rule 506 offering. The significance of the McHenry Amendment is to prevent ''intermediaries'' that facilitate the sale of securities through ''crowdfunding'' from requirements to register or be regulated as a broker.

NASAA appreciates that the question of how crowdfunding intermediaries may best be regulated is complex, however categorically exempting these sellers from broker registration requirements, in the absence of a sensible alternative for their licensing and regulation, is foolish and reckless. As amended, Section 201 will leave intermediaries open to conflicts, such inducements to list, de-list, or promote certain offerings. Moreover, as amended, Section 201 will deny any regulator effective means to examine or discipline these sellers.

TITLE III: THE ENTREPRENEUR ACCESS TO CAPITAL ACT

Title III of the JOBS Act is identical to H.R. 2930, the Entrepreneur Access to Capital Act, which was approved by the House last fall. Two separate ''crowdfunding'' bills have been sponsored in the Senate: S. 1791, sponsored by Sen. Scott Brown (R–MA), and S. 1970, sponsored by Sen. Jeff Merkley (D–OR).

While intending to promote an internet-based fundraising technique known as ''crowdfunding'' as a tool for investment, this legislation will needlessly preempt state securities laws and weaken important investor protections. NASAA appreciates that the concept of crowdfunding is appealing in many respects because it provides small, innovative enterprises access to capital that might not otherwise be available. Indeed, this is precisely the reason that states are now considering adopting a model rule that would establish a more modest exemption for crowdfunding as it is traditionally understood.

SECTION 301: INDIVIDUAL INVESTMENT LIMIT

Section 301 contemplates a hard-cap on individual crowdfunding investments that goes far beyond anything that is being contemplated by the states, or even by the overwhelming majority of advocates of crowdfunding. By setting an individual investment cap of 10 percent of annual income, or $10,000, Section 301 will create an exemption that will expose many more American families to potentially devastating financial harm.

NASAA recognizes that for certain very wealthy individuals, or seasoned investors, a cap of $10,000 may make sense. Unfortunately, Sec. 301 fails to distinguish between these few wealthy, sophisticated investors, and the general investing public, imposing a $10,000 cap on both groups. Given that most U.S. households have a relatively modest amount of savings, a loss of $10,000, in even a single case, can be financially crippling.

NASAA believes a superior method of limiting individual investment amounts would be a scaled approach that would cap most investments at a modest level, but allow experienced investors, Who can afford to sustain higher losses, to invest up to $10,000.

SECTION 301: AGGREGATE OFFERING LIMIT

Section 301 would also permit businesses to solicit investments of up to $2 million, in increments of $10,000 per investment. Such a high cap on aggregate investment makes the bill inconsistent with the expressed rationale for the crowdfunding exception.

Registration and filing requirements at both the state and federal level exist to protect investors. A company that is sufficiently large to warrant the raising of $2 million in investment capital is also a company that can afford to comply with the applicable registration and filing requirements at both the state and federal level.

SECTION 303: PREEMPTION OF STATE LAW

Section 303 would preempt state laws requiring disclosures, or reviewing exempted investment offerings, before they are sold to the public. The authority to require such filings is critical to the ability of states to get ''under the hood'' of an offering to make sure that it is what it says it is. Moreover, as a matter of principle and policy, NASAA ardently believes that the review of offerings of this size should remain primarily the responsibility of the states. State regulators are closer, more accessible, and more in

touch with the local and regional economic issues that affect both the issuer and the investor in a small business offering.

Congress would be rash to preempt states from regulating crowdfunding. Preempting state authority is a very serious step and not something that should be undertaken lightly or without careful deliberation, including a thorough examination of all available alternatives. In this case, preemption for a very new and untested concept to raise capital, without a demonstrable history of reliability, is especially unwarranted, as the states have far more experience with crowdfunding than Congress or the SEC, and as the states have historically been the primary ''cops on the beat'' in the regulation of all areas of small business capital formation.

For a clear example of the dangers of preempting state securities look no further than the effect of the National Securities Markets Improvement Act (NSMIA). As a result of this Congressional action, private offerings receive virtually no regulatory scrutiny. State securities regulators are prohibited from reviewing these offerings prior to their sale to investors, and federal regulators lack the resources to conduct any meaningful review, so the offerings proceed unquestioned. Today, the exemption is being misused to steal millions of dollars from investors through false and misleading representations in offerings that provide the appearance of legitimacy without any meaningful scrutiny of regulators. In essence, the private offering provisions of Rule 506 are being used by unscrupulous promoters to evade review and fly under the radar of justice.

Instead of preempting states, Congress should allow the states to take a leading role in implementing an appropriate regulatory framework for crowdfunding. Based on the small size of the offering, the small size of the issuer, and the relatively small investment amounts, it is clear that the states are the only regulators in a position to police this new market and protect its participants. Moreover, and as has already been noted, the states are now in the midst of developing a Model Crowdfunding Exemption.

As the securities regulators closest to the investing public, and in light of their distinguished record of effective regulation, the States are the most appropriate regulator in this area. State securities regulators are not only capable of acting, but, indeed, are acting in this critical area, and Congress should continue to allow the states to do so.

TITLE IV: THE SMALL COMPANY CAPITAL FORMATION ACT

Title IV of the JOBS Act is identical to S. 1544, which has been sponsored in the Senate by Sens. Jon Tester (D–MT) and Pat Toomey (R–PA).

Given the risky nature of these offerings, NASAA believes that state oversight is critically important for investor protection. At the same time, NASAA recognizes the costs and difficulty of the typical registration process, and the particular burden it places upon small companies. Indeed, for this reason the states have adopted a streamlined process for an issuer to use in an offering under Regulation A.

NASAA had significant concerns regarding the original version of this legislation because it stripped away investor protection by preempting state review of Regulation A offerings that are sold through broker-dealers. However, Title IV of H.R. 3606 does not include the preemptive provisions that were in the original version of the bill. While NASAA remains concerned about the dollar amount of potential offerings under Title IV, as well as the bill's nonsensical requirement that the SEC automatically increase the ceiling in the future, every two years, in perpetuity, we believe that the states' ability to review these offerings, along with the SEC's proper exercise of discretion in creating reasonable reporting requirements for issuers, will prove to achieve a proper balance of the issuers' needs with investor protection.

TITLE V: THE PRIVATE COMPANY FLEXIBILITY AND GROWTH ACT

Title V of H.R. 3606 would raise the threshold for mandatory registration under the Securities Exchange Act of 1934 (the ''Exchange Act'') from 500 shareholders to 1,000 shareholders for all companies. This bill would also exclude accredited investors and securities held by shareholders who received such securities under employee compensation plans from the 1,000-shareholder threshold.

Section 12(g) of the Exchange Act requires issuers to register equity securities with the SEC if those securities are held by 500 or more record holders and the company has total assets of more than $10 million. After a company registers with the SEC under Section 12(g), it must comply with all of the Exchange Act's reporting requirements.

The states are primarily interested in the issues related to the regulation of small, non-public companies. We give considerable deference to the SEC in the regulation of public companies and secondary trading. However, we do have concerns about drastic changes in the thresholds for reporting companies or the information they must disclose.

The primary reason for requiring a company to be ''public'' is to facilitate secondary trading of the company's securities by providing easily-accessible information to potential purchasers. The principal concern for states is the facilitation of this secondary trading market with adequate and accurate information. It may be possible to achieve this without full-blown Exchange Act registration and periodic reporting, but the states are wary of changes that may lead to the creation of less informed markets.

No matter what threshold number is chosen before a company becomes ''public,'' it makes little sense to exclude any investor from the count of beneficial holders. Those that purchased from the issuer were protected by the requirements of the Securities Act. Both the seller and the purchaser benefit from the robust marketplace facilitated by the Exchange Act registration. Accordingly, NASAA believes the registration threshold should be based upon the need to provide for a legitimate secondary trading market. Regardless of where the threshold is set, everyone who is a potential seller in the market should be counted. This would include all beneficial owners, not just holders of record.

TITLE VI: CAPITAL EXPANSION

Title VI of H.R. 3606 would raise the threshold for mandatory registration under the Securities Exchange Act of 1934 from 500 shareholders to 2,000 shareholders for all banks and bank holding companies, and raises the shareholder deregistration threshold from 300 shareholders to 1,200 shareholders.

NASAA understands the purpose of Title VI is to remedy a specific problem that is today confronting certain community banks. Specifically, as a result of the increasing costs of public company registration, many community banks have determined that deregistration is in the best interests of their shareholders. But in order to deregister, community banks must have fewer than 300 shareholders. As a result, community banks must often buy back shares to deregister, which reduces the access of small banks to capital and deprives small communities of an opportunity to invest in local companies.

Given the narrow scope of this Title and its application to only banks and bank holding companies, NASAA has no position on Title VI.

Finally, in view of the significant changes that H.R. 3606 would make to our securities laws, and of the fundamentally experimental nature of many of this bill's provisions, NASAA urges that H.R. 3606 proceed through the Senate under regular order, and that the bill be subject to the scrutiny of the Senate Banking Committee and it Securities Subcommittee. Securities regulators, legal scholars, investor advocates, and others have cautioned the Senate about the impact H.R. 3606 could have on investors and on our capital markets. The Senate must answer these questions and concerns, thoroughly and to its satisfaction, before it votes on H.R. 3606 or similar legislation.

Thank you for your consideration of these important issues. If you have any questions, please feel free to contact Michael Canning, Director of Policy, or Anya Coverman, Assistant Director of Policy, at the NASAA Corporate Office.

Respectfully,

JACK E. HERSTEIN,
NASAA President; Assistant Director, Nebraska Department of Banking & Finance, Bureau of Securities.

COUNCIL OF INSTITUTIONAL INVESTORS,
Washington, DC, March 1, 2012.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: As a nonprofit, nonpartisan association of public corporate and union pension plans, and other employee benefit funds, foundations and endowments with combined assets that exceed $3 trillion, the Council of Institutional Investors (Council) is committed to protecting the retirement savings of millions of American workers. With that commitment in mind, and in anticipation of your upcoming March 6 hearing entitled ''Spurring Job Growth Through Capital Formation While Protecting Investors, Part II,'' we would like to share with you some of our concerns and questions about S. 1933, the ''Reopening American Capital Markets to Emerging Growth Companies Act of 2011.''

Our questions and concerns about S. 1933 are grounded in the Council's membership approved corporate governance best practices. Those policies explicitly reflect our members' view that all companies, including ''companies in the process of going public should practice good corporate governance.'' Thus, we respectfully request that the Committee consider changes to, or removal of, the following provisions of S. 1933:

DEFINITIONS

We question the appropriateness of the qualities defining the term ''emerging growth company'' (EGC) as set forth in Sec. 2(a) and 2(b).

As you are aware, under Sec. 2(a) and 2(b) a company would qualify for special status for up to five years, so long as it has less than $1 billion in annual revenues and not more than $700 million in public float following its initial public offering (IPO). The Council is concerned that those thresholds may be too high in establishing an appropriate balance between facilitating capital formation and protecting investors.

For example, we note that some of the most knowledgeable and active advocates for

small business capital formation have in the past agreed that a company with more than $250 million of public float generally has the resources and infrastructure to comply with existing U.S. securities regulations. We, therefore, urge the Committee to reevaluate the basis for the proposed thresholds defining an EGC.

DISCLOSURE OBLIGATIONS

We have concerns about Sec. 3(a)(1) because it would effectively limit shareowners' ability to voice their concerns about executive compensation practices.

More specifically, Sec. 3(a)(1) would revoke the right of shareowners, as owners of an EGC, to express their opinion collectively on the appropriateness of executive pay packages and severance agreements.

The Council's longstanding policy on advisory shareowner votes on executive compensation calls on all companies to ''provide annually for advisory shareowner votes on the compensation of senior executives.'' The Investors Working Group echoed the Council's position in its July 2009 report entitled U.S. Financial Regulatory Reform: The Investors' Perspective.

Advisory shareowner votes on executive compensation and golden parachutes efficiently and effectively encourage dialogue between boards and shareowners about pay concerns and support a culture of performance, transparency and accountability in executive compensation. Moreover, compensation committees looking to actively rein in executive compensation can utilize the results of advisory shareowner votes to defend against excessively demanding officers or compensation consultants.

The 2011 proxy season has demonstrated the benefits of nonbinding shareowner votes on pay. As described in Say on Pay: Identifying Investors Concerns:

Compensation committees and boards have become much more thoughtful about their executive pay programs and pay decisions. Companies and boards in particular are articulating the rationale for these decisions much better than in the past. Some of the most egregious practices have already waned considerably, and may even disappear entirely.

As the Committee deliberates the appropriateness of disenfranchising certain shareowners from the right to express their views on a company's executive compensation package, we respectfully request that the following factors be considered:

1. Companies are not required to change their executive compensation programs in response to the outcome of a say on pay or golden parachutes vote. Securities and Exchange Commission (SEC) rules simply require that companies discuss how the vote results affected their executive compensation decisions.

2. The SEC approved a two-year deferral for the say on pay rule for smaller U.S. companies. As a result, companies with less than $75 million in market capitalization do not have to comply with the rule until 2013, thus the rule's impact on IPO activity is presumably unknown. We, therefore, question whether there is a basis for the claim by some that advisory votes on pay and golden parachutes are an impediment to capital formation or job creation.

We also have concerns about Sec. 3(a)(2) because it would potentially reduce the ability of investors to evaluate the appropriateness of executive compensation.

More specifically, Sec. 3(a)(2) would exempt an EGC from Sec. 14(i) of the Securities Exchange Act of 1934, which would require a company to include in its proxy statement information that shows the relationship between executive compensation actually paid and the financial performance of the issuer.

We note that the SEC has yet to issue proposed rules relating to the disclosure of pay versus performance required by Sec. 14(i). As a result, no public companies are currently required to provide the disclosure. We, therefore, again question whether a disclosure that has not yet even been proposed for public comment is impeding capital formation or job creation.

Our membership approved policies emphasize that executive compensation is one of the most critical and visible aspects of a company's governance. Executive pay decisions are one of the most direct ways for shareowners to assess the performance of the board and the compensation committee.

The Council endorses reasonable, appropriately structured pay-for-performance programs that reward executives for sustainable, superior performance over the long-term. It is the job of the board of directors and the compensation committee to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance.

Transparency of executive compensation is a primary concern of Council members. All aspects of executive compensation, including all information necessary for shareowners to understand how and how much executives are paid should be clearly, comprehensively and promptly disclosed in plain English in the annual proxy statement.

Transparency of executive pay enables shareowners to evaluate the performance of the compensation committee and the board in setting executive pay, to assess pay-for-performance links and to optimize their role in overseeing executive compensation through such means as proxy voting. It is, after all, shareowners, not executives, whose money is at risk.

ACCOUNTING AND AUDITING STANDARDS

We have concerns about Sec. 3(c) and Sec. 5 because those provisions would effectively impair the independence of private sector accounting and auditing standard setting, respectively.

More specifically, Sec. 3(c) would prohibit the independent private sector Financial Accounting Standards Board from exercising their own expert judgment, after a thorough public due process in which the views of investors and other interested parties are solicited and carefully considered, in determining the appropriate effective date for new or revised accounting standards applicable to EGCs.

Similarly, Sec. 5 would prohibit the independent private sector Public Company Accounting Oversight Board from exercising their own expert judgment, after a thorough public due process in which the view of investors and other interested parties are solicited and carefully considered, in determining improvements to certain standards applicable to the audits of EGCs.

The Council's membership ''has consistently supported the view that the responsibility to promulgate accounting and auditing standards should reside with independent private sector organizations.'' Thus, the Council opposes legislative provisions like Sec. 3(a) and Sec. 5 that override or unduly interfere with the technical decisions and judgments (including the timing of the implementation of standards) of private sector standard setters.

A 2010 joint letter by the Council, the American Institute of Certified Public Accountants, the Center for Audit Quality, the CFA Institute, the Financial Executives International, the Investment Company Institute, and the U.S. Chamber of Commerce explains, in part, the basis for the Council's strong support for the independence of private sector standard setters:

We believe that interim and annual audited financial statements provide investors and companies with information that is vital to making investment and business decisions. The accounting standards underlying such financial statements derive their legitimacy from the confidence that they are established, interpreted and, when necessary, modified based on independent, objective considerations that focus on the needs and demands of investors—the primary users of financial statements. We believe that in order for investors, businesses and other users to maintain this confidence, the process by which accounting standards are developed must be free—both in fact and appearance—of outside influences that inappropriately benefit any particular participant or group of participants in the financial reporting system to the detriment of investors, business and the capital markets. We believe political influences that dictate one particular outcome for an accounting standard without the benefit of public due process that considers the views of investors and other stakeholders would have adverse impacts on investor confidence and the quality of financial reporting, which are of critical importance to the successful operation of the U.S. capital markets.

INTERNAL CONTROLS AUDIT

We have concerns about Sec. 4 because that provision would, in our view, unwisely expand the existing exemption for most public companies from the requirement to have effective internal controls.

More specifically, Sec. 4 would exempt an EGC from the requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX). That section requires an independent audit of a company's assessment of its internal controls as a component of its financial statement audit.

The Council has long been a proponent of Section 404 of SOX. We believe that effective internal controls are critical to ensuring investors receive reliable financial information from public companies.

We note that Section 989G(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) already exempts most public companies, including all smaller companies, from the requirements of Section 404(b). We also note that Section 989G(b) of Dodd-Frank required the SEC to conduct a study on ''how the Commission could reduce the burden of complying with section 404(b) . . . while maintaining investor protections. . . .''

The SEC study, issued April 2011, revealed that (1) there is strong evidence that the provisions of Section 404(b) ''improves the reliability of internal control disclosures and financial reporting overall and is useful to investors,'' and (2) that the ''evidence does not suggest that granting an exemption [from Section 404(b)] . . . would, by itself, encourage companies in the United States or abroad to list their IPOs in the United States.'' Finally, and importantly, the study recommends explicitly against—what Sec. 4 attempts to achieve—a further expansion of the Section 404(b) exemption.

AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES

Finally, we have concerns about Sec. 6 of S. 1933 because it appears to potentially create conflicts of interest for financial analysts.

More specifically, we agree with the U.S. Chamber of Commerce that the provisions of Sec. 6 as drafted ''may be a blurring of boundaries that could create potential conflicts of interests between the research and investment components of broker-dealers.'' The Council membership supports the provisions of Section 501 of SOX and the Global

Research Analyst Settlement. Those provisions bolstered the transparency, independence, oversight and accountability of research analysts.

While the Council welcomes further examination of issues, including potential new rules, relating to research analysts as gatekeepers, it generally does not support legislative provisions like Sec. 6 that would appear to weaken the aforementioned investor protections.

The Council respectfully requests that the Committee carefully consider our questions and concerns about the provisions of S. 1933. If you should have any questions or require any additional information about the Council or the contents of this letter, please feel free to contact me at 202.261.7081 or Jeff@cii.org, or Senior Analyst Laurel Leitner at 202.658.9431 or Laurel@cii.org.

Sincerely,

JEFF MAHONEY,
General Counsel.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 13, 2012.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: Last week, the House of Representatives passed H.R. 3606, the ''Jumpstart Our Business Startups Act.'' As the Senate prepares to debate many of the capital formation initiatives addressed by H.R. 3606, I wanted to share with you my concerns on some important aspects of this significant legislation.

The mission of the Securities and Exchange Commission is three-fold: protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy, and companies seeking access to capital should not be hindered by unnecessary or overly burdensome regulations. At the same time, we must balance our responsibility to facilitate capital formation with our obligation to protect investors and our markets. Too often, investors are the target of fraudulent schemes disguised as investment opportunities. As you know, if the balance is tipped to the point where investors are not confident that there are appropriate protections, investors will lose confidence in our markets, and capital formation will ultimately be made more difficult and expensive.

While I recognize that H.R. 3606 is the product of a bipartisan effort designed to facilitate capital formation and includes certain promising approaches, I believe that there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

DEFINITION OF EMERGING GROWTH COMPANY

The ''IPO On-Ramp'' provisions of H.R. 3606 provide a number of significant regulatory changes for what are defined as ''emerging growth companies.'' While I share the view that it is important to reduce the impediments to smaller businesses conducting initial public offerings in the United States, the definition of ''emerging growth company'' is so broad that it would eliminate important protections for investors in even very large companies, including those with up to $1 billion in annual revenue. I am concerned that we lack a clear understanding of the impact that the legislation's exemptions would have on investor protection. A lower annual revenue threshold would pose less risk to investors and would more appropriately focus benefits provided by the new provisions on those smaller businesses that are the engine of growth for our economy and whose IPOs the bill is seeking to encourage.

CHANGES TO RESEARCH AND RESEARCH ANALYST RULES

H.R. 3606 also would weaken important protections related to (1) the relationship between research analysts and investment bankers within the same financial institution by eliminating a number of safeguards established after the research scandals of the dot-com era and (2) the treatment of research reports prepared by underwriters of IPOs.

H.R. 3606 would remove certain important measures put in place to enforce a separation between research analysts and investment bankers who work in the same firm. The rules requiring this separation were designed to address inappropriate conflicts of interest and other objectionable practices—for example, investment bankers promising potential clients favorable research in return for lucrative underwriting assignments—which ultimately severely harmed investor confidence. In addition, H.R. 3606 would overturn SRO rules that establish mandatory quiet periods designed to prevent banks from using conflicted research to reward insiders for selecting the bank as the underwriter. I am concerned that the changes contained in H.R. 3606 could foster a return to those practices and cause real and significant damage to investors.

In addition, the legislation would allow, for the first time, research reports in connection with an emerging growth company IPO to be published before, during, and after the IPO by the underwriter of that IPO without any such reports being subject to the protections or accountability that currently apply to offering prospectuses. In essence, research reports prepared by underwriters in emerging growth company IPOs would compete with prospectuses for investors' attention, and investors would not have the full protections of the securities laws if misled by the research reports.

DISCLOSURE, ACCOUNTING AND AUDITING MATTERS

H.R. 3606 would allow emerging growth companies to make scaled disclosures, in an approach similar to that currently permitted under our rules for smaller reporting companies, and would provide other relief from specific disclosure requirements, during the 5-year on-ramp period. While there is room for reasonable debate about particular exemptions included in the disclosure on-ramp, on balance I believe allowing some scaled disclosure for emerging growth companies could be a reasonable approach.

H.R. 3606, however, also would restrict the independence of accounting and auditing standard-setting by the Financial Accounting Standards Board (''FASB'') and the Public Company Accounting Oversight Board (''PCAOB''). These provisions undermine independent standard-setting by these expert boards, and both the FASB and the PCAOB already have the authority to consider different approaches for different classes of issuers, if appropriate.

Moreover, H.R. 3606 would exempt emerging growth companies from an audit of internal controls set forth in Section 404(b) of the Sarbanes Oxley Act during the five-year on-ramp period. IPO companies already have a two-year on-ramp period under current SEC rules before such an audit is required. In addition, the Dodd-Frank Act permanently exempted smaller public companies (generally those with less than $75 million in public float) from the audit requirement, which already covers approximately 60 percent of reporting companies. I continue to believe that the internal controls audit requirement put in place after the Enron and other accounting scandals of the early 2000's has significantly improved the quality and reliability of financial reporting and provides important investor protections, and therefore believe this change is unwarranted.

''TEST THE WATERS'' MATERIALS

H.R. 3606 would allow emerging growth companies to ''test the waters'' to determine whether investors would be interested in an offering before filing IPO documents with the Commission. This would allow offering and other materials to be provided to accredited investors and qualified institutional buyers before a prospectus—the key disclosure document in an offering—is available.

There could be real value to permitting these types of pre-filing communications: it could save companies time and money, and make it more likely that companies that file for IPOs can complete them. Indeed, there are some SEC rules that permit ''test the waters'' activities already. However, unlike the existing ''test the waters'' provisions, the provisions of H.R. 3606 would not require companies to file with the SEC and take responsibility for the materials they use to solicit investor interest, even after they file for their IPOs. This would result in uneven information for investors who see both the ''test the waters'' materials and the prospectus compared to those who only see the prospectus. In addition, as with the provisions relating to research reports, it could result in investors focusing their attention on the ''test the waters'' materials instead of the prospectuses, without important investor protections being applied to those materials.

CONFIDENTIAL FILING OF IPO REGISTRATION STATEMENTS

H.R. 3606 would permit emerging growth companies to submit their registration statements confidentially in draft form for SEC staff review. This reduction in transparency would hamper the staff's ability to provide effective reviews, since the staff benefits in its reviews from the perspectives and insights that the public provides on IPO filings. It also could require significant resources for staff review of offerings that companies are not willing to make public and then abandon before making a public filing. SEC staff recently limited the general practice of permitting foreign issuers to submit IPO registrations in nonpublic draft form because of these concerns, and expanding that program to all IPOs could adversely impact the IPO review program.

CROWDFUNDING

H.R. 3606 also provides an exemption from Securities Act registration for ''crowdfunding,'' which would permit companies to offer and sell, in some cases, up to $2 million of securities in publicly advertised offerings without preparing a registration statement. For the past several months, the staff has been analyzing crowdfunding, among other capital formation strategies, and also has discussed these strategies with the Commission's newly created Advisory Committee on Small and Emerging Companies.

I recognize that proponents of crowdfunding believe this method of raising money could help small businesses harness the power of the internet and social media to raise small amounts of very early stage capital from a large number of investors. That said, I believe that the crowdfunding exemption included as part of H.R. 3606 needs additional safeguards to protect investors from

those who may seek to engage in fraudulent activities. Without adequate protections, investor confidence in crowdfunding could be significantly undermined and would not achieve its goal of helping small businesses.

For example, an important safeguard that could be considered to better protect investors in crowdfunding offerings would be to provide for oversight of the industry professionals that intermediate and facilitate these offerings. With Commission oversight, these intermediaries could serve a critical gatekeeper function, running background checks, facilitating small businesses' provision of complete and adequate disclosures to investors, and providing the necessary support for these small businesses. Commission oversight would further enhance customer protections by requiring intermediaries to protect investors' and issuers' funds and securities, for example by requiring funds and securities to be held at an independent bank or broker-dealer.

Investors also would benefit from a requirement to provide certain basic information about companies seeking crowdfunding investors. H.R. 3606 requires only limited disclosures about the business investors are funding. Additional information that would benefit investors should include a description of the business or the business plan, financial information, a summary of the risks facing the business, a description of the voting rights and other rights of the stock being offered, and ongoing updates on the status of the business.

CHANGES TO SECTION 12(G) REGISTRATION THRESHOLDS

H.R. 3606 also would change the rules relating to the thresholds that trigger public reporting by, among other things, increasing the holder of record threshold that triggers public reporting for companies and bank holding companies. The current rules have been in place since 1964, and since that time there have been profound changes in the way shareholders hold their securities and in the capital markets.

Last spring, I asked our staff to comprehensively study a variety of capital formation-related issues, including the current thresholds for public reporting. At this point, I do not have sufficient data or information to assess whether the thresholds proposed in H.R. 3606 are appropriate. I do recognize that a different treatment may be appropriate for community banks that are already subject to an extensive reporting and regulatory regime.

RULEMAKING

H.R. 3606 requires a series of new, significant Commission rulemakings with time limits that are not achievable. For example, the rulemaking for the crowdfunding section has a deadline of 180 days, and it specifically requires the Commission to consider the costs and benefits of the rules. Given (1) that much of the data that would be used to perform such analyses is not readily available and (2) the complexity of such analyses, this time frame is too short to develop proposed rules, perform the required analyses, solicit public comments, review and analyze the public comments, and adopt final rules. I believe a deadline of 18 months would be more appropriate for rules of this magnitude.

I stand ready to assist Congress as it addresses these important issues. Please call me, at (202) 551–2100, or have your staff call Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551–2010, should you have any questions or comments.

Sincerely,

MARY L. SCHAPIRO,
Chairman.

[From the AFL–CIO Executive Council, Mar. 14, 2012]

THE JOBS ACT—A CYNICAL AND DANGEROUS RETURN TO THE POLITICS OF FINANCIAL DEREGULATION

America needs jobs. Yet Congress cannot enact such basic legislation as the reauthorization of the Surface Transportation Bill that would create hundreds of thousands of jobs. Instead, this week Congress once again is looking to deregulate Wall Street—this time in the form of the cynically named JOBS Act, which would weaken the ability of the Securities and Exchange Commission to regulate our capital markets and allow companies to sell stock to the public without providing three years of audited financial statements, without having adequate internal controls and without complying with key corporate governance reforms in the recently passed Dodd-Frank Act.

We still have millions of unemployed workers as a direct result of decades of financial deregulation. Workers' pension funds have yet to recover from the effects of the last time we created a bubble in IPOs during the late 1990s. And yet members of both parties in Congress seem bent on repeating these experiences, even as congressional Republicans block any initiative that might really create jobs and set our economy toward the path of long-term prosperity.

In case our own ugly history with stock bubbles and financial fraud is not enough, Congress should heed the warnings from other developed countries that recently have experimented with deregulated securities markets. In the 1990s, Canadian regulators condemned the ''continuing occurrence of shams, swindles and market manipulations'' on the Vancouver Stock Exchange of loosely regulated small company stocks. More recently, the London Stock Exchange's Alternative Investment Market has been described as a ''casino'' for its highly speculative small company stock listings.

Workers' retirement savings will be in greater risk of fraud and speculation if securities market deregulation once again is railroaded through Congress. Once again our economy will be at risk from the folly of policymakers promoting financial bubbles and ignoring the needs of the real economy. The AFL–CIO calls on Congress to set aside the politics of the 1%, the old game of special favors for Wall Street, and turn to the business of real job creation. The labor movement strongly opposes the JOBS Act and any other effort to weaken the Dodd-Frank Act.

We support the efforts of Senate Democrats such as Jack Reed, Carl Levin, and Mary Landrieu to amend the ''JOBS Act'' to lessen the harm it does to investors, pension funds, and the U.S. economy.

We want jobs, not cynical Wall Street scams.

A MESSAGE FROM SECRETARIES OF STATE ON CROWDFUNDING REGULATION

MARCH 14, 2012

Re Crowdfunding and H.R. 3606, the Jumpstarting Our Business Startups Act.

Hon. TIM JOHNSON,
Chairman, U.S. Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, U.S. Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN JOHNSON, RANKING MEMBER SHELBY AND MEMBERS OF THE COMMITTEE: As Secretaries of State with primary securities regulatory jurisdiction, we welcome this opportunity to discuss the developments in ''crowdfunding'' as a useful tool in small business capital formation, and the work of the U.S. Senate to ensure that such a mechanism remains viable for small businesses and safe for investors.

Crowdfunding is an online, typically grassroots, money-raising strategy that allows the public to use websites to contribute small amounts of money to help artists, musicians, filmmakers and other creative people finance their projects. Recently, crowdfunding financing has been applied to small businesses and start-ups, facilitating their attempts to get their ventures off the ground.

We applaud the work of Congress, via H.R. 3606, aimed at allowing small businesses greater access to crowdfunding financing through the Internet. We are keenly aware of how critical small businesses are to job growth and to improving the economy.

However, Congress' attempt to enact laws meant to reinvigorate the economy could, in fact, have a detrimental effect. If passed as currently drafted, Title III of H.R. 3606, would prohibit the States from working proactively to enforce laws designed to protect investors.

State securities regulators are proud of their 100-year history of effectively regulating smaller businesses seeking to raise capital. States securities laws protect investors by requiring registration of securities offerings and preventing the exploitation of investors through unjust or incomplete offerings. State securities regulators are uniquely able to protect investors in that they are not only present in the state, but they are also attuned to the particular state's economic conditions. It would therefore be impractical and a disservice to investors to remove state regulators entirely from this important role. To that end, we recommend the following adjustments to current legislation concerning crowdfunding.

Currently-proposed Federal legislation would limit state authority to protect their investing citizenry. Specifically, Title III of H.R. 3606—which is identical to H.R. 2930, the crowdfunding bill passed by the House last November—leaves enormous gaps in investor protection. Small businesses and investors alike have suffered from the fraudulent activities of unregistered brokers and unqualified business advisers who, escaping regulatory oversight, seek only to profit by exploiting the legitimate capital formation community and ultimately harm its investors through unchecked and improper practices. Website operators functioning as intermediaries, among others, should complete at least minimal filings with regulators and demonstrate minimum competencies. Congress should preserve the States' ability to address this issue.

We commend Congress's efforts to be responsive to small business owners' capital formation needs, but we are concerned that Title III of H.R. 3606, by preventing states from acting proactively to deter fraud in this new market, would have precisely the opposite effect.

The states are currently developing a framework for encouraging and facilitating the formation of small business capital. Last fall, NASAA voted to establish a special committee to propose steps that state securities regulators can take collectively to facilitate small business capital formation. In January, this special committee completed work on an initial draft of a model rule which state securities regulators may adopt to responsibly encourage small business capital formation through a crowdfunding exemption. The NASAA model crowdfunding rule completed the first phase of the rulemaking process, an internal comment period, on February 7, and NASAA expects to

publish a revised version of the rule for public comment as early as latter this month. We believe that federal legislation should be crafted in a fashion that complements these efforts, and that it can best do so by ensuring that the role of state regulators in this area is addressed in broad parameters.

State securities regulators understand that technology has vastly improved the methods by which entrepreneurs can communicate with potential investors. We also understand, however, that securities offerings made through the Internet—which Title III of H.R. 3606 is based on—are fraught with risk. In such cases, the need for the state securities laws becomes even more urgent for the protection of investors and legitimate, worthwhile small business offerings. We urge Congress to resist preemption and preserve state securities regulators' authority to protect their investors.

STATE OF LOUISIANA,
OFFICE OF FINANCIAL INSTITUTIONS,
Baton Rouge, LA, March 14, 2012.

Senator MARY LANDRIEU,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LANDRIEU: I am writing to urge you to oppose the preemption of Louisiana law to protect investors in any ''crowdfunding'' legislation that comes before the Senate. By preempting state law for a new crowdfunding exemption, Congress would be creating a massive hole in the investor protection safety net by needlessly prohibiting the Office of Financial Institutions from working proactively to enforce laws designed to protect Louisiana investors.

I want to echo the concerns expressed in the March 12, 2012 letter sent by North American Securities Administrators Association (NASAA) President Jack Herstein on this important investor protection issue to the Senate leadership. I agree with NASAA that ''preempting state authority is a very serious step and not something that should be undertaken lightly or without careful deliberation, including a thorough examination of all available alternatives.''

Crowdfunding would give unproven start-up companies, offering risky speculative investments, direct access to small unsophisticated investors, potentially creating a haven for fraud. If state regulatory authority is preempted, states would not be able to review crowdfunding investment opportunities before they are offered to investors. Post-sale anti-fraud remedies provide little comfort to an investor who has lost a significant sum of money that is unrecoverable.

Expanded access to capital markets is beneficial only when investors remain confident that they are protected, when transparency in the marketplace is preserved, and when investment opportunities are legitimate. As Columbia Law School Professor John Coffee stated, in testimony to the Senate Banking Committee, ''one of these bills (S. 1791) could well be titled 'The Boiler Room Legalization Act of 2011.'' Such legislation, according to Professor Coffee, ''is likely to be used by early stage issuers that do not yet have an operating history or, possibly, even financial statements. Such issuers are flying on a 'wing and prayer,' selling hope more than substance.''

I appreciate that the concept of crowdfunding is appealing because it provides small, innovative enterprises access to capital that might not otherwise be available. Indeed, this is precisely why states are now considering adopting a model rule that would establish a more modest exemption for crowdfunding as it is traditionally understood, with individual investments capped at several hundred dollars per investor.

Instead of preempting states, Congress should allow the states to take a leading role in implementing an appropriate regulatory framework for crowdfunding. States are the most appropriate regulator in this area and Congress should allow states the opportunity to continue to protect retail investors from the risks associated with smaller, speculative investments.

I welcome the opportunity to discuss this matter further and to work together to craft legislation that is beneficial to small business as well as the investing public in Louisiana and throughout the United States.

Sincerely,

JOHN DUCREST,
Commissioner of Securities.

AMERICAN SUSTAINABLE
BUSINESS COUNCIL,
Washington, DC, March 14, 2012.

Hon. HARRY REID,
Office of the Majority Leader, U.S. Capitol, Washington, DC.

Hon. MITCH MCCONNELL,
Office of the Minority Leader, U.S. Capitol, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: The American Sustainable Business Council (ASBC) supports the CROWDFUND Act, S. 2190, authored by Senators Merkley, Bennet, Brown and Landrieu and encourage the Senate to use this bill as the vehicle to move forward on crowdfunding.

The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to advancing a framework and policies that support a just and sustainable economy. The organizations that have joined in this partnership represent over 100,000 businesses and more than 200,000 business professionals covering the gamut of local and state chambers of commerce, microenterprise, social enterprise, green and sustainable, local living economy, women business leaders, economic development and investor organizations.

In 2010 ASBC was one of the very few organizations supporting crowdfunding as a vehicle for small businesses to access capital investment without the prohibitive cost and time presently required by the Securities and Exchange Commission (SEC) regulations. That original proposal was to have small individual investments from a large number of people with a relatively low aggregate investment cap. This would minimize individual investor loss and systemic fraud. While the current legislation allows for larger individual and aggregate investments than the original proposal, our initial crowdfunding goals have been addressed.

While we support appropriate SEC oversight over significant investments, we recognize there will always be risks in the marketplace. This legislation strikes an appropriate balance between those risks and regulatory protection.

The winners with S. 2190 will not only be individual businesses that will have new avenues to access to capital, but also the national economy by enabling small and medium sized businesses to grow and create jobs. Small businesses are responsible for creating the majority of net new jobs in the country and deserve our support to rebuild the U.S. economy.

We applaud the leadership of Senators Merkley, Bennet, Brown and Landrieu on this critical issue for small and medium sized businesses. We look forward to working with the U.S. Senate to successfully pass S. 2190 and see its enactment into law.

Sincerely,

DAVID LEVINE,
Co-Founder and CEO.

Re Crowdfunding Intermediary in favor of the CROWDFUND Act (S. 1970).

Senator HARRY REID,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR REID, I write in favor of the bipartisan compromise CROWDFUND Act proposed recently by Senators Merkley, S. Brown, Bennet, and Landrieu.

Yesterday evening's introduction of the first bi-partisan Senate crowdfunding bill is a big step forward in our fight to get equity crowdfunding passed through Congress. I have been to Washington DC seven times since mid November discussing equity crowdfunding legislation directly with key Senate offices. The offices of the Senators on the Banking Committee have been very receptive to input from the entrepreneurial community and have adopted many of our suggestions in the latest bill.

This latest bill, the CrowdFund Act, is important because, unlike previous bills, for the first time we have a Senate bill with bipartisan sponsorship, a balance of state oversight and federal uniformity, industry standard investor protections, and workable funding caps. This bill has a legitimate chance at quieting those who were previously trumping up fears of fraud/bad actors as well as the various state oversight concerns. To date the main issues the opposition raised were regarding fraud and state oversight of our new industry. While the opposition is mainly from those protecting the interests of large banks, the earlier House Bill and two partisan Senate bills did little to address the legitimate concerns raised by the opposition. As a compromise, this bill has a real chance at becoming law.

I hope to see your support of this bipartisan effort in the Senate to pass a functional and balanced CROWDFUND Act.

Sincerely,

FREEMAN WHITE,
CEO, Launcht.com

MOTAAVI,
Durham, NC, March 14, 2012.

Hon. HARRY REID,
Hart Senate Office Building,
Washington, DC.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We are a crowdfunding intermediary based in Durham, NC. We understand the Senate will take up the JOBS Act shortly. We are very concerned about language in Title III of While we appreciate the broad exemption written by the House, the language does not protect investors and puts the crowdfunding industry at risk of significant fraud. However, more responsible language does exist. The CROWDFUND Act, cosponsored by Senators Jeff Merkley (OR), Michael Bennet (CO), Scott Brown (MA), and Mary Landrieu (LA), represents an ideal crowdfunding statutory framework.

The crowdfunding language in the JOBS Act lacks critical investor protection features. It does not require offerings to be conducting through an intermediary, which opens the door for fraudulent activity similar to what was experienced when Rule 504 was changed to allow offer and solicitation in the mid-1990s. It also does not require appropriate disclosures or inspections. The bill does not require the issuer to inform investors of dilution risk or capital structure. There are no provisions for misstatements or omissions that relate specifically to this exemption. Crowdfunding is premised on openness. Without disclosure, investors cannot protect themselves or accurately price the securities they are buying. If issuers are not

willing to provide information over and above what is required, the JOBS Act language does not provide investors with other alternatives short of giving up on crowdfunding altogether.

The CROWDFUND Act addresses our concerns. This bill strikes the right balance between disclosure and flexibility. The language is tightly integrated with existing securities laws to provide investor protection. It places easily met obligations on the issuer and the intermediary to ensure that investors have the information they need to make sound decisions. This bill has many provisions for appropriate rulemaking, and is written in a way that reflects how crowdfunding actually works. We think crowdfunding can be valuable and integral part of the capital formation process. The CROWDFUND Act is the right bill to make this happen.

We understand that introducing a significant amendment to the JOBS Act may slow down the reconciliation process, but we think the benefits are worth the effort. We urge you to adopt the CROWDFUND Act as the Senate language on crowdfunding and believe the House will also see the value in this well written, investor focused bill.

Sincerely,

NICK BHARGAVA, J.D.
Motaavi, LLC.

Ms. LANDRIEU. Again to recap so people can see on this chart, AARP has written us against the House bill. Consumer Federation of America—against the House bill. The AFL–CIO—against the House bill. Yes, those are some of the left leaning organizations.

But we also have centrist and right leaning organizations. I am talking about the former Securities and Exchange Commissioners' Chief Accountant, this is what they say

There are always paths to improvement for any complex system, the American Stock Exchange included. But how quickly these Congressmen seem to have forgotten why many such regulations were enacted in the first place. Last month marked the 10-year anniversary of the collapse of Enron.

It has not been 10 years and we are going back to where we were when Enron took money out of the pockets of thousands of people in America. Why are we doing that

Regulations that prevent capital multiplying companies that want to go public from doing so are bad. Ones that prevent capital destroying ones from becoming public nuisances are good. No job creation will be generated through the process of socializing capital destruction to the general public.

But he is saying that the House bill goes too far.

Again, Eric Schureunberg, editor of Inc.com—they are a very well respected voice in the small business community in America today. They are saying the House bill is flawed.

I know we are going to be criticized on the other side by saying it is just the same old left wing groups that want more regulation and more regulation. But that is not true. That is why I am putting all of this in the record today so people can carefully consider it tomorrow, and over the weekend on Monday, before we come back here; to look and read what is being said about the House bill and to be open and honest in our efforts to try to reform it. Again, for the record, Mary Shapiro, Chairman of the Securities and Exchange Commission, said: While I recognize that H.R. 3606—the ill-advised political opportunity bill, those are my words—is the product of a bipartisan effort designed to facilitate capital formation and include certain promising approaches, I believe there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

So that is what we have done. We took the bill from the House and looked at it very carefully and on Monday I am going to hand this out to everyone and we are sending it to everyone's offices now. It has kind of become a famous small business blue line that is very easy for everyone to understand. It shows the differences between the Senate bill and the House bill. As we can see, both bills raise the cap on regulation A offerings from $5 million to $50 million. We are happy to do that. We improve the transparency of regulation A by requiring an audited financial statement.

You don't need to have graduated from a master's program at Stanford or Harvard to understand that if you are getting ready to invest—whether it is $1,000, $10,000 or $100,000—having an audited financial statement about the company you are getting ready to invest in would be a basic thing to do. I think we learned about this when we were in seventh or eighth grade. You don't have to go to Harvard to know this.

The audited financial statement requirement is absent from the House bill. There is no requirement in the House bill for an audited financial statement, so we put an audited financial statement in our bill. I don't think that is a radical amendment. It is a simple one; it is an important one. In the House version of this IPO on-ramp, they exempt companies up to $1 billion in annual revenue. Madam President, $1 billion is a lot of money, so everybody wake up. The House bill says if you are less than $1 billion, you basically don't have to adhere to most of the rules and regulations; you can just go on your merry way.

That sign is great—''ill-advised political opportunity.'' That is what I am calling the House bill. Let me check to see how many companies went public that were over $1 billion last year. Only 22 percent of companies that went public last year were over $1 billion. So if my math is correct, the House bill is going to eliminate 78 percent of the companies from regulation that raise money in the public. That is going too far. It is unnecessary. We bring that number down to $350 million in our bill, and the author of this provision in the Senate has signed on as a supporter, CHUCK SCHUMER. The reason he did that is because he realizes—even as the sponsor of this on-ramp provision—that the House bill went too far. I am not going to go into all the rules and regulations, but it is not that complicated because—1, 2, 3, 4, 5, 6, 7, 8—there are only about eight big differences, but they are important differences.

I am going to wrap up by saying: Please study the record. Please look at it. In our Senate bill, which the Chair has been very supportive of, as has Senator CANTWELL, and I wish to thank both of them publicly, as well as Senator KLOBUCHAR—we have the Export-Import Bank in our bill, which is not in the House bill. The Chamber of Commerce has written us asking us to please support the Export-Import Bank. We also expand the SBIC, which is the small business investment program, which the President included in his State of the Union Address to authorize that program to move from $3 billion to $4 billion. Why? Because we are having such success, through the SBIC programs that exist in all our States, getting money out to Main Street, to small businesses. So that is included in our bill—and one the Chair has particularly been a lead on, and that is at no cost to the taxpayer. These things do not cost any additional money. There is the SBA 504 refinancing that is going to allow to extend for 1 year the ability of the small business loan program that has thousands of outstanding loans to extend for another year the opportunity to refinance their commercial loans.

So we have added three provisions to the House bill that make it more balanced and better for small business, and we have put a couple oversight measures into their provisions that I think—in the words of many of even the advocates of this bill—''make the bill better.''

I don't know if we will be successful, but this is worth a try because the damage that could be done in venturing out so far into a new way of financing without the proper safeguards could set us back decades. We don't want to go backward; we want to go forward. We don't want to go back to the days of Enron and Bernie Madoff. Why would Republicans, in the face of these scandals, come up with—and some Democrats voted for it. I am not quite sure how that happened, but we are going to find out. Why would they want to go back to those days? We want to go forward with the right protections.

I see my friend Senator LEVIN on the floor. He most certainly understands this issue in many ways better than I do on the technical side of it. He has helped write this bill. I am hoping he will give an even better explanation than I have been able to give, but I think I have covered it pretty broadly, and he can go into a lot more detail about the possibility of fraud in here if it is not locked down.

I am going to end with a word to my community banks because I have tried to become a champion for them. I think they can appreciate it. I am not

100 percent sure. I believe in community banks. The Independent Community Bankers of America sent a letter supporting the House bill. I am going to call them over the weekend and talk with them specifically about my concerns and ask them to reconsider their position. I think our compromise is very good for our community bankers. I don't know whether they will. I know they want to get rid of some of the onerous requirements that were placed on them in the Sarbanes-Oxley legislation, and I appreciate it. I helped sponsor some of the amendments on their behalf.

But I think this House bill is going too far. I am going to reach out to them. We will see what their view is. I do respect the views of my community bankers. We are going to have a lot more to talk about next week.

Again, I thank Senator LEVIN and Senator REED for joining with me and Senator JACK REED for leading this effort to help put a bill before the Senate that is quite balanced and provides the investor protections and also opens some exciting opportunities for capital to create new businesses in America that are the backbone of our extraordinary—and not to be matched—entrepreneurship spirit in the world. We honor that, but we want to do it in the right way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, before the Senator from Louisiana leaves the floor, let me thank her for her leadership in this area and the passion she has brought to it. This is a train which has moved with great speed from the House of Representatives—much too great a speed—and her ability, just by the expression of her will and her determination to bring this to a point where we can debate it at least over a few days and the weekend, is critically important, I believe, to future of investors in this country.

There is no State that has suffered more from the job losses of the great recession than my State of Michigan. We don't have to ask a Michigander twice if he or she believes Congress should take action to increase the speed of the jobs recovery. So I am ready to consider any legislation that promises more opportunity for the workers of this country, but unfortunately the legislation the House has sent to us, which is promoted as a job creation bill, is no such thing. In the name of job creation, the House bill would severely weaken investor and taxpayer protections in our securities laws.

In the name of putting Americans to work, the House bill would hand a series of special favors to influential special interest groups. It also reflects a disturbing failure to learn the lessons of the recent and all-too-painful past. It defies belief that after the worst financial crisis in generations, a crisis brought on by the failure to effectively police our financial markets, Congress would consider removing vital obstacles to fraud and abuse. The House bill would take a series of steps that would undermine the integrity of our financial markets. We should not go down that road. We need not go down that road. In working with Senator JACK REED, Senator LANDRIEU and Senator SHERROD BROWN and others, I participated in an effort to make some changes in that bill that would give small, innovative companies more tools to access the capital they need. We want to do that. We all want to do that. But we do that in our bill without putting the stability of our economy and the interest of American investors and taxpayers at risk.

I wish to lay out some of the problems with the House bill and how our Reed-Landrieu-Levin amendment would address those problems. The House bill would lower barriers to fraud that are now present in the so-called regulation A stock offerings. These are offerings that are exempt from the SEC registration requirements. The House bill would expose retail investors—those with no expertise and no resources—to assess the risks of participating in the unregulated market to massive potential fraud and abuse.

The bill does not even require that companies making offerings under regulation A provide audited financial statements. The regulation A process is appropriate for very small companies, but the House bill provides few meaningful limits to its use. Instead, it would allow larger companies to avoid meaningful oversight year after year.

I have worked with colleagues to fix this problem by ensuring that these offerings are limited, so they are only used once every 3 years—that is one of the changes we would make—and that investors in the offerings get an accurate picture of the company's finances by requiring audited financial statements.

In the name of giving smaller companies greater access to the initial public offering market, the House bill would create a new class of corporation called an emerging growth company and would strip from investors in such companies more than a dozen important investor protections. Some of the protections involve transparency. The House bill would weaken corporate governance provisions we enacted less than 2 years ago in the Dodd-Frank Act, including disclosures on executive pay. The House bill would exempt these companies from having to comply with changes to accounting standards. It would repeal the protections we put in place after the dot-com bubble burst. These protections require financial firms to separate research analysts who advise clients on whether to invest in initial public offerings from the sales teams of those same companies.

There is supposed to be a wall between those two parts of any company so the sales teams don't take advantage of what the research teams are telling their customers. There are too many opportunities for conflicts of interest and front-running and other things if we allow that wall to be breached.

The House bill provides that companies with up to $1 billion in annual revenue would not have to get an outside auditor to check their internal controls. So what happens if one of these companies is cooking the books? Who is going to catch it? We learned with Enron and WorldCom why we need meaningful checks on how companies prepare their financial statements. The vast majority of financial restatements, which are corrections to bad information given to the investing public, are made by medium and small companies. Investors in these companies should have the confidence that the financial statements on which they base their decisions are accurate.

Now, those provisions in the House bill are bad enough given the chronic problem in financial markets with poor and misleading financial disclosure but, to make matters worse, the bill would open this collection of loopholes with companies of up to $1 billion in annual revenues. That is a level which would include well over 80 percent of all IPOs. So over 80 percent of all the IPOs that will be issued would then be exempt from the protections under the House bill.

Financial regulators, associations of individual investors, many of the largest pension funds in this country, securities experts, and the chamber of commerce have raised alarm bells about that $1 billion threshold as well as the many problems that would follow from the House bill.

Just this week, the SEC took a series of enforcement actions against fraudsters seeking to victimize investors in pre-IPO offerings. One SEC official noted, ''The newly emerging secondary market for pre-IPO stock presents risks for even savvy investors.'' The House bill threatens to bring the same level of risk and instability that plagues pre-IPO trading to the IPO market itself—changes that, rather than building support for IPOs, might actually make the IPO market so risky that it ends up dampening investor interest.

The amendment some of us have been working on, which is the Reed-Landrieu-Levin, et al., amendment, accepts the premise that some small, newly public companies could benefit from somewhat relaxed requirements as they adjust to the public marketplace. But our amendment would limit these benefits to smaller companies—those with under $350 million in annual revenue—and our amendment would not exempt these companies from many of the critical investor protections. For example, we would not remove protections designed to protect the integrity of the research that is available to investors, nor would we exempt them from any new accounting

rules, nor would we exempt them from requirements regarding important executive pay disclosures and shareholder input on executive pay packages. Our amendment would provide flexibility for smaller, newly public companies to adjust to the public markets, but we would leave in place the investor protections that ensure our public markets remain the best in the world.

The House bill would also allow companies or fraudsters posing as legitimate companies to solicit investors directly through the Internet. This is one of the really big issues we are going to address next week. As written, the House bill would offer investors almost no protection from fraudulent schemes and fake investment opportunities. Although these Web sites that are often called intermediaries or funding portals are the only entities capable of making sure that a company seeking to sell its stock on its site is real, the House exempts them—exempts the intermediaries and the funding portals—from any real regulation or liability. The same is true with the issuing company. That is why labor groups, seniors organizations, regulators, and security experts all warn us that this measure is an open invitation to fraud. One group calls it the ''boiler room legalization act.''

So we have many problems with these provisions in the House bill, but we also believe the so-called crowdfunding, in which small startups can access pools of capital from small investors, usually over the Internet, has the potential to provide opportunity for truly small businesses to get additional capital they need to grow. This can be done legitimately. That is why we build on the work of Senators MERKLEY and BENNET to create a platform for raising money through the Internet. But we make sure, as they do, that it has the necessary investor and consumer protections. In fact, legitimate crowdfunding sites have made it clear to us that they, like us, are concerned about the House bill. So we have legitimate crowdfunding interest groups that want to make sure the protections are there for the investors, speaking out against some of the excessive provisions in the House bill. They want the additional protections we provide. So our amendment makes sure that funding portals are subject to meaningful regulation and that the companies that use them to raise capital are also subject to meaningful regulation.

Our amendment would, unlike the House bill, require comprehensive disclosures to investors about the company and the risks of such investments. If this new way of investing in small companies is to succeed, then investor protections such as the ones embodied in the Merkley-Bennet provisions, which we have included in our amendment, are vital to giving investors the confidence to participate.

The House bill also attempts to remove regulations on so-called private offerings. By allowing issuers of private offerings to market their stock to the general public—whether it is on billboards and the Internet, in visits to retirement homes or late-night television ads—that provision in the House bill would dangerously lower our defenses against frauds. We have seen this movie before. In the 1990s regulators lowered the barriers to general solicitation for private offerings and within years reversed their error because of widespread fraud and abuse.

Some have complained that the existing restrictions on solicitation for private offerings are too narrow and impede businesses' access to capital. That seems unlikely given the nearly $1 trillion a year in private offering activity. But if there are yet more worthy investments that are going unfunded because of unneeded investor protections, the SEC regulations should be updated for the Internet age.

The Reed-Landrieu-Levin amendment would direct the SEC to revise its rules to allow companies to offer and sell shares to a credited investor, but it then directs the SEC to make sure those who offer or sell these securities take reasonable steps to verify that the purchasers are actually accredited investors. It requires the SEC to revise its rules to make sure these sales tactics are appropriate. There are not going to be, under our language, billboards or cold calls to senior living centers. I wish I could say the same about the House bill.

There is little evidence that the reduced investor protections and invitations to fraud in the House bill will make any meaningful contribution to job growth. We do not have one study on any one of the provisions in the House bill establishing that even one job would be created. If such a study existed, I am sure we would have seen it. The simple reality is that repealing Federal securities laws—and that is clearly the intent of the House bill—does not create jobs. In fact, the former Chief Accountant to the SEC was quoted recently as saying that this JOBS bill was no jobs bill at all. He said: ''This would be better known as the bucket-shop and penny-stock fraud reauthorization act of 2012.''

Taken together, these and other provisions in the House bill send a false message: that in order to grow the economy, we must subject our citizens to more fraud, we must put pension funds and church endowments at greater risk of fleecing, we must create more threats to the financial stability of American families.

The America that I know and that I believe in is capable of growing our economy without these unnecessary risks. Indeed, it is fraud and financial abuse that have repeatedly brought our economy to its knees. We opened the door to fraud and abuse in the savings and loan industry and precipitated a crisis that destroyed 750 financial institutions when we did that. We cut the number of new homes built in this country by nearly half and devastated entire communities. We dropped the barriers to fraud through financial statements and in swaps markets, opening the door to the predations of the so-called ''smartest guys in the room''—those are the criminal executives of Enron. We lowered the barriers to heedless risk and conflicts of interest in the financial system, thereby paving the road to the greatest financial crisis since the 1930s.

Over the last 10 years, on a bipartisan basis, my Permanent Subcommittee on Investigations has held hearing after hearing and issued report after report on the Enron crisis, on accounting and securities frauds, and on the more recent subprime mortgage crisis. Our investigation has exposed how some American corporations, and their accountants and banks, were willing to dupe investors and, even after their wrongdoing came to light, walk away with huge paychecks while workers, investors, and the American economy at large paid the price.

Enron was the seventh largest U.S. corporation before its crash bankrupted employees, pensions, and investors. It lied about its earnings and did so with the help of accountants and banks. Goldman Sachs sold securities through public and private offerings that did not fully inform investors about what they were buying. The wrongdoing our subcommittee has uncovered over the years is as powerful a reminder as we can get that investors deserve protection against abuses when they invest their hard-earned dollars in U.S. capital markets.

There is a rising wave of concern among market experts that the effect of the House legislation might be precisely the opposite of its supporters' stated intent and that instead of boosting the ability of companies to find capital so they can grow, these changes would hurt the market for investing in new companies by making that market too risky. If we remove meaningful transparency and safeguards against fraud, SEC Chairman Schapiro wrote just a few days ago that ''investors will lose confidence in our markets and capital formation will ultimately be made more difficult and expensive.''

The question for the champions of lower regulatory barriers is this: Did those rollbacks of regulatory protections help our economy grow? Did those rollbacks which we saw so many of and which I have just outlined create jobs? Ask a family who was wiped out in the financial crisis. Ask an investor who lost everything to Enron. Ask one of the many 8.6 million American workers who lost their jobs in a financial crisis created on Wall Street, one we have yet to fully overcome.

In November of 1999 this body debated another piece of financial legislation, one that supporters claimed would lead to boundless new economic opportunities for our country. The bill we were debating repealed the Glass-Steagall Act. It lowered barriers to

concentration in the financial industry. It removed the wall that had separated investment banking from commercial banking since the aftermath of the Great Depression.

Senator Byron Dorgan came to this floor and he issued a warning: ''It may be that I am hopelessly old-fashioned, but I just do not think we should ignore the lessons learned in the 1930s . . . I also think that we will, in 10 year's time, look back and say: We should not have done that because we forgot the lessons of the past.''

Well, that was 1999. Ten years after Senator Dorgan's remarks, almost to the day that he predicted, America's economy hit rock bottom, with the lowest mark of employment during the great recession. Well, old-fashioned sounds pretty good these days. I hope to be as old-fashioned as Senator Dorgan, who warned us that lowering the barriers that protect us from financial catastrophe can only destroy jobs—not create jobs, destroy jobs.

I hope the Senate will turn away from the House bill that threatens more fraud, more abuse, and renewed crisis. I hope the Senate will embrace reforms that are present in our substitute amendment that give our innovative companies the chance to compete without endangering investor confidence or the stability of our economy.

Madam President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

Mrs. SHAHEEN. Mr. President, when I talk to owners, operators, and employees of small businesses in New Hampshire, one thing I hear consistently is that access to capital is a real challenge. While our community banks have increased their lending, capital access from large banks and other entities has been very hard to come by. As a result, small businesses fighting to grow and create jobs continue to be constrained in their efforts.

I am glad the Senate is planning to move forward with this legislation that will address capital formation and will take some additional steps to help those small companies get the financing they need to grow, but as we take that step forward, it is equally important that we do not also take a step back. That is why I believe it is critical for the Senate to extend two venues of small business financing as part of this debate: the Export-Import Bank and the Small Business Administration's 504 refinancing program. These programs, which bring no cost to the taxpayers—let me say that again: these programs bring no cost to taxpayers—provide financing options for so many small businesses in New Hampshire, in West Virginia, and across our country.

We have an important opportunity to ensure that such important avenues to capital remain available in the coming years by extending these programs as part of the small business capital package we are currently debating. So first let me begin with the Export-Import Bank, which is a vital agency that helps many small businesses secure the financing they need for export deals. This is critical because exports are such an important part of the markets that are available to businesses today. Mr. President, 95 percent of markets exist outside of the United States, but only 1 percent of small and medium-sized businesses are doing business outside of the United States. So businesses need access to these international markets.

Last August, Senator AYOTTE and I held a Small Business Committee field hearing in New Hampshire, and it was on small business exporting. We heard how difficult it can be for a small company to sell its products overseas. It is particularly challenging for a small business to get financing for its foreign deals. That is where the Export-Import Bank makes such a significant impact. Mr. President, 87 percent of the Export-Import Bank's transactions support small businesses. So I think there is a misconception about whom the Ex-Im Bank really helps. Eighty-seven percent of their transactions support small businesses.

Last year alone, the bank helped finance more than $6 billion in export sales from small companies in the United States. It has set a goal of increasing this volume by an additional $3 billion in the coming years, and it has created a new Global Access for Small Business Initiative which is designed to dramatically increase the number of small companies taking advantage of its programs. In fact, I think this new initiative is terrific. The Ex-Im Bank came to New Hampshire and unveiled this initiative. Again, this bank assists small businesses at no cost to the taxpayer.

Unfortunately, right now this no-cost small business program is in jeopardy. Unless we act soon to reauthorize the Export-Import Bank, it will hit its lending cap and it will be forced to cut off its support for small businesses. We just cannot afford to let that happen. Without the bank small businesses will lose a significant amount of foreign sales and the jobs they maintain. Last year the bank supported over 288,000 American jobs. As more small companies become aware of the bank's programs, more businesses will be able to access new markets and create new jobs.

So I want to give an example because, as I said, last year we had the Chair of the Export-Import Bank in Portsmouth, NH. They unveiled their new small business initiative, and they met with a number of small businesses that were interested in exporting.

One of those small businesses was a company called Skelley Medical, which is a medical equipment company that is based in Hollis, NH. Before our event, Skelley Medical was unaware of the programs the Export-Import Bank offered. Two weeks later, just 2 weeks after this event, Skelley took out a policy with the bank. That put Skelley in a position to expand its sales overseas. Right now, Skelley Medical is looking to finance deals in as many as five international markets. That is all thanks to the help of the Export-Import Bank. Without the Export-Import Bank, that kind of small business success story will not happen. It would be a real mistake for this Senate to pass a capital access bill without this critical reauthorization.

The second program I would like to talk about is another no-cost program that deserves to be extended. That is the Small Business Administration's section 504 refinancing program.

With bipartisan support, the Senate passed the Small Business Jobs Act 2 years ago—well, about a year and a half ago. That Small Business Jobs Act created this 504 program to help small businesses refinance existing loans under the SBA's 504 lending program.

Again, what we are hearing, as my colleagues know, as I am sure the Presiding Officer knows, is that this difficult real estate market we are in has made it challenging for many successful businesses to refinance their real estate deals. They cannot get access to capital right now, particularly in the real estate industry, which has been so hard hit during this recession. What this SBA program allows is for small businesses to lock in long-term, stable financing so they can free up capital to invest in their companies and hire new workers.

Although this program got off to a slow start, the Small Business Administration has made important changes to ensure that it is working better now for small businesses and for banks. As a result, we are starting to see a significant increase in volume.

In New Hampshire, lenders see this program becoming a real success in the near future. Alan Abraham, who is the president of the Granite State Development Corporation in New Hampshire, has said that ''banks and borrowers are now understanding the significant benefits of the program.'' He told me:

> We are starting to field many [more] phone calls requesting information on the policies, and we anticipate dozens of New Hampshire small businesses could benefit from extending this program.

We should not cut this program off at the knees just as we are beginning to see substantial returns—again, without costs to taxpayers.

This program is scheduled to sunset in September. I believe it is important for the lending community to know as soon as possible that the program will continue into 2013 so that they can devote the resources necessary to continue this initiative's budding success and also so that we can provide the certainty so many companies tell us they need.

We should extend this program. We should address the Export-Import Bank's reauthorization. That is why, as we look at the Landrieu-Reed-Levin substitute amendment, it includes these provisions. It includes reauthorization of the Export-Import Bank, and it includes the extension of the SBA 504 program. It also includes a number of other provisions that address some of the concerns that have been expressed by the House-passed capital formation bill.

Senators LANDRIEU, REED, and LEVIN were on the floor earlier and very eloquently elaborated on those changes. I urge my colleagues to support that substitute amendment to reauthorize the Export-Import Bank and to extend SBA's 504 Loan Program.

I ask unanimous consent that I be added as a cosponsor to that Landrieu-Reed-Levin amendment.

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

Mrs. SHAHEEN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

SCHOOL GUN VIOLENCE PROTECTION

Mr. LEVIN. Mr. President, as news reports focus on yet another horrific shooting in an American school, we must again confront the simple and sad truth: tragedies like this are often preventable. On February 27, 17-year-old T.J. Lane opened fire in his high school cafeteria in Chardon, OH, killing three of his classmates and wounding two other students.

This is a narrative we have heard over and over again. Lane is believed to have taken the gun from his grandfather's barn. Similar to what happened 5 days earlier in Port Orchard, WA, when a 9-year-old boy accidentally shot his classmate with a .45-caliber handgun he took from his mother's house. Or in 2009, when a 15-year-old boy was institutionalized after stealing three guns and hundreds of rounds of ammunition from his father as part of a plan to shoot other students at Pottstown High School in Philadelphia. Sadly, these are not rare circumstances. A 2000 study by the U.S. Secret Service found that in more than 65 percent of school shootings, the attacker got the gun from his or her own home or from a relative.

The guardians of these children never intended for their firearms to be used for harm. But they left their loaded guns without any measures to prevent their children—or anyone else—from using them irresponsibly. According to reports by the Legal Community Against Violence, in a nation where approximately one-third of households with minors have a firearm, studies have shown that 55 percent of these households store one or more of their guns unlocked. Another study showed that 22 percent of the parents who claimed their children had never handled their firearms were contradicted by their children. When it comes to gun safety, a young person's curiosity and recklessness can be a dangerous thing.

It is imperative that gun owners across the country safely store their weapons out of the reach of young people. But despite these troubling statistics, there are no Federal laws that prevent adults from leaving firearms easily accessible to children and minors. Some State and local governments around the Nation have adopted child firearm access prevention measures, and these laws work. From 1990 to 1994, in the 12 States where child access prevention laws had been in effect for at least 1 year, unintentional firearm deaths fell by 23 percent among children under the age of 15. Laws that encourage parents to keep their firearms locked and unloaded, to store their ammunition in a locked location separate from their firearms, and to educate their children on proper gun use and safety, would help prevent shootings involving children and teenagers.

We must not wait for the next Chardon High School or the next Virginia Tech or the next Columbine. Commonsense gun safety legislation protects our schools, our universities, our religious institutions, and our homes from gun violence. But despite this evidence, legislation has been introduced in this Congress to dismantle the few Federal gun safety provisions that protect the American people. I urge our colleagues to support sensible gun safety measures that could prevent tragedies like the one unfolding in Ohio.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

Mr. CORNYN. Mr. President, today I come to floor to express concerns about the transportation bill recently voted on by the Senate.

My State of Texas is the fastest-growing State in America, and our economic success has made us a national model and a magnet for talent. But rapid population and economic growth means an ever-increasing strain on our infrastructure.

This legislation takes several positive steps such as consolidating programs, improving project delivery, and expanding the Transportation Infrastructure Finance and Innovation Act, also known as TIFIA, which has been successful in addressing various infrastructure needs in Texas and across our Nation.

Unfortunately, the bill is also deeply flawed. First, it is a 2-year proposal. Changing policy for such a short period of time does not give States like Texas the certainty they need to undertake meaningful long-term transportation projects.

In addition, the Senate bill uses 10 years' worth of revenue to pay for 2 years of spending. This is the type of budget gimmickry that makes Americans suspicious of Washington.

So we have legislation that is short-sighted and relies on accounting tricks. But the problems don't end there. The bill also moves us away from the user-pay principle. While this might work in the short term, closing a large funding gap with non-user tax revenues would ultimately destroy the Highway Trust Fund's protected budget status.

The legislation also does not address the Trust Fund's long-term insolvency problem. Instead, it spends down the balance in the Trust Fund leaving a substantial deficit starting in fiscal year 2014.

Finally, Texas receives significantly less from the Highway Trust Fund than it pays in. In 2009, Texas had the lowest Trust Fund return ratio in the country, according to a Heritage Foundation study. Congress simply must address the equity issue rather than rewarding a few States based on their previous share of highway funding.

I know there are those in my State who favor this legislation, and I share their commitment to finding solutions to our transportation challenges. But I believe the people of Texas and the people of America deserve a better approach. I hope that we can improve the bill during the conference process. Our challenges are difficult, but they are not insurmountable, and there is no reason we can't make 21st-century American infrastructure the very best in the world.

Mr. PRYOR. Mr. President, I would like to commend my colleagues for passing the highway bill yesterday, which included language from Mariah's Act, a bill I introduced last year. This bill reauthorizes the National Highway Traffic Safety Administration, NHTSA, and will improve safety programs on our roadways and safety standards in our vehicles.

Mariah's Act was named after Mariah West, a teen from Rogers, AR. A day before her high school graduation in 2010, Mariah was killed as a result of texting while driving. Mariah's mother, Merry, has since become an advocate against texting and driving and continues to promote safe driving habits across the country.

In part, Mariah's Act will prevent others from a similar tragedy by concentrating resources to prevent distracted driving. In 2010, more than 3,000

people died and thousands were hurt in crashes involving a distracted or inattentive driver.

Along with distracted driving, Mariah's Act addresses NHTSA's two core missions: vehicle safety and highway safety. By improving these areas, we hope to continue to reduce traffic fatalities and reduce damage when accidents do occur.

While I was pleased to hear that the number of traffic fatalities fell 3 percent between 2009 and 2010, there were still over 32,000 traffic fatalities throughout our country in 2011. I believe we can do better to lower the number of deaths on our roadways by consistently improving safety.

Lifesaving protections for children and young drivers are key components of this bill. This is important because motor vehicle crashes are the leading cause of death for all Americans ages 5 to 34. As a parent of two teenagers, I know the fears of first transporting your children, and then seeing them get behind the wheel. Because vehicular accidents are so deadly to our young people, I was pleased to introduce a bill with strong protections for our youth.

Another specific issue that Mariah's Act addresses is a problem we have been facing for a long time, impaired driving. Impaired driving still remains a deadly problem across the country. In 2010, 31 percent of all fatal crashes were alcohol-related, and more than 10,000 people were killed in alcohol-impaired driving crashes. We, as a country, should be taking a strong stance for ending this behavior and Mariah's Act helps develop the laws and technology to do it.

Other provisions in this bill include updates and consolidation of highway safety programs; ensuring emerging electronics and technologies in vehicles are safe; and improved transparency and accountability in vehicle investigations.

Along with NHTSA, the Commerce section of this Highway bill includes provisions of two bills I introduced last year, the Commercial Driver Compliance Improvement Act and the Safe Roads Act of 2011.

The Commercial Driver Compliance Improvement Act will help authorities improve compliance with hours-of-service regulations that keep fatigued commercial truck and bus drivers off the road.

The Safe Roads Act will establish a national clearinghouse for verified positive alcohol and drug test results of commercial motor vehicle operators. This will prevent a bad actor from failing a drug test in one State and simply going across a State line to try to beat the test.

Our safety is compromised everyday by those bad acting truck and bus drivers that are fatigued or under the influence of drugs or alcohol. We needed to strengthen our current regulations to ensure these drivers cannot bypass the law. These provisions are a practical way to ensure that the commercial driving industry is reducing the number of unsafe drivers on the road.

Last year, there were over 5 million accidents on our roads resulting in over 32,000 lives lost. That is why we need to continue to fine tune highway safety programs to better target prevention, enforcement and oversight. I am pleased that all three of these provisions were included in this Highway bill and that they will help reduce the number of tragedies families face due to automobile related deaths and injuries.

I would like to thank everyone for their input and believe that we have a bill that will complete the goal of increasing safety on our roadways.

TRIBUTE TO INDIANA CHIEF JUSTICE RANDALL T. SHEPARD

Mr. LUGAR. Mr. President, I wish to recognize Indiana Chief Justice Randall T. Shepard, who is retiring this month after 25 years of distinguished service as Indiana's Chief Justice of the Supreme Court.

Justice Shepard was appointed to the Indiana Supreme Court by Governor Robert Orr in 1985 and became Chief Justice in 1987, then the youngest chief justice in the nation. During his career, he has authored nearly 900 civil and criminal opinions and 68 law review articles. His writings have been cited hundreds of times by law journals and other courts, including the U.S. Supreme Court.

Justice Shepard's leadership and idealism are recognized beyond his legal opinions. Under his tenure, the court adopted a more balanced workload of civil and criminal cases and began webcasting all of its oral arguments. In 2001, he created the Courts in the Classroom program, which helps students learn about the judiciary, and was a driving force behind the Indiana Conference for Legal Education Opportunity program which promotes diversity in the legal profession. In 2007, Justice Shepard was appointed by Governor Mitch Daniels as co-chair of the Indiana Commission on Local Government Reform, and several of the Commission's recommendations have been implemented.

A seventh-generation Hoosier, Justice Shepard grew up in Evansville, IN, and graduated cum laude from Princeton in 1969. He received his law degree from Yale Law School in 1972. Among other awards, Justice Shepard has received the Indiana Chamber of Commerce Government Leader of the Year, the American Judicature Society's Opperman Award, and the Indiana Black Expo Lifetime Achievement Award. He has honorary degrees from the University of Southern Indiana, the University of South Carolina, the University of Notre Dame, and the University of Evansville.

I appreciate this opportunity to recognize Justice Shepard, and I wish him every continuing success as he pursues new challenges and opportunities.

RECOGNIZING CIRCUS SMIRKUS

Mr. LEAHY. Mr. President, I would like to take a moment to pay tribute to Circus Smirkus, the award-winning international touring youth circus based out of Greensboro, VT. A treasured Vermont institution, renowned well beyond our borders, this year Circus Smirkus is celebrating its 25th anniversary.

Circus Smirkus was founded by Rob Mermin, who ran away to join the circus at the age of 19 when summer camps for aspiring performers did not exist. Upon moving to Greensboro in 1987, Rob started the program to promote the culture and skills of the circus and to inspire youth to enter the arts and experience the adventure of a traveling show.

Today Circus Smirkus is the only youth circus in America to put on a full-season tour under its own big top, a 750-seat, one-ring, European-style circus tent. Every summer, a company of talented troupers, ages 10 to 18, arrives and rehearses the show at Smirkus's headquarters in the Circus Barn in Vermont's Northeast Kingdom. Then 30 young clowns, aerialists and acrobats take the show on the road, staging more than 70 performances across New England in just 7 weeks.

The program is a complete immersion in circus life, including long hours, rigorous training, and daily chores. Most graduates—known as Smirkos—describe their experiences as life-changing and as having forged some of their most cherished memories. The young performers come from as far away as Mongolia, New Zealand, and Siberia. Since its founding the circus has fostered youth exchanges with more than 25 nations.

Marcel Marceau, the famed French mime, broke his silence to call Circus Smirkus ''an absolutely wonderful task: to bring children hope for the future, to create an entirely new form of circus and make it universal.'' He was so right. I see the skill they develop in young performers and the joy they bring to every audience—including Marcelle and me when we take our grandchildren each summer in Vermont. I wish Circus Smirkus the best for this special milestone season and in all the years to come.

TRIBUTE TO REVEREND HURMON E. HAMILTON, JR.

Mr. BROWN of Massachusetts. Mr. President, I wish to recognize the Reverend Hurmon E. Hamilton, Jr. of Roxbury, MA, a remarkable pastor, teacher and leader. Reverend Hamilton grew up in Louisiana, the son of a preacher. He attended Grambling State University and went on to earn a Master of Divinity Degree from San Francisco Theological Seminary.

In 1994, Reverend Hamilton began his career in Massachusetts when he was elected Senior Pastor of Boston's Roxbury Presbyterian Church. In this

senior ministry position, he led a major capital campaign that renovated the historic church's building. More importantly, he understood that the church was far more than brick, mortar and stained glass and set about expanding the congregation's role in the community through their Social Impact Center. Under Reverend Hamilton's stewardship, the Center, and particularly its Dream Again Program, provided a variety of hands-on programs to help area residents find jobs, learn new skills, continue their education and even purchase and keep homes.

Also under his leadership, the Roxbury Presbyterian Church began a highly successful ''Adopt-A-School'' program that has been touted as a model of excellence.

Mr. President, if we are known by the fruits of our labor, then Reverend Hamilton's time with us in Boston was bountiful. He was a champion for summer jobs programs for disadvantaged teens; he also helped secure funding for new textbooks for city schools. Yet nowhere was he more effective than in his efforts to secure access to health insurance for all our citizens. For Reverend Hamilton it was a matter of justice. Thanks in large part to his efforts, 98 percent of Massachusetts residents are now covered by health insurance. The program is not perfect and he understood that, which is why he has helped lead the fight to reduce exploding health care costs in our state.

Shortly after coming to Boston, Reverend Hamilton founded the Greater Boston Interfaith Organization which has been tremendously effective in not just raising awareness of pressing social concerns, but bringing together religious and community organizations to actually improve the lives of our neighbors. Because of the GBIO and Reverend Hamilton's leadership, there are more opportunities for at-risk youth, poor families are better educated and equipped to climb the economic ladder, and the rights of workers in nursing homes are better protected just to name a few of their accomplishments.

Mr. President, Reverend Hamilton leaves a lasting legacy in Massachusetts that expands well beyond his former church's Roxbury neighborhood. His impact can be measured in richer and more fulfilling lives, improved access to health insurance, better job prospects and engaged youth who go on to be productive and effective leaders, parents and workers.

Earlier this year, Reverend Hamilton accepted a new position in his words, God reassigned him to a new ministry in California. I join Reverend Hamilton's former congregation and all the people whose lives he touched in thanking him and wish him and his wife, Dr. Rhonda Hamilton, every blessing with their new opportunities in California.

RECOGNIZING MAJOR GENERALS FRANK VAVALA AND GUS HARGETT

Mr. CORKER. Mr. President, in December, with the distinguished leadership of the Senators from Vermont and South Carolina, we passed the National Guard Empowerment Act as an amendment to the National Defense Authorization Act with truly bipartisan support, as evidenced by its 71 cosponsors here in the U.S. Senate. At the time, we said that the National Guard has performed extraordinary service in the last 10 years alongside their Reserve and Active Duty counterparts as part of a truly integrated total force, but that the changes included by the National Guard Empowerment Act were most important not because of the great work in the past, but because of the essential need for enhanced cooperation in the future.

The Senate recognized that enhanced capabilities for the National Guard, particularly elevating the Chief of the National Guard Bureau as a statutory member of the Joint Chiefs of Staff, this Nation's highest military planning body, were essential to meeting the threats of the future. And today I am happy to join my friend from Delaware to recognize two men who played a key role in advocating that point of view here in the Senate, two men who approached an idea widely regarded as a nice, but unlikely thought and helped transform it into a reality. They are Chairman of the National Guard Association of the United States NGAUS, MG Frank Vavala, and his highly capable ''battle buddy,'' the president of the NGAUS, retired MG Gus Hargett.

People around Tennessee know Gus Hargett as the former Adjutant General of our State's National Guard, but also as the person responsible for supervising the Tennessee Emergency Management Agency and the Tennessee State Guard. They also know Gus as the kind of guy to get things done when they really matter. Throughout his career he had a healthy mixture of active duty service with the U.S. Army and the precise sort of duty with the National Guard at the state level or Active Guard Reserve status that we put GEN Craig McKinley on the Joint Chiefs of Staff to strategize for.

With the support of General Vavala and Adjutant Generals around the country, General Hargett provided key guidance for this legislation, answered countless questions, and provided the needed impetus to take it over the top and onto the President's desk. He recognized that this transcended simply advocating for the National Guard, it was an essential step for preparing our country's homeland defense strategy.

Mr. COONS. Mr. President, I am pleased to join my friend from Tennessee to show appreciation for the efforts of General Hargett and General Vavala. As he says, it is about much more than recognizing good work done, it is about preparing for the natural and manmade threats to Americans, and I would like to associate myself with his remarks.

My State is particularly blessed to have General Vavala as our world-class adjutant general, providing invaluable leadership to the Delaware National Guard on behalf of our Governor. I think that people who have had just a few minutes to chat with him come away understanding that he is a dynamic force. They would be able to instantly understand how he and General Hargett helped guide a compelling, grassroots campaign of hundreds of thousands of National Guard men and women and their State leadership to make clear to their representatives that their Guard strategy was a national defense concept to be taken seriously. Defense of our homes begins at home, something the National Guard has specialized in for 375 years. At a time when it seems nothing in Washington works right, General Vavala insisted time and again that the voice of the people matters and worked tirelessly to prove it. Congress recognized the wisdom of investing in the National Guard, and responded appropriately, with the most important piece of legislation since the modern, dual-mission National Guard was established in 1903.

Now, the leadership of the National Guard stands ready to support the President and Secretary of Defense in the new strategic guidance released in January. It is clear that tough decisions have to be made in this budget environment and that we will have a military with a different look and operational approach in the future. However, we are confident that the National Guard will not shrink from its responsibility to defend our Nation and its interests around the world as well as meeting every home State emergency and challenge it faces.

We are grateful to GEN Frank Vavala, GEN Gus Hargett, and the members of NGAUS, for the important roles they played in this momentous legislation.

ADDITIONAL STATEMENTS

TRIBUTE TO RAYMOND J. WIECZOREK

• Ms. AYOTTE. Mr. President, today I wish to honor my dear friend, Raymond J. Wieczorek—a distinguished New Hampshire citizen who has devoted a lifetime of service to his city, State, and Nation. After providing decades of community and civic leadership in and around Manchester, he will retire from public office at the end of this year.

Ray is a father and a grandfather who has also been a loving husband. He has served as a soldier, a volunteer, a small businessman, a mayor, and as a member of New Hampshire's executive

council. But to me, Ray is a model public servant whose commitment to improving the lives of others sets the standard for elected officials.

Not long after graduating from high school, Ray answered the call to serve his country. During the Korean war, he was a soldier with the Army's 40th Infantry Division. An advocate for veterans, he remains a proud member of the American Legion and the Veterans of Foreign Wars.

In 1958, Ray's career brought him to his adopted hometown of Manchester. Six years later, he founded the insurance agency that bears his name—now a second generation family business carried on by his sons.

It didn't take long for Ray to realize that a city is only as strong as its citizenry. He once said that the heart and soul of any community is formed by the people who are willing to give their heart and soul to their community. And that is exactly what Ray has done.

To say that he has given generously of his time and expertise over the past several decades would be an understatement. Ray served as a trustee of the Manchester Boys and Girls Club; director and president of the Manchester Scholarship Foundation; chairman of the Greater Manchester United Way Board of Directors; and as commissioner, and later chairman, of the Manchester Housing and Redevelopment Authority.

In 1989, Ray was elected to his first of five terms as the mayor of Manchester—New Hampshire's largest city. In the midst of an economic downturn, the Queen City faced significant challenges. A once bustling mill town, the city was struggling to reinvent itself. Ray's enormous energy, vision, and optimism made him a perfect fit for the mayor's office—and at just the right time.

While others may have had doubts about the city's future, Ray thought big. To help drive economic activity, he successfully pushed for the approval of a civic center. Today, visitors from across New Hampshire descend on the Verizon Wireless arena—located in the well-named ''Raymond J. Wieczorek Square''—for sporting events and concerts. This facility has literally changed the face of Manchester, enlivening downtown and proving that the Queen City is open for business.

Under Ray's leadership, Manchester made a major comeback. The city's iconic Millyard started to flourish once again. The groundwork was laid for a now-thriving Manchester Airport, which today serves as the gateway to northern New England and Boston's northern suburbs. Fittingly enough, the access road to the airport is named in Ray's honor. Also during his mayoralty, a new city charter was adopted. The FIRST program got underway, and city hall was renovated and restored; it is now listed on the National Register of Historic Places.

Ray once said, ''I wasn't born in this city. I'm here [be]cause I want to be here.'' His efforts to improve Manchester were driven by an unwavering devotion to the city he loves. The turnaround Ray led was confirmed in 1998, when Money magazine named Manchester as the Number One Small City in the East.

And after nearly a decade of service as mayor, Ray was honored by the Greater Manchester Chamber of Commerce as the 1999 Citizen of the Year.

It would have been understandable for Ray to enjoy a quiet retirement. Fortunately for the people of New Hampshire, he instead chose to bring his wisdom to the statehouse in Concord.

Serving with Ray in State government, I had a firsthand opportunity to see his strong commitment to fighting for his constituents. And as New Hampshire has faced challenges during a difficult economic period, there is no question that Ray's experience as a successful mayor and businessman has contributed conspicuously to the work of the executive council. Just as he helped Manchester navigate a challenging chapter in its history, Ray has provided steady and strong leadership at a critical time for our State. Having served on the council for a decade, Ray's voice will be sorely missed after his retirement.

Today, in the Senate, I am honored to recognize Ray Wieczorek for his tireless work to improve the lives of Manchester residents and citizens from across New Hampshire. I am grateful for his leadership, for his good humor, and most of all for his kind friendship. By raising the bar for excellence in public service, Ray Wieczorek has earned his rightful place as one of New Hampshire's great statesmen.●

RECOGNIZING THE NATIONAL WILDLIFE REFUGE SYSTEM

● Mr. CARDIN. President Theodore Roosevelt established Pelican Island in Florida as the first national wildlife refuge on March 14, 1903. He was responding not only to an urgent need to conserve our vulnerable natural resources but also to the passionate advocacy of Americans who understood that our Nation's strength lies in the conservation of our wild lands and unique species.

Over the course of his Presidency, Roosevelt established 53 wildlife refuges, from Key West's mangrove islands and sand flats to Flattery Rock along Washington State's coast.

Today, on the refuge system's 109th birthday, the National Wildlife Refuge spans more than 150 million acres, across 556 wildlife refuges and 38 wetland management districts. The National Wildlife Refuge System is the Nation's premier network of public lands dedicated to the conservation of America's land and waters, its fish, wildlife, and plants.

From the Arctic to the Caribbean, the Atlantic to the Pacific, America's wildlife refuges are in every State and U.S. territory. Wildlife refuges conserve habitat that is essential to more than 700 species of birds, 220 types of mammals, 250 varieties of reptiles and amphibians, more than 1,000 species of fish, and uncounted invertebrates and plants. They sustain nearly 300 of the Nation's more than 1,300 endangered or threatened species.

The National Wildlife Refuge System does not only benefit wildlife. The refuges also play a critical role for our communities. By protecting wetlands, grasslands, forests, wilderness, and other natural habitats, wildlife refuges improve air and water quality, relieve flooding, improve soil quality, and trap greenhouse gases. Wildlife refuges also benefit local economies, drawing visitors to local communities and supporting jobs tied to conservation and outdoor recreation.

I am especially proud of the Blackwater National Wildlife Refuge in my home State of Maryland. Blackwater contains roughly one-third of all of the tidal wetlands in the State of Maryland and provides critical storm protection to lower Dorchester County, MD. Home to one of the largest breeding populations of American bald eagles on the east coast, Blackwater Refuge is recognized as a ''Wetlands of International Importance'' by the Ramsar Convention and has been called one of the ''Last Great Places'' by the Nature Conservancy. Blackwater also plays a critical economic role in Maryland, attracting approximately 200,000 visitors annually and providing an important economic engine for our Eastern Shore communities.

The Blackwater Refuge is a place of great ecological and economic value, but more than that, it is a place of deep historic value. One of the most important heroes in our Nation's history lived and bravely worked within the boundaries of Blackwater. To commemorate this history, I have introduced legislation to create two national historical parks—one within the Blackwater Refuge and one in New York to honor the legacy of Harriet Ross Tubman for her work on the Underground Railroad. Harriet Tubman was born within the Blackwater boundary and conducted much of her courageous work there leading other slaves northward to freedom. I am deeply committed to ensuring that her legacy is celebrated within the Blackwater Refuge. This is part of the beauty of the National Wildlife Refuge System: by preserving the ecological integrity of our treasured lands, we also preserve an important link to our Nation's past.

In an increasingly urban and high-speed world, our national wildlife refuges—islands of natural beauty—offer Americans priceless places to soothe or stir the soul, educate the mind, and invigorate the body. I am pleased today to recognize the anniversary of this valuable system.●

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2191. A bill to amend the Americans with Disabilities Act of 1990 to prohibit the Attorney General from administering or enforcing certain accessibility regulations relating to pools at public accommodations or provided by public entities.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5352. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc. Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2011–0916)) received in the Office of the President of the Senate on March 6, 2012; to the Committee on Commerce, Science, and Transportation.

EC–5353. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2011–0918)) received in the Office of the President of the Senate on March 6, 2012; to the Committee on Commerce, Science, and Transportation.

EC–5354. A communication from the Management and Program Analyst, Forest Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Community Forest and Open Space Conservation Program'' (RIN0596–AC84) received in the Office of the President of the Senate on March 13, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5355. A communication from the Assistant Secretary of Defense (Global Strategic Affairs), transmitting, pursuant to law, a report relative to the Department's renotification of the intent to obligate up to $30 million in funds for the Cooperative Threat Reduction (CTR) program; to the Committee on Armed Services.

EC–5356. A communication from the Assistant Secretary of Defense (Reserves Affairs), transmitting, pursuant to law, the National Guard Youth Challenge Program 2011 annual report; to the Committee on Armed Services.

EC–5357. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the continuation of the national emergency with respect to Iran declared in Executive Order 12957; to the Committee on Banking, Housing, and Urban Affairs.

EC–5358. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to blocking the property of certain persons contributing to the conflict in Somalia that was declared in Executive Order 13536 of April 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5359. A communication from the General Counsel of the Federal Housing Finance Agency, transmitting, pursuant to law, the report of a rule entitled ''Private Transfer Fees'' (RIN2590–AA41) received in the Office of the President of the Senate on March 13, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–5360. A communication from the Director of Insular Affairs, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, a report entitled ''Report to Congress on the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands for Fiscal Years 2009 and 2010''; to the Committee on Energy and Natural Resources.

EC–5361. A communication from the Director of Insular Affairs, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, a report entitled ''First Five-Year Review of the Compact of Free Association, As Amended, Between the Governments of the United States and the Republic of the Marshall Islands''; to the Committee on Energy and Natural Resources.

EC–5362. A communication from the Director of Insular Affairs, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, a report entitled ''First Five-Year Review of the Compact of Free Association, As Amended, Between the Governments of the United States and the Federated States of Micronesia''; to the Committee on Energy and Natural Resources.

EC–5363. A communication from the Deputy Chief of the National Forest System, Department of Agriculture, transmitting, pursuant to law, a report relative to the detailed boundary for the Presque Isle Wild and Scenic River in Michigan to be added to the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

EC–5364. A communication from the Secretary of the Treasury, transmitting, pursuant to Executive Order 13313 of July 31, 2003, a semiannual report detailing telecommunications-related payments made to Cuba pursuant to Department of the Treasury licenses; to the Committee on Foreign Relations.

EC–5365. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to the export to the People's Republic of China of an item not detrimental to the U.S. space launch industry; to the Committee on Foreign Relations.

EC–5366. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for permanent export of defense articles, including, technical data, or defense services sold commercially under contract for use by the Iraqi Counter Terrorism Service Iraq Special Forces for military purposes in the amount of $1,000,000 or more; to the Committee on Foreign Relations.

EC–5367. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report entitled ''Rising to the Challenge: A New Era in Victim Services''; to the Committee on the Judiciary.

EC–5368. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the Annual Report to Congress for the Office of Justice Programs' Bureau of Justice Assistance for fiscal year 2010; to the Committee on the Judiciary.

EC–5369. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an annual report relative to Food and Drug Administration Advisory Committee Vacancies and Public Disclosures; to the Committee on Health, Education, Labor, and Pensions.

EC–5370. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, an annual report relative to Federal sector equal employment opportunity complaints filed with the Office during fiscal year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–5371. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report entitled ''Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) Quarterly Report to Congress; First Quarter of Fiscal Year 2012''; to the Committee on Veterans' Affairs.

EC–5372. A communication from the Acting Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report entitled ''National Airspace System Capital Investment Plan Fiscal Years 2013–2017''; to the Committee on Commerce, Science, and Transportation.

EC–5373. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act'' (MB Docket No. 11–93; FCC 11–182) received in the Office of the President of the Senate on February 29, 2012; to the Committee on Commerce, Science, and Transportation.

EC–5374. A communication from the Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers, . . . Universal Service Reform—Mobility Fund'' ((RIN3060–AF85) (DA–12–147)) received in the Office of the President of the Senate on March 2, 2012; to the Committee on Commerce, Science, and Transportation.

EC–5375. A communication from the Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training'' ((RIN3060–AF85) (FCC 12–11)) received in the Office of the President of the Senate on March 7, 2012; to the Committee on Commerce, Science, and Transportation.

EC–5376. A communication from the Associate Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures'' (WT Docket No. 05–211; FCC 12–12) received in the Office of the President of the Senate on March 2, 2012; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PRYOR:

S. 2192. A bill to amend the Public Health Service Act to provide for the participation of optometrists in the National Health Service Corps scholarship and loan repayment programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MERKLEY (for himself, Mr. GRASSLEY, Mr. BENNET, and Mr. KOHL):

S. 2193. A bill to require the Food and Drug Administration to include devices in the postmarket risk identification and analysis system, to expedite the implementation of the unique device identification system for medical devices, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COONS (for himself, Mr. RUBIO, and Mr. BINGAMAN):

S. 2194. A bill to award grants in order to establish longitudinal personal college readiness and savings online platforms for low-income students; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWN of Massachusetts:

S. 2195. A bill to require Members and employees of Congress and other Federal employees who file under the Ethics in Government Act of 1978 to disclose delinquent tax liability; to the Committee on Homeland Security and Governmental Affairs.

By Mr. PAUL (for himself, Mr. GRAHAM, Mr. LEE, and Mr. DEMINT):

S. 2196. A bill to provide higher-quality, lower-cost health care to seniors; to the Committee on Finance.

By Ms. MURKOWSKI (for herself, Mr. INOUYE, Mrs. HUTCHISON, Mr. BEGICH, and Mr. AKAKA):

S. 2197. A bill to require the attorney for the Government to disclose favorable information to the defendant in criminal prosecutions brought by the United States, and for other purposes; to the Committee on the Judiciary.

By Mrs. BOXER (for herself and Mr. GRASSLEY):

S. 2198. A bill to implement common sense controls on the taxpayer-funded salaries of government contractors by limiting reimbursement for excessive compensation equal to the pay of the President of the United States; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LEE:

S. 2199. A bill to spur economic growth and create jobs; to the Committee on Finance.

By Mr. LEE:

S. 2200. A bill to amend the Internal Revenue Code of 1986 to exempt certain family-owned farms and businesses from the estate tax; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. UDALL of Colorado, Mr. BROWN of Massachusetts, Mr. HARKIN, Mr. HELLER, Mr. WYDEN, and Mr. BENNET):

S. 2201. A bill to amend the Internal Revenue Code of 1986 to extend the renewable energy credit; to the Committee on Finance.

By Mr. INOUYE:

S. 2202. A bill to provide for the establishment of a private, nonprofit entity to assist the Government in providing disaster assistance, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COONS (for himself, Mr. ISAKSON, Mr. DURBIN, Mr. WICKER, and Mr. CARDIN):

S. Res. 397. A resolution promoting peace and stability in Sudan, and for other purposes; to the Committee on Foreign Relations.

By Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. DURBIN, Mr. WHITEHOUSE, Mr. LIEBERMAN, Mr. JOHNSON of South Dakota, Mr. CARPER, Mr. KOHL, Mr. BROWN of Ohio, Mr. INOUYE, Mrs. SHAHEEN, Mr. CARDIN, Mr. CASEY, Mr. LEVIN, Mr. REED, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mr. LAUTENBERG, Mrs. BOXER, Mrs. FEINSTEIN, Mr. WYDEN, Mr. LUGAR, Ms. COLLINS, Mr. COCHRAN, Mr. COBURN, Mr. ISAKSON, Mr. KIRK, and Mr. CHAMBLISS):

S. Res. 398. A resolution recognizing the 191st anniversary of the independence of Greece and celebrating Greek and American democracy; considered and agreed to.

ADDITIONAL COSPONSORS

S. 296

At the request of Ms. KLOBUCHAR, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 296, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide the Food and Drug Administration with improved capacity to prevent drug shortages.

S. 461

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend financing of the Superfund.

S. 957

At the request of Mr. BOOZMAN, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 957, a bill to amend title 38, United States Code, to improve the provision of rehabilitative services for veterans with traumatic brain injury, and for other purposes.

S. 1119

At the request of Mr. INOUYE, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1119, a bill to reauthorize and improve the Marine Debris Research, Prevention, and Reduction Act, and for other purposes.

S. 1167

At the request of Mr. JOHNSON of South Dakota, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1167, a bill to amend the Public Health Service Act to improve the diagnosis and treatment of hereditary hemorrhagic telangiectasia, and for other purposes.

S. 1421

At the request of Mr. PORTMAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1421, a bill to authorize the Peace Corps Commemorative Foundation to establish a commemorative work in the District of Columbia and its environs, and for other purposes.

S. 1737

At the request of Mr. BENNET, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1737, a bill to improve the accuracy of mortgage underwriting used by Federal mortgage agencies by ensuring that energy costs are included in the underwriting process, to reduce the amount of energy consumed by homes, to facilitate the creation of energy efficiency retrofit and construction jobs, and for other purposes.

S. 1935

At the request of Mrs. HAGAN, the names of the Senator from California (Mrs. BOXER) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1935, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the 75th anniversary of the establishment of the March of Dimes Foundation.

S. 1981

At the request of Mr. HELLER, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1981, a bill to provide that Members of Congress may not receive pay after October 1 of any fiscal year in which Congress has not approved a concurrent resolution on the budget and passed the regular appropriations bills.

S. 2103

At the request of Mr. LEE, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2103, a bill to amend title 18, United States Code, to protect pain-capable unborn children in the District of Columbia, and for other purposes.

At the request of Mr. JOHANNS, his name was added as a cosponsor of S. 2103, supra.

S. 2112

At the request of Mr. BEGICH, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of S. 2112, a bill to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the reserve components, a member or former member of a reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents.

S. 2122

At the request of Mr. PAUL, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of S. 2122, a bill to clarify the definition of navigable waters, and for other purposes.

S. 2159

At the request of Mr. LEAHY, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 2159, a bill to extend the authorization of the Drug-Free Communities Support Program through fiscal year 2017.

S. 2187

At the request of Mr. CARDIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2187, a bill to remove the sunset date for amendments to the Small Business Investment Act of 1958, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COONS (for himself, Mr. RUBIO, and Mr. BINGAMAN):

S. 2194. A bill to award grants in order to establish longitudinal personal college readiness and savings online platforms for low-income students; to the Committee on Health, Education, Labor, and Pensions.

Mr. COONS. Mr. President, parents in my home State of Delaware and all across this country worry so much and work so hard for the future of their children—for their health, their safety, their education, and their future. I rise today as a parent of three young children and the son and grandson of classroom teachers to talk about how we can pull together to provide all the tools and resources parents, teachers, mentors, and students need to understand, to afford, and to connect with college opportunities in this country.

Why do we need a new solution to this longstanding problem of college access? Well, let's just look at some statistics from this recent tough recession we are still growing our way out of.

The unemployment rate amongst high school dropouts was 13 percent; amongst those who had finished high school, 8 percent; and amongst those who had a college degree, just 4 percent. That is an enormous difference. That is millions of people unemployed because they didn't finish their high school education and go on to some higher education.

In the new global economy, Americans who don't go on to college have less than $1 million in lifetime earning potential compared to those who do go to college. That $1 million difference is something that—if parents and teachers and students were aware of it at the beginning of their education—it might drive them to make very different choices.

As a Senator, I have met with dozens of folks who lead companies or who are innovators and job creators who have said they have vacant positions they can't fill because we are not graduating enough Americans with advanced degrees and training in critical opportunities—engineering, science, technology, and math.

Filling the gap of opportunity by connecting students, teachers, parents, and mentors and creating a new generation of higher education achievers is something we can and should do to help create a competitive economy and workforce for the future. That is why today I am introducing the American Dream Accounts Act of 2012. This legislation encourages partnerships between schools, colleges, local nonprofits, and businesses to develop secure, Web-based, individual, portable student accounts that contain information about each student's academic preparedness, financial literacy, connects them to high-impact mentoring, and is tied to a college savings account. Instead of having each of these different resources be available to students separately, it connects them across existing silos and across existing education programs at the State and Federal level and, by connecting across these different silos, deploys a powerful new tool and resource for students, teachers, parents, and mentors.

This bill is a modest but I think powerful step toward helping more students of all income levels and backgrounds access, afford, and complete a college education. And I am grateful to Senator RUBIO of Florida and to Senator BINGAMAN of New Mexico in joining me as original cosponsors of this innovative solution.

Too many American kids today are cut off from the enormous potential and value of higher education. Today, just about 1 out of 10 children from low-income families will complete a college degree by the time they are 24. As I have already said, the economic consequences of that are one of the main drivers of unemployment and poverty in our modern economy. But with early action, with early engagement, we can help millions of Americans beat those odds.

Many years ago, early in my career, I had the opportunity to work with something called the national I Have a Dream Foundation, founded by Gene Lang, through which my family and I adopted a whole class of elementary kids from the East Side of Wilmington. All over this country, more than 100 similar groups, motivated individuals, and donors have engaged in sponsoring college education opportunities for kids beginning at a very early age.

What I saw firsthand in the dozen years I was actively engaged with the 50 kids in our I Have a Dream program was that young people who come from a community, a family, a school where there is little to no experience of college education get powerful and negative messages from an early age that college is not for them, that it is not affordable, that it is not accessible, and that it is not part of the plan for their future.

Similarly, kids who grow up in families where their parents went to school, their teachers went to school, went to college, get constant messages—subtle but powerful messages—about the value and importance of college. Folks who come from those backgrounds—whether it is college sports or pride in their own graduation or constant conversations about one's alma mater or visits to college campuses—from childhood hear about college as something that is an expected part of life.

Very few of the 50 Dreamers my family and I worked with had any expectation of a college education, and the most powerful thing we did was to change that, to open the door to college as a possibility from elementary school on. It showed and this program has shown time and again across the country that exciting and engaging not just young students but their parents, their teachers, and an array of mentors has a cumulative, powerful, positive impact.

The American Dream Accounts Act will expand on this idea and use modern social networking technology to bring together existing programs and deliver ideas that will work for more kids. And the good news is that by utilizing existing Department of Education funds, this legislation comes at no additional cost to taxpayers.

What makes the American Dream Accounts Act work is the unique ability to harness the power of currently available technology to address some of the biggest challenges in college access—first, connectivity. The journey from elementary school to finishing high school is long, and the journey from there to higher education is a longer one. So many students in our public schools all over this country disengage or even drop out along the way because they are not connected. They attend large and sometimes anonymous schools. Their parents are stretched too thin in this tough economy, trying to hang on to their jobs and housing, and, frankly, a dedicated cadre of teachers can only do so much. These kids, as they become less and less connected to a clear vision of their future, drop out or make choices that make it unlikely they will finish high school and go on to college.

American dream accounts take advantage of modern technology. They are a Facebook-inspired opportunity to deliver on secure, personalized hubs of information that would connect these kids, sustain and support them throughout the entire journey of education.

Second, it connects them with college savings opportunities. Senator Roth of Delaware long served as the chairman of the Finance Committee, and one of the greatest pieces of his legacy was the Roth IRA, helping to empower working families to save for retirement. Part of the American dream accounts is the idea of connecting young people to college savings accounts. Virtually every State has college savings programs. Yet they are not accessed by most working- and middle-class Americans. Connecting students to college savings accounts from their earliest ages has a powerful impact. Studies show that students who know there is a dedicated college savings account in their name are seven times more likely to go to college than their peers without one. So this legislation would help open an individual savings account for each enrolled student from the beginning of elementary school. It matters less how much money is in the account than that students are aware there is one.

The third piece of this program is early intervention. State and Federal governments already spend billions of dollars on higher education—on Pell grants at the Federal level and in my State of Delaware on SEED grants. We provide these millions of dollars of support to afford college, but we don't tell kids they are there until they are in high school. Most kids have already made decisions by then that make them ineligible to finish high school or

attend college. So why not tell them earlier, particularly given the powerful potential impact of that information.

By letting children know these opportunities exist from the earliest age, we can change outcomes.

Last is portability. One of the things I saw in my own experience with my own Dreamers in Delaware was how often they moved and how often overstretched teachers with full classrooms didn't get any information or background on students who moved into their classroom halfway through the year. So instead of being welcomed and engaged in a positive way, they became discipline problems or were difficult to teach. This robust, online, secure account would empower teachers to connect with parents and mentors and understand the students who are before them. That is why portability and persistence is an essential feature of American dream accounts. This way, no matter what disruptions or challenges a student might face as they travel through education, their American dream account would travel with them. Supportive adults, teachers, mentors, and guidance counselors would be able to access this information, and kids would get a consistent understanding of the value and impact of a future college education.

One of my favorite parts of drafting this legislation was the meetings and conversations we had with those on the front lines of education in Delaware. As a community, I heard over and over again: We are hungry for innovative solutions. One of the many groups I met with was the Delaware PTA. In endorsing the American Dream Accounts Act, they said that it ''incorporates the school, the parent and the student to ensure each child will be closely monitored with resources and support that is needed to access a postsecondary education.''

The fact is our Nation's long-term economic competitiveness requires a highly trained, highly educated workforce. We can meet that challenge by connecting students with a broad array of higher education options—vocational school, job training, community college, or a 4-year university. This legislation will help students identify the type of higher education that is best for them, the career they most want, and give them the tools to get there.

I have visited with schools across Delaware, and one thing is clear. One vision stays with me from my time at I Have a Dream to my service as a Senator. When you ask a roomful of elementary school kids, what do you dream of being when you grow up, they all shoot their hands in the air and they all answer the question in the same way regardless of their background or income or community. Every child begins with dreams of a full, positive educational experience and career. All of our kids start with big dreams, but the numbers show that not all of our kids get them. The American Dream Accounts Act of 2012 is a modest but powerful bill designed to empower students and parents of all backgrounds to achieve those dreams from an early age.

Mr. President, I welcome support from other of my colleagues to make this bill a reality.

By Ms. MURKOWSKI (for herself, Mr. INOUYE, Mrs. HUTCHISON, Mr. BEGICH, and Mr. AKAKA):

S. 2197. A bill to require the attorney for the Government to disclose favorable information to the defendant in criminal prosecutions brought by the United States, and for other purposes; to the Committee on the Judiciary.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2197

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness in Disclosure of Evidence Act of 2012''.

SEC. 2. DUTY TO DISCLOSE FAVORABLE INFORMATION.

Chapter 201 of title 18, United States Code, is amended by adding at the end the following:

''§ 3014. Duty to disclose favorable information

''(a) DEFINITIONS.—In this section—

''(1) the term 'covered information' means information, data, documents, evidence, or objects that may reasonably appear to be favorable to the defendant in a criminal prosecution brought by the United States with respect to—

''(A) the determination of guilt;

''(B) any preliminary matter before the court before which the criminal prosecution is pending; or

''(C) the sentence to be imposed; and

''(2) the term 'prosecution team' includes, with respect to a criminal prosecution brought by the United States—

''(A) the Executive agency, as defined in section 105 of title 5, that brings the criminal prosecution on behalf of the United States; and

''(B) any entity or individual, including a law enforcement agency or official, that—

''(i) acts on behalf of the United States with respect to the criminal prosecution;

''(ii) acts under the control of the United States with respect to the criminal prosecution; or

''(iii) participates, jointly with the Executive agency described in subparagraph (A), in any investigation with respect to the criminal prosecution.

''(b) DUTY TO DISCLOSE FAVORABLE INFORMATION.—In a criminal prosecution brought by the United States, the attorney for the Government shall provide to the defendant any covered information—

''(1) that is within the possession, custody, or control of the prosecution team; or

''(2) the existence of which is known, or by the exercise of due diligence would become known, to the attorney for the Government.

''(c) TIMING.—Except as provided in subsections (e) and (f), the attorney for the Government shall provide to the defendant any covered information—

''(1) without delay after arraignment and before the entry of any guilty plea; and

''(2) if the existence of the covered information is not known on the date of the initial disclosure under this subsection, as soon as is reasonably practicable upon the existence of the covered information becoming known, without regard to whether the defendant has entered or agreed to enter a guilty plea.

''(d) RELATIONSHIP TO OTHER LAWS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the requirements under subsections (b) and (c) shall apply notwithstanding section 3500(a) or any other provision of law (including any rule or statute).

''(2) CLASSIFIED INFORMATION.—Classified information (as defined in section 1 of the Classified Information Procedures Act (18 U.S.C. App.)) shall be treated in accordance with the Classified Information Procedures Act.

''(e) PROTECTIVE ORDERS.—

''(1) IN GENERAL.—Upon motion of the United States, the court may issue an order to protect against the immediate disclosure to a defendant of covered information otherwise required to be disclosed under subsection (b) if—

''(A) the covered information is favorable to the defendant solely because the covered information would provide a basis to impeach the credibility of a potential witness; and

''(B) the United States establishes a reasonable basis to believe that—

''(i) the identity of the potential witness is not already known to any defendant; and

''(ii) disclosure of the covered information to a defendant would present a threat to the safety of the potential witness or of any other person.

''(2) TIME LIMIT.—The court may delay disclosure of covered information under this subsection until the earlier of—

''(A) the date that the court determines provides a reasonable amount of time before the date set for trial (which shall be not less than 30 days before the date set for trial, absent a showing by the United States of compelling circumstances); and

''(B) the date on which any requirement under paragraph (1) ceases to exist.

''(3) MOTIONS UNDER SEAL.—The court may permit the United States to file all or a portion of a motion under this subsection under seal to the extent necessary to protect the identity of a potential witness, but the United States—

''(A) may not file a motion under this subsection ex parte; and

''(B) shall summarize any undisclosed portion of a motion filed under this subsection for the defendant in sufficient detail to permit the defendant a meaningful opportunity to be heard on the motion, including the need for a protective order or the scope of the requested protective order.

''(f) WAIVER.—

''(1) IN GENERAL.—A defendant may not waive a provision of this section except in open court.

''(2) REQUIREMENTS.—The court may not accept the waiver of a provision of this section by a defendant unless the court determines that—

''(A) the proposed waiver is knowingly, intelligently, and voluntarily offered; and

''(B) the interests of justice require the proposed waiver.

''(g) NONCOMPLIANCE.—

''(1) IN GENERAL.—Before entry of judgment, upon motion of a defendant or by the court sua sponte, if there is reason to believe the attorney for the Government has failed to comply with subsection (b) or subsection (c), the court shall order the United States to show cause why the court should not find the United States is not in compliance with subsection (b) or subsection (c), respectively.

''(2) FINDINGS.—If the court determines under paragraph (1) that the United States is not in compliance with subsection (b) or subsection (c), the court shall—

''(A) determine the extent of and reason for the noncompliance; and

''(B) enter into the record the findings of the court under subparagraph (A).

''(h) REMEDIES.—

''(1) REMEDIES REQUIRED.—

''(A) IN GENERAL.—If the court determines that the United States has violated the requirement to disclose covered information under subsection (b) or the requirement to disclose covered information in a timely manner under subsection (c), the court shall order an appropriate remedy.

''(B) TYPES OF REMEDIES.—A remedy under this subsection may include—

''(i) postponement or adjournment of the proceedings;

''(ii) exclusion or limitation of testimony or evidence;

''(iii) ordering a new trial;

''(iv) dismissal with or without prejudice; or

''(v) any other remedy determined appropriate by the court.

''(C) FACTORS.—In fashioning a remedy under this subsection, the court shall consider the totality of the circumstances, including—

''(i) the seriousness of the violation;

''(ii) the impact of the violation on the proceeding;

''(iii) whether the violation resulted from innocent error, negligence, recklessness, or knowing conduct; and

''(iv) the effectiveness of alternative remedies to protect the interest of the defendant and of the public in assuring fair prosecutions and proceedings.

''(2) DEFENDANT'S COSTS.—

''(A) IN GENERAL.—If the court grants relief under paragraph (1) on a finding that the violation of subsection (b) or subsection (c) was due to negligence, recklessness, or knowing conduct by the United States, the court may order that the defendant, the attorney for the defendant, or, subject to paragraph (D), a qualifying entity recover from the United States the costs and expenses incurred by the defendant, the attorney for the defendant, or the qualifying entity as a result of the violation, including reasonable attorney's fees (without regard to the terms of any fee agreement between the defendant and the attorney for the defendant).

''(B) QUALIFYING ENTITIES.—In this paragraph, the term 'qualifying entity' means—

''(i) a Federal Public Defender Organization;

''(ii) a Community Defender Organization; and

''(iii) a fund established to furnish representation to persons financially unable to obtain adequate representation in accordance with section 3006A.

''(C) SOURCE OF PAYMENTS FOR COSTS AND EXPENSES.—Costs and expenses ordered by a court under subparagraph (A)—

''(i) shall be paid by the Executive agency, as defined in section 105 of title 5, that brings the criminal prosecution on behalf of the United States, from funds appropriated to that Executive agency; and

''(ii) may not be paid from the appropriation under section 1304 of title 31.

''(D) PAYMENTS TO QUALIFYING ENTITIES.—Costs and expenses ordered by the court under subparagraph (A) to a qualifying entity shall be paid—

''(i) to the Community Defender Organization that provided the appointed attorney; or

''(ii) in the case of a Federal Public Defender Organization or an attorney appointed under section 3006A, to the court for deposit in the applicable appropriations accounts of the Judiciary as a reimbursement to the funds appropriated to carry out section 3006A, to remain available until expended.

''(i) STANDARD OF REVIEW.—In any appellate proceeding initiated by a criminal defendant presenting an issue of fact or law under this section, the reviewing court may not find an error arising from conduct not in compliance with this section to be harmless unless the United States demonstrates beyond a reasonable doubt that the error did not contribute to the verdict obtained.''.

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 201 of title 18, United States Code, is amended by adding at the end the following:

''3014. Duty to disclose favorable information.''.

(b) DEMANDS FOR PRODUCTION OF STATEMENTS AND REPORTS OF WITNESSES.—Section 3500(a) of title 18, United States Code, is amended by striking ''In'' and inserting ''Except as provided in section 3014, in''.

By Mr. GRASSLEY (for himself, Mr. UDALL of Colorado, Mr. BROWN, of Massachusetts, Mr. HARKIN, Mr. HELLER, Mr. WYDEN, and Mr. BENNET):

S. 2201. A bill to amend the Internal Revenue Code of 1986 to extend the renewable energy credit; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am proud to be joined today by a number of my colleagues in introducing the American Energy and Job Promotion Act, a bill to extend a tax incentive for the production of electricity from a number of renewable sources, including wind. The wind production tax credit is scheduled to expire at end of 2012. This bill would extend the credit for two years, through December 31, 2014. I am joined in this effort by Senators MARK UDALL, SCOTT BROWN, HARKIN, HELLER, WYDEN and BENNET.

The production tax credit is a sensible policy that promotes homegrown energy and American manufacturing jobs. The wind industry currently supports 75,000 American jobs and is driving as much as $20 billion in private investment. During the past 5 years, 35 percent of all new electric generation in the United States was wind. This expansion has directly led to the growth in domestic wind manufacturing. There are nearly 400 manufacturing facilities today, compared with just 30 in 2004.

The American Energy and Jobs Promotion Act would prevent a lapse in the credit. Without an extension, as many as 37,000 jobs could be lost, including thousands in Iowa. With national unemployment at 8.3 percent, it would be irresponsible to send thousands of Americans employed in the wind industry a pink slip. Unfortunately, because of the long lead time in the production of wind equipment, many manufacturers are already announcing layoffs.

I recognize that some have questioned the need to extend this important credit, particularly in light of the effort to reform the tax code. I fully support tax reform and believe we need a simpler, more efficient tax code. However, we need to take action to support jobs and alternative energy producers in light of the slow pace on tax reform. This 2-year extension will provide certainty for the renewable energy sector while recognizing that tax reform efforts could further modify or address this incentive in the next few years.

Additionally, due to our Nation's dire fiscal situation, many of my colleagues have rightly focused their attention on ensuring that the deficit is not exacerbated. While in the past I have generally opposed permanent tax increases to offset temporary tax incentives, I am willing to work with my colleagues to extend the incentive in a manner that minimizes its impact on the deficit.

Extension of the tax incentive is supported by the U.S. Chamber of Commerce, the National Association of Manufacturers, Edison Electric Institute and the American Farm Bureau Federation. A similar extension in the House of Representatives currently has the support of 80 bipartisan cosponsors.

I encourage my colleagues to support this legislation that will continue to grow domestic, renewable electricity, create jobs and provide cleaner air. We must enact this extension as expeditiously as possible. Further delay will harm our economic recovery and our energy security.

By Mr. INOUYE:

S. 2202. A bill to provide for the establishment of a private, nonprofit entity to assist the Government in providing disaster assistance, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, today, I rise to introduce the Preparedness and Resilience Foundation Act, which establishes an independent non-profit public charity that acts as a philanthropic intermediary between the Federal Emergency Management Agency, FEMA, and the private sector. The lack of appropriate mechanisms make it difficult for FEMA to receive disaster related funds from private sector entities. The Preparedness and Resilience Foundation is intended to bridge this gap and improve the collaboration and coordination between FEMA and private sector entities. The unique roles that both the private and public sectors play is critical not only to the leveraging of private and public resources, but to the development of capacity and innovation models that will improve America's preparedness and resilience to an ever-increasing world of complexity, challenges and dangers both natural and man-made.

The measure will allow FEMA to support and carry out activities that promote the resilience of individuals, communities, structures, and systems against natural disasters, terrorist attacks, and other human caused disasters. Further, the bill would build and

sustain the capabilities of the public, private, and civic sectors to work together to prepare for, prevent, protect against, respond to, recover from, and mitigate all such hazards.

Among other things, the proposed Preparedness and Resilience Foundation would function as a 501(c)(3) nonprofit private corporation, and not as an agency or instrument of the Federal Government. The Foundation would establish an Endowment Fund consisting of donations from non-federal entities or assets, to provide endowments and grants, and to carry out its mission, and preparedness and resilience activities. The proposed measure requires a seven-person Board of Directors, whose sole responsibility would be to run the Foundation, including management of its employees, and the administering of donations to the Foundation. This legislation requires annual performance evaluations of the Foundation.

The Preparedness and Resilience Foundation Act is modeled after the Centers for Disease Control and Prevention, CDC, Foundation. The CDC Foundation has become not only self-reliant to fund its activities, but also generates millions of dollars every year to operate and award grants to programs that help the agency meet its stated goals. I believe similar achievements can be made under the Preparedness and Resilience Foundation Act. Accordingly, I ask my colleagues to support this measure, and to bring positive change and innovation to disaster management in America.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2202

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Preparedness and Resilience Foundation Act''.

(b) DEFINITIONS.—In this Act—

(1) the term ''Foundation'' means the Preparedness and Resilience Foundation established under this Act;

(2) the terms ''Board'' and ''Chair'' mean the board of directors of the Foundation and the Chair of the board of directors, respectively;

(3) the terms ''Department'' and ''Secretary'' mean the Department of Homeland Security and the Secretary of Homeland Security, respectively;

(4) the term ''Fund'' means the Endowment Fund established under this Act;

(5) the terms ''FEMA'' and ''Administrator'' mean the Federal Emergency Management Agency and the Administrator thereof, respectively; and

(6) the term ''Director'' means the executive director of the Foundation appointed under this Act.

SEC. 2. ESTABLISHMENT AND DUTIES OF THE FOUNDATION.

(a) IN GENERAL.—There is established in accordance with this section a nonprofit private corporation to be known as the ''Preparedness and Resilience Foundation''. The Foundation shall not be an agency or instrumentality of the Federal Government, and officers, employees, and members of the board of directors of the Foundation shall not be officers or employees of the Federal Government.

(b) PURPOSE OF THE FOUNDATION.—The purpose of the Foundation shall be to support and carry out activities that promote the resilience of individuals, communities, structures, and systems against natural disasters and terrorist attacks and other human caused disasters, and that build and sustain the capabilities of the public, private, and civic sectors to work together to prepare for, prevent, protect against, respond to, recover from, and mitigate all such hazards.

(c) ENDOWMENT FUND.—

(1) IN GENERAL.—In carrying out subsection (b), the Foundation shall establish an Endowment Fund for providing endowments for positions that are associated with FEMA and dedicated to the purpose described in subsection (b). The Fund shall consist of such donations as may be provided by non-Federal entities and such non-Federal assets of the Foundation (including earnings of the Foundation and the fund) as the Foundation may elect to transfer to the Fund.

(2) AUTHORIZED EXPENDITURES OF THE FUND.—The provision of funding and assistance under paragraph (1) shall be the exclusive function of the Fund. Such funds may be expended only for the compensation of individuals holding positions endowed by the Fund, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the positions endowed by the Fund, and for recruiting individuals to hold the positions endowed by the Fund.

(d) CERTAIN ACTIVITIES OF THE FOUNDATION.—In carrying out subsection (b), the Foundation may provide for, with respect to the purpose described in subsection (b)—

(1) programs of fellowships among State, local, and tribal officials to work and study in association with each other and FEMA or the Department;

(2) programs of international arrangements to provide opportunities for officials of other countries engaged in preparedness or resilience programs and activities to serve in voluntary or reciprocal capacities in the United States in association with FEMA or the Department, or opportunities for employees of FEMA (or other Federal officials in the United States) to serve in such capacities in other countries, or both;

(3) studies, projects, and research (which may include applied research on the effectiveness of prevention activities, demonstration projects, and programs and projects involving international, Federal, State, local, and tribal governments, private sector, or non-governmental organizations);

(4) forums for government officials and appropriate private entities to exchange information, participation in which may include institutions of higher education and appropriate international or non-governmental organizations;

(5) meetings, conferences, courses, and training workshops;

(6) programs to improve the collection and analysis of data on preparedness and resilience programs, practices, activities, and events;

(7) programs for writing, editing, printing, and publishing of books and other materials; and

(8) other activities to carry out the purpose described in subsection (b).

(e) GENERAL STRUCTURE OF FOUNDATION; NONPROFIT STATUS.—

(1) BOARD OF DIRECTORS.—The Foundation shall have a board of directors, which shall be established and conducted in accordance with subsection (f). The Board shall establish the general policies of the Foundation for carrying out subsection (b), including the establishment of the bylaws of the Foundation.

(2) EXECUTIVE DIRECTOR.—The Foundation shall have an executive director, who shall be appointed by the Board, who shall serve at the pleasure of the Board, and for whom the Board shall establish the rate of compensation. Subject to compliance with the policies and bylaws established by the Board pursuant to paragraph (1), the Director shall be responsible for the daily operations of the Foundation.

(3) NONPROFIT STATUS.—In carrying out subsection (b), the Board shall establish such policies and bylaws under paragraph (1), and the Director shall carry out such activities under paragraph (2), as may be necessary to ensure that the Foundation maintains status as an organization that—

(A) is described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)); and

(B) is, under section 501(a) of such Code, exempt from taxation.

(f) BOARD OF DIRECTORS.—

(1) CERTAIN BYLAWS.—In establishing bylaws under subsection (e)(1), the Board shall ensure that the bylaws of the Foundation—

(A) include policies for—

(i) the selection of the officers, employees, agents, and contractors of the Foundation;

(ii) the acceptance and disposition of donations to the Foundation and for, the disposition of the assets of the Foundation, including ethical standards;

(iii) the conduct of the general operations of the Foundation; and

(iv) writing, editing, printing, and publishing of books and other materials, and the acquisition of patents and licenses for devices and procedures developed by the Foundation; and

(B) do not, including with respect to the activities carried out under the bylaws—

(i) reflect unfavorably upon the ability of the Foundation or FEMA to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in such a program.

(2) COMPOSITION.—The Board—

(A) subject to subparagraph (B), shall be composed of 7 individuals, appointed in accordance with paragraph (4), who—

(i) collectively possess education or experience appropriate for representing the general field of emergency management, preparedness, or resilience, and the general public; and

(ii) each shall be a voting member of the Board; and

(B) may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be a greater number than the number specified in subparagraph (A).

(3) CHAIR.—The Board shall, from among the members of the Board, designate an individual to serve as the chair of the Board.

(4) APPOINTMENTS, VACANCIES, AND TERMS.—Subject to subsection (j), the following shall apply to the Board:

(A) VACANCIES.—Any vacancy in the membership of the Board shall be filled by appointment by the Board, after consideration of suggestions made by the Chair and the Director regarding the appointment. Any such vacancy shall be filled not later than the expiration of the 180-day period beginning on the date on which the vacancy occurs.

(B) TERM OF OFFICE.—The term of office of each member of the Board appointed under subparagraph (A) shall be 5 years. A member of the Board may continue to serve after the expiration of the term of the member until

the expiration of the 180-day period beginning on the date on which the term of the member expires.

(C) VACANCY DOES NOT AFFECT AUTHORITY.—A vacancy in the membership of the Board shall not affect the power of the Board to carry out the duties of the Board. If a member of the Board does not serve the full term applicable under subparagraph (B), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the subject term.

(5) COMPENSATION.—Members of the Board may not receive compensation for service on the Board. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board.

(g) CERTAIN RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR.—The Director shall—

(1) hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees;

(2) accept and administer donations to the Foundation, and administer the assets of the Foundation;

(3) establish a process for the selection of candidates for holding endowed positions under subsection (c);

(4) enter into such financial agreements as are appropriate in carrying out the activities of the Foundation;

(5) take such action as may be necessary to acquire patents and licenses for devices and procedures developed by the Foundation and the employees of the Foundation;

(6) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(7) commence and respond to judicial proceedings in the name of the Foundation; and

(8) exercise such other functions as are appropriate, in the determination of the Director.

(h) GENERAL PROVISIONS.—

(1) AUTHORITY FOR ACCEPTING FUNDS.—The Administrator of FEMA may accept and utilize, on behalf of the Federal Government, any gift, donation, bequest, or devise of real or personal property from the Foundation for the purpose of aiding or facilitating the work of FEMA. Funds may be accepted and utilized by the Administrator without regard to whether the funds are designated as general-purpose funds or special-purpose funds.

(2) AUTHORITY FOR ACCEPTANCE OF VOLUNTARY SERVICES.—

(A) IN GENERAL.—The Administrator of FEMA may accept, on behalf of the Federal Government, any voluntary services provided by the Foundation for the purpose of aiding or facilitating the work of the Federal Government. In the case of an individual, such Administrator may accept the services provided under this subparagraph by the individual until such time as the private funding for such individual ends.

(B) CLARIFICATION.—The limitation established in subparagraph (A) regarding the period of time in which services may be accepted applies to each individual who is not an employee of the Federal Government and who serves in association with FEMA pursuant to financial support from the Foundation.

(3) ADMINISTRATIVE CONTROL.—No officer, employee, or member of the Board may exercise any administrative or managerial control over any Federal employee.

(4) APPLICABILITY OF CERTAIN STANDARDS TO NON-FEDERAL EMPLOYEES.—In the case of any individual who is not an employee of the Federal Government and who serves in association with FEMA pursuant to financial support from the Foundation, the Foundation shall negotiate a memorandum of understanding with the individual and the Administrator of FEMA specifying that the individual—

(A) shall be subject to the ethical and procedural standards regulating Federal employment, scientific investigation, and research findings (including publications and patents) that are required of individuals employed by FEMA, including standards under this Act, the Ethics in Government Act, and the Technology Transfer Act; and

(B) shall be subject to such ethical and procedural standards under chapter 11 of title 18, United States Code (relating to conflicts of interest), as the Administrator of FEMA determines is appropriate, except that such memorandum may not provide that the individual shall be subject to the standards of section 209 of such chapter (18 U.S.C. 209).

(5) FINANCIAL CONFLICTS OF INTEREST.—Any individual who is an officer, employee, or member of the Board may not directly or indirectly participate in the consideration or determination by the Foundation of any question affecting—

(A) any direct or indirect financial interest of the individual; or

(B) any direct or indirect financial interest of any business organization or other entity of which the individual is an officer or employee or in which the individual has a direct or indirect financial interest.

(6) AUDITS; AVAILABILITY OF RECORDS.—The Foundation shall—

(A) provide for biennial audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(7) REPORTS.—

(A) ANNUAL REPORTS.—

(i) IN GENERAL.—Not later than February 1 of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year.

(ii) CONTENT.—Each such report required under this paragraph shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation, including—

(I) an accounting of the use of amounts provided for under subsection (i); and

(II) an explanation of how such funding has enhanced, and not supplanted, FEMA core missions.

(B) SPECIFIC DETAILS.—With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts to the Foundation of real or personal property, and the source and amount of all gifts to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts to the Foundation may be used.

(C) AVAILABILITY OF REPORTS.—The Foundation shall make copies of each report submitted under subparagraph (A) available—

(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge not to exceed the cost of providing the copy; and

(ii) to the appropriate committees of Congress.

(8) LIAISON FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—The Administrator of FEMA shall serve as the liaison representative of FEMA to the Board and the Foundation.

(i) FEDERAL FUNDING.—

(1) AUTHORITY FOR ANNUAL GRANTS.—

(A) IN GENERAL.—The Administrator of FEMA shall—

(i) for fiscal year 2013, make a grant to an entity described in subsection (j)(9) (relating to the establishment of a committee to establish the Foundation);

(ii) for fiscal year 2014, make a grant to the committee established under subsection (j), or if the Foundation has been established, to the Foundation; and

(iii) for fiscal year 2015, and each fiscal year thereafter, make a grant to the Foundation.

(B) LIMITATIONS.—A grant under subparagraph (A) may be expended—

(i) in the case of an entity receiving the grant under subparagraph (A)(i), only for the purpose of carrying out the duties established in subsection (j)(9) for the entity;

(ii) in the case of the committee established under subsection (j)(9), only for the purpose of carrying out the duties established in subsection (j) for the committee; and

(iii) in the case of the Foundation, only for the purpose of the administrative expenses of the Foundation.

(C) LIMIT ON GRANT USES.—A grant under subparagraph (A) may not be expended to provide amounts for the Fund.

(D) UNOBLIGATED AMOUNTS.—For the purposes described in subparagraph (B)—

(i) any portion of the grant made under subparagraph (A)(i) for fiscal year 2013 that remains unobligated after the entity receiving the grant completes the duties established in subsection (j)(9) for the entity shall be available to the committee established under subsection (j)(9); and

(ii) any portion of a grant under subparagraph (A) made for fiscal year 2014 that remains unobligated after such committee completes the duties established in subsection (j)(9) for the committee shall be available to the Foundation.

(2) FUNDING FOR GRANTS.—For the purpose of grants under paragraph (1)—

(A) there is authorized to be appropriated $1,500,000 for each fiscal year; and

(B) the Administrator of FEMA may, for each fiscal year, make available not less than $500,000, and not more than $1,500,000 from the amounts appropriated for the fiscal year for the programs of FEMA.

(3) CERTAIN RESTRICTION.—If the Foundation receives Federal funds for the purpose of serving as a fiscal intermediary between Federal agencies, the Foundation may not receive such funds for the indirect costs of carrying out such purpose in an amount exceeding 10 percent of the direct costs of carrying out such purpose. This paragraph may not be construed as authorizing the expenditure of any grant under paragraph (1) for such purpose.

(4) SUPPORT SERVICES.—The Administrator of FEMA may provide facilities, utilities, and support services to the Foundation if it is determined by the Administrator to be advantageous to the programs of FEMA or the Department.

(j) COMMITTEE FOR ESTABLISHMENT OF FOUNDATION.—

(1) IN GENERAL.—There is established in accordance with this subsection a committee to carry out the functions described in paragraph (2) (referred to in this subsection as the ''Committee'').

(2) FUNCTIONS.—The functions referred to in paragraph (1) for the Committee are as follows:

(A) To carry out such activities as may be necessary to incorporate the Foundation under the laws of the State involved, including serving as incorporators for the Foundation. Such activities shall include ensuring that the articles of incorporation for the Foundation require that the Foundation be established and operated in accordance with the applicable provisions of this Act.

(B) To ensure that the Foundation qualifies for and maintains the nonprofit status described in subsection (e)(3).

(C) To establish the general policies and initial bylaws of the Foundation, which bylaws shall include the bylaws described in subsections (e)(3) and (f)(1).

(D) To provide for the initial operation of the Foundation, including providing for quarters, equipment, and staff.

(E) To appoint the initial members of the Board in accordance with the requirements established in subsection (f)(2)(A) for the composition of the Board, and in accordance with such other qualifications as the Committee may determine to be appropriate regarding such composition. Of the Board members so appointed—

(i) 2 shall be appointed to serve for a term of 3 years;

(ii) 2 shall be appointed to serve for a term of 4 years; and

(iii) 3 shall be appointed to serve for a term of 5 years.

(3) COMPLETION OF FUNCTIONS OF THE COMMITTEE; INITIAL MEETING OF BOARD.—

(A) IN GENERAL.—The Committee shall complete the functions required in paragraph (1) not later than September 30, 2014.

(B) TERMINATION.—The Committee shall terminate upon the expiration of the 30-day period beginning on the date on which the Secretary determines that the functions of the Committee have been completed.

(C) INITIAL MEETING.—The initial meeting of the Board shall be held not later than November 1, 2014.

(4) COMPOSITION.—The Committee shall be composed of 5 members, each of whom shall be a voting member. Of the members of the Committee—

(A) not fewer than 2 shall have broad, general experience in emergency management, preparedness, or resilience; and

(B) not fewer than 2 shall have broad, general experience in nonprofit private organizations.

(5) CHAIRPERSON.—The Committee shall, from among the members of the Committee, designate an individual to serve as the chairperson of the Committee.

(6) TERMS; VACANCIES.—The term of members of the Committee shall be for the duration of the Committee. A vacancy in the membership of the Committee shall not affect the power of the Committee to carry out the duties of the Committee. If a member of the Committee does not serve the full term, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term subject.

(7) COMPENSATION.—Members of the Committee may not receive compensation for service on the Committee. Members of the Committee may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(8) COMMITTEE SUPPORT.—The Administrator of FEMA may, from amounts available to the Administrator for the general administration of FEMA, provide staff and financial support to assist the Committee with carrying out the functions described in paragraph (2). In providing such staff and support, the Administrator may both detail employees and contract for assistance.

(9) GRANT FOR ESTABLISHMENT OF THE COMMITTEE.—

(A) IN GENERAL.—With respect to a grant under subsection (i)(1)(A)(i) for fiscal year 2013, an entity described in this paragraph is a private nonprofit entity with significant experience in domestic and international issues of emergency management, preparedness, or resilience.

(B) CONDITIONS.—The grant referred to in subparagraph (A) may be made to an entity only if the entity agrees that—

(i) the entity will establish a committee that is composed in accordance with paragraph (4); and

(ii) the entity will not select an individual for membership on the Committee unless the individual agrees that the Committee will operate in accordance with each of the provisions of this subsection that relate to the operation of the Committee.

(C) GRANT TERMS.—The Administrator of FEMA may make a grant referred to in subparagraph (A) only if the applicant for the grant makes an agreement that the grant will not be expended for any purpose other than carrying out subparagraph (B). Such a grant may be made only if an application for the grant is submitted to the Administrator containing such agreement, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Administrator determines to be necessary to carry out this paragraph.

SEC. 3. PERFORMANCE EVALUATIONS.

(a) IN GENERAL.—To ensure that the Foundation and its grantees are meeting their objectives, the Board shall establish and implement performance evaluations—

(1) that monitor and evaluate the performance and impact of the Foundation program activities in a specific, measurable, achievable, relevant, and timely fashion; and

(2) that assess the financial accountability of appropriated and donated funds.

(b) IMPACT OR OUTCOME EVALUATIONS.—The Board shall establish mechanisms to evaluate and assess the effectiveness of individual programs supported by the Foundation. Impact or outcome evaluations such as balanced scorecard, innovations in risk reduction, and return on investment shall be employed and reported through the annual report of the Foundation under section 2(h)(7)(A).

(c) USE OF EVALUATION RESULTS.—The Foundation shall—

(1) identify through its annual report under section 2(h)(7)(A) its greatest needs and the ways that the Foundation or others, will use evaluation results; and

(2) use such information to set priorities for the Foundation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 397—PROMOTING PEACE AND STABILITY IN SUDAN, AND FOR OTHER PURPOSES

Mr. COONS (for himself, Mr. ISAKSON, Mr. DURBIN, Mr. WICKER, and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 397

Whereas conflict between the Government of Sudan and the Sudan People's Liberation Movement-North (SPLM-N) has been ongoing since June 2011 in Sudan's border state of South Kordofan and since September 2011 in the border state of Blue Nile, resulting in a humanitarian crisis;

Whereas the Government of Sudan has refused repeated requests by the United States Government, the United Nations, the African Union, the League of Arab States, nongovernmental organizations, and others to allow humanitarian access to the conflict areas;

Whereas the Governments of Sudan and South Sudan signed a memorandum of understanding on non-aggression and cooperation in Addis Ababa on February 12, 2012, agreeing to respect each other's sovereignty and refrain from launching any attack against the other, including bombardment;

Whereas the United Nations estimates that more than 130,000 refugees have fled South Kordofan and Blue Nile for South Sudan, Ethiopia, and elsewhere since June 2011, and hundreds of thousands more have been internally displaced or severely affected by conflict;

Whereas the Government of Sudan bombed the Yida refugee camp in South Sudan on November 10, 2011;

Whereas both the Government of Sudan and the Sudan People's Liberation Movement-North have reportedly prevented civilians from leaving Blue Nile and Southern Kordofan;

Whereas the Famine Early Warning Systems Network (FEWSNET), funded by the United States Agency for International Development, estimated in March 2012 that conflict-affected areas of South Kordofan would deteriorate further in coming weeks to Phase 4 emergency levels of food insecurity (one step before being classified as a famine), due mainly to conflict and government policies that have limited cultivation, displaced the population, restricted trade, and refused access for international humanitarian assistance;

Whereas the United Nations Security Council issued a statement on February 14, 2012, expressing deep and growing alarm with the rising levels of malnutrition and food insecurity in some areas of Southern Kordofan and Blue Nile, calling on the Government of Sudan to allow immediate access to United Nations personnel, and urging the Government of Sudan and the Sudan People's Liberation Movement-North to agree to an immediate cessation of hostilities and return to talks to address the issues that have fueled the current conflict;

Whereas the United Nations High Commissioner for Refugees appealed urgently to donors in February 2012 for $145,000,000 to assist refugees from South Kordofan and Blue Nile;

Whereas President Barack Obama released a statement in June 2011 calling on the Government of Sudan and the Sudan People's Liberation Movement-North to agree immediately to a ceasefire, end restrictions on humanitarian access and United Nations movements, and agree on security arrangements for Southern Kordofan and Blue Nile States through direct, high-level negotiations as opposed to the use of force;

Whereas President Obama released a statement on February 2, 2012, strongly condemning the bombing by the Armed Forces of Sudan of civilian populations in Southern Kordofan and Blue Nile states in Sudan, which stated that aerial attacks on civilian targets are unjustified, unacceptable, and a violation of international law and compound the ongoing crisis in these areas;

Whereas neither South Kordofan nor Blue Nile were able to complete the popular consultation process with the Government of Sudan as stipulated in the Comprehensive Peace Agreement (CPA) before violence broke out;

Whereas, despite the independence of South Sudan on July 9, 2011, many key issues between Sudan and South Sudan remain unresolved, including transit fees for oil pipeline use, citizenship, the status of Abyei, and border demarcation;

Whereas the goal of democratic governance reform in Sudan as envisioned in the CPA has not been met;

Whereas, in addition to the growing conflict-induced humanitarian and human rights crisis in Sudan's southern border-

states, the humanitarian crisis and ongoing insecurity in Darfur continues; and

Whereas the United Nations High Commissioner for Refugees estimates that more than 4,000,000 people in Sudan remain internally displaced, and in 2011, though for the first time since the Darfur conflict began, more Darfuris voluntarily returned to their homes (87,000) than were newly displaced (70,000), and additional tens of thousands are being displaced in southern Sudan: Now, therefore, be it

Resolved, That the Senate—

(1) welcomes the memorandum of understanding on non-aggression and cooperation signed between the Governments of Sudan and South Sudan in Addis Ababa on February 12, 2012;

(2) calls on the Government of Sudan and the Sudan People's Liberation Movement-North to reach a mutually-beneficial political agreement;

(3) urges the Government of Sudan to allow immediate and unrestricted humanitarian access to South Kordofan, Blue Nile, and all other conflict-affected areas of Sudan;

(4) encourages the Government of Sudan and the Sudan People's Liberation Movement-North to declare a cessation of hostilities to allow food and essential supplies to reach affected civilians;

(5) implores the Governments of Sudan and South Sudan to refrain from any support of proxy forces;

(6) urges the Government of Sudan and the Sudan People's Liberation Movement-North to allow civilians to leave the two states voluntarily and seek refuge in more secure areas; and

(7) supports the current efforts of the Obama Administration, working with partners in the international community, to facilitate humanitarian access to affected areas, to encourage all relevant parties to return to the negotiation table to reach agreements associated with the conclusion of the Comprehensive Peace Agreement, to mitigate violence in the interim, and to allow full humanitarian access.

SENATE RESOLUTION 398—RECOGNIZING THE 191ST ANNIVERSARY OF THE INDEPENDENCE OF GREECE AND CELEBRATING GREEK AND AMERICAN DEMOCRACY

Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. DURBIN, Mr. WHITEHOUSE, Mr. LIEBERMAN, Mr. JOHNSON of South Dakota, Mr. CARPER, Mr. KOHL, Mr. BROWN of Ohio, Mr. INOUYE, Mrs. SHAHEEN, Mr. CARDIN, Mr. CASEY, Mr. LEVIN, Mr. REED of Rhode Island, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mr. LAUTENBERG, Mrs. BOXER, Mrs. FEINSTEIN, Mr. WYDEN, Mr. LUGAR, Ms. COLLINS, Mr. COCHRAN, Mr. COBURN, Mr. ISAKSON, Mr. KIRK, and Mr. CHAMBLISS) submitted the following resolution; which was considered and agreed to:

S. RES. 398

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States, many of whom read Greek political philosophy in the original Greek, drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821 that ''it is in your land that liberty has fixed her abode and. . .in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you'';

Whereas the Greek national anthem, the ''Hymn to Liberty'', includes the words, ''Most heartily was gladdened George Washington's brave land'';

Whereas the people of the United States generously offered humanitarian assistance to the people of Greece during their struggle for independence;

Whereas Greece, in one of the most consequential ''David vs. Goliath'' victories for freedom and democracy in modern times, refused to surrender to the Axis forces and inflicted a fatal wound at a crucial moment in World War II, forcing Hitler to change his timeline and delaying the attack on Russia where the Axis Forces met defeat;

Whereas Winston Churchill said, ''If there had not been the virtue and courage of the Greeks, we do not know which the outcome of World War II would have been.'';

Whereas hundreds of thousands of Greek civilians were killed in Greece during World War II in defense of the values of the Allies;

Whereas, throughout the 20th century, Greece was one of a few countries that allied with the United States in every major international conflict;

Whereas Greece is a strategic partner and ally of the United States in bringing political stability and economic development to the volatile Balkan region, having invested billions in the countries of the region, thereby helping to create many tens of thousands of new jobs, and having contributed more than $750,000,000 in development aid for the region;

Whereas the Government and people of Greece actively participate in peacekeeping and peace-building operations conducted by international organizations, including the United Nations, the North Atlantic Treaty Organization, the European Union, and the Organization for Security and Co-operation in Europe, and have more recently provided critical support to the North Atlantic Treaty Organization operation in Libya;

Whereas Greece received worldwide praise for its extraordinary handling during the 2004 Olympic Games of more than 14,000 athletes and more than 2,000,000 spectators and journalists, a feat the Government and people of Greece handled efficiently, securely, and with hospitality;

Whereas Greece, located in a region where Christianity meets Islam and Judaism, maintains excellent relations with Muslim nations and Israel;

Whereas the Government of Greece has taken important steps in recent years to further cross-cultural understanding and rapprochement and cooperation in various fields with Turkey, and has also upgraded its relations with other countries in the region, including Israel, thus enhancing the stability of the wider region;

Whereas the Governments and people of Greece and the United States are at the forefront of efforts for freedom, democracy, peace, stability, and human rights;

Whereas those and similar ideals have forged a close bond between the people of Greece and the United States; and

Whereas it is proper and desirable for the United States to celebrate March 25, 2012, Greek Independence Day, with the Greek people and to reaffirm the democratic principles from which these two great nations were born: Now, therefore, be it

Resolved, That the Senate—

(1) extends warm congratulations and best wishes to the people of Greece as they celebrate the 191st anniversary of the independence of Greece;

(2) expresses support for the principles of democratic governance to which the people of Greece are committed; and

(3) notes the important role that Greece has played in the wider European region and in the community of nations since gaining its independence 191 years ago.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1832. Mrs. HAGAN (for herself and Mr. CORKER) submitted an amendment intended to be proposed by her to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table.

SA 1833. Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) proposed an amendment to the bill H.R. 3606, supra.

SA 1834. Mr. REID proposed an amendment to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, supra.

SA 1835. Mr. REID proposed an amendment to amendment SA 1834 proposed by Mr. REID to the amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, supra.

SA 1836. Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) proposed an amendment to the bill H.R. 3606, supra.

SA 1837. Mr. REID proposed an amendment to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra.

SA 1838. Mr. REID proposed an amendment to the bill H.R. 3606, supra.

SA 1839. Mr. REID proposed an amendment to amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, supra.

SA 1840. Mr. REID proposed an amendment to amendment SA 1839 proposed by Mr. REID to the amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, supra.

SA 1841. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1842. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1843. Mr. MORAN (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1844. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1845. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1846. Mr. CARDIN (for himself, Ms. LANDRIEU, and Ms. SNOWE) submitted an

amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1847. Mr. REID (for Mr. BOOZMAN (for himself and Mr. PRYOR)) proposed an amendment to the bill H.R. 886, to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

TEXT OF AMENDMENTS

SA 1832. Mrs. HAGAN (for herself and Mr. CORKER) submitted an amendment intended to be proposed by her to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—COVERED BONDS

SEC. 801. SHORT TITLE.

This title may be cited as the ''United States Covered Bond Act''.

SEC. 802. DEFINITIONS.

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

(1) ANCILLARY ASSET.—The term ''ancillary asset'' means—

(A) any interest rate or currency swap associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(B) any credit enhancement or liquidity arrangement associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(C) any guarantee, letter-of-credit right, or other secondary obligation that supports any payment or performance of 1 or more eligible assets, substitute assets, or other assets in a cover pool; and

(D) any proceeds of, or other property incident to, 1 or more eligible assets, substitute assets, or other assets in a cover pool.

(2) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) COVER POOL.—The term ''cover pool'' means a dynamic pool of assets that is comprised of—

(A) in the case of any eligible issuer described in subparagraph (A), (B), (C), (D), or (E) of paragraph (9)—

(i) 1 or more eligible assets from a single eligible asset class; and

(ii) 1 or more substitute assets or ancillary assets; and

(B) in the case of any eligible issuer described in paragraph (9)(F)—

(i) the covered bonds issued by each sponsoring eligible issuer; and

(ii) 1 or more substitute assets or ancillary assets.

(4) COVERED BOND.—The term ''covered bond'' means any recourse debt obligation of an eligible issuer that—

(A) has an original term to maturity of not less than 1 year;

(B) is secured by a perfected security interest in or other perfected lien on a cover pool that is owned directly or indirectly by the issuer of the obligation;

(C) is issued under a covered bond program that has been approved by the applicable covered bond regulator;

(D) is identified in a register of covered bonds that is maintained by the Secretary; and

(E) is not a deposit (as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l))).

(5) COVERED BOND PROGRAM.—The term ''covered bond program'' means any program of an eligible issuer under which, on the security of a single cover pool, 1 or more series of covered bonds may be issued.

(6) COVERED BOND REGULATOR.—The term ''covered bond regulator'' means—

(A) for any eligible issuer that is subject to the jurisdiction of an appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the appropriate Federal banking agency;

(B) for any eligible issuer that is described in paragraph (9)(F), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by only 1 eligible issuer, the covered bond regulator for the sponsor;

(C) for any eligible issuer that is described in paragraph (9)(F), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by more than 1 eligible issuer, the covered bond regulator for the sponsor whose covered bonds constitute the largest share of the cover pool of the issuer; and

(D) for any other eligible issuer that is not subject to the jurisdiction of an appropriate Federal banking agency, the Board of Governors of the Federal Reserve System.

(7) ELIGIBLE ASSET.—The term ''eligible asset'' means—

(A) in the case of the residential mortgage asset class—

(i) any first-lien mortgage loan that is secured by 1-to-4 family residential property;

(ii) any mortgage loan that is insured under the National Housing Act (12 U.S.C. 1701 et seq.); and

(iii) any loan that is guaranteed, insured, or made under chapter 37 of title 38, United States Code;

(B) in the case of the commercial mortgage asset class, any commercial mortgage loan (including any multifamily mortgage loan);

(C) in the case of the public sector asset class—

(i) any security issued by a State, municipality, or other governmental authority;

(ii) any loan made to a State, municipality, or other governmental authority; and

(iii) any loan, security, or other obligation that is insured or guaranteed, in full or substantially in full, by the full faith and credit of the United States Government (whether or not such loan, security, or other obligation is also part of another eligible asset class);

(D) in the case of the auto asset class, any auto loan or lease;

(E) in the case of the student loan asset class, any student loan (whether guaranteed or nonguaranteed);

(F) in the case of the credit or charge card asset class, any extension of credit to a person under an open-end credit plan;

(G) in the case of the small business asset class, any loan that is made or guaranteed under a program of the Small Business Administration; and

(H) in the case of any other eligible asset class, any asset designated by the Secretary, by rule and in consultation with the covered bond regulators, as an eligible asset for purposes of such class.

(8) ELIGIBLE ASSET CLASS.—The term ''eligible asset class'' means—

(A) a residential mortgage asset class;

(B) a commercial mortgage asset class;

(C) a public sector asset class;

(D) an auto asset class;

(E) a student loan asset class;

(F) a credit or charge card asset class;

(G) a small business asset class; and

(H) any other eligible asset class designated by the Secretary, by rule and in consultation with the covered bond regulators.

(9) ELIGIBLE ISSUER.—The term ''eligible issuer'' means—

(A) any insured depository institution and any subsidiary of such institution;

(B) any bank holding company, any savings and loan holding company, and any subsidiary of any of such companies;

(C) any broker or dealer that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and is a member of the Securities Investor Protection Corporation, and any subsidiary of such broker or dealer;

(D) any insurer that is supervised by a State insurance regulator, and any subsidiary of such insurer;

(E) any nonbank financial company (as defined in section 102(a)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311(a)(4))) that is supervised by the Board of Governors of the Federal Reserve System under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323), including any intermediate holding company supervised as a nonbank financial company, and any subsidiary of such a nonbank financial company; and

(F) any issuer that is sponsored by 1 or more eligible issuers for the sole purpose of issuing covered bonds on a pooled basis.

(10) OVERSIGHT PROGRAM.—The term ''oversight program'' means the covered bond regulatory oversight program established under section 803(a).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(12) SUBSTITUTE ASSET.—The term ''substitute asset'' means—

(A) cash;

(B) any direct obligation of the United States Government, and any security or other obligation whose full principal and interest are insured or guaranteed by the full faith and credit of the United States Government;

(C) any direct obligation of a United States Government corporation or Government-sponsored enterprise of the highest credit quality, and any other security or other obligation of the highest credit quality whose full principal and interest are insured or guaranteed by such corporation or enterprise, except that the outstanding principal amount of these obligations in any cover pool may not exceed an amount equal to 20 percent of the outstanding principal amount of all assets in the cover pool without the approval of the applicable covered bond regulator;

(D) any other substitute asset designated by the Secretary, by rule and in consultation with the covered bond regulators; and

(E) any deposit account or securities account into which only an asset described in subparagraph (A), (B), (C), or (D) may be deposited or credited.

SEC. 803. REGULATORY OVERSIGHT OF COVERED BOND PROGRAMS ESTABLISHED.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall, by rule and in consultation with the covered bond regulators, establish a covered bond regulatory oversight program that provides for—

(A) covered bond programs to be evaluated according to reasonable and objective standards in order to be approved under paragraph (2), including any additional eligibility standards for eligible assets and any other criteria determined appropriate by the Secretary to further the purposes of this title;

(B) covered bond programs to be maintained in a manner that is consistent with this title and safe and sound asset-liability management and other financial practices; and

(C) any estate created under section 804 to be administered in a manner that is consistent with maximizing the value and the proceeds of the related cover pool in a resolution under this title.

(2) APPROVAL OF EACH COVERED BOND PROGRAM.—

(A) IN GENERAL.—A covered bond shall be subject to this title only if the covered bond is issued by an eligible issuer under a covered bond program that is approved by the applicable covered bond regulator.

(B) APPROVAL PROCESS.—Each covered bond regulator shall apply the standards established by the Secretary under the oversight program to evaluate a covered bond program that has been submitted by an eligible issuer for approval. Each covered bond regulator also shall take into account relevant supervisory factors, including safety and soundness considerations, in evaluating a covered bond program that has been submitted for approval. Each covered bond regulator, promptly after approving a covered bond program, shall provide the Secretary with the name of the covered bond program, the name of the eligible issuer, and all other information reasonably requested by the Secretary in order to update the registry under paragraph (3)(A). Each eligible issuer, promptly after issuing a covered bond under an approved covered bond program, shall provide the Secretary with all information reasonably requested by the Secretary in order to update the registry under paragraph (3)(B).

(C) EXISTING COVERED BOND PROGRAMS.—A covered bond regulator may approve a covered bond program that is in existence on the date of enactment of this Act. Upon such approval, each covered bond under the covered bond program shall be subject to this title, regardless of when the covered bond was issued.

(D) MULTIPLE COVERED BOND PROGRAMS PERMITTED.—An eligible issuer may have more than 1 covered bond program.

(E) CEASE AND DESIST AUTHORITY.—The applicable covered bond regulator may direct an eligible issuer to cease issuing covered bonds under an approved covered bond program if the covered bond program is not maintained in a manner that is consistent with this title and the oversight program and if, after notice that is reasonable under the circumstances, the issuer does not remedy all deficiencies identified by the applicable covered bond regulator.

(F) CAP ON THE AMOUNT OF OUTSTANDING COVERED BONDS.—

(i) IN GENERAL.—With respect to each eligible issuer that submits a covered bond program for approval, the applicable covered bond regulator shall set, consistent with safety and soundness considerations and the financial condition of the eligible issuer, the maximum amount, as a percentage of the eligible issuer's total assets, of outstanding covered bonds that the eligible issuer may issue.

(ii) REVIEW OF CAP.—The applicable covered bond regulator may, not more frequently than quarterly, review the percentage set under clause (i) and, if safety and soundness considerations or the financial condition of the eligible issuer has changed, increase or decrease such percentage. Any decrease made pursuant to this clause shall have no effect on existing covered bonds issued by the eligible issuer.

(3) REGISTRY.—Under the oversight program, the Secretary shall maintain a registry that is published on a Web site available to the public and that, for each covered bond program approved by a covered bond regulator, contains—

(A) the name of the covered bond program, the name of the eligible issuer, and all other information that the Secretary considers necessary to adequately identify the covered bond program and the eligible issuer; and

(B) all information that the Secretary considers necessary to adequately identify all outstanding covered bonds issued under the covered bond program (including the reports described in paragraphs (3) and (4) of subsection (b)).

(4) FEES.—Each covered bond regulator may levy, on the issuers of covered bonds under the primary supervision of such covered bond regulator, reasonably apportioned fees that such covered bond regulator considers necessary, in the aggregate, to defray the costs of such covered bond regulator carrying out the provisions of this title. 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.

(b) MINIMUM OVER-COLLATERALIZATION REQUIREMENTS.—

(1) REQUIREMENTS ESTABLISHED.—The Secretary, by rule and in consultation with the covered bond regulators, shall establish minimum over-collateralization requirements for covered bonds backed by each of the eligible asset classes. The minimum over-collateralization requirements shall be designed to ensure that sufficient eligible assets and substitute assets are maintained in the cover pool to satisfy all principal and interest payments on the covered bonds when due through maturity and shall be based on the credit, collection, and interest rate risks (excluding the liquidity risks) associated with the eligible asset class.

(2) ASSET COVERAGE TEST.—The eligible assets and the substitute assets in any cover pool shall be required, in the aggregate, to meet at all times the applicable minimum over-collateralization requirements.

(3) MONTHLY REPORTING.—On a monthly basis, each issuer of covered bonds shall submit a report on whether the cover pool that secures the covered bonds meets the applicable minimum over-collateralization requirements to—

(A) the Secretary;

(B) the applicable covered bond regulator;

(C) the applicable indenture trustee;

(D) the applicable covered bondholders; and

(E) the applicable independent asset monitor.

(4) INDEPENDENT ASSET MONITOR.—

(A) APPOINTMENT.—Each issuer of covered bonds shall appoint the indenture trustee for the covered bonds, or another unaffiliated entity, as an independent asset monitor for the applicable cover pool.

(B) DUTIES.—An independent asset monitor appointed under subparagraph (A) shall, on an annual or other more frequent periodic basis determined by the Secretary under the oversight program—

(i) verify whether the cover pool meets the applicable minimum over-collateralization requirements; and

(ii) report to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders on whether the cover pool meets the applicable minimum over-collateralization requirements.

(C) REMOVAL AND REPLACEMENT.—The independent asset monitor appointed under subparagraph (A) may be removed and replaced—

(i) by a covered bond regulator in any case in which such action is in the best interest of the covered bond investors; and

(ii) by covered bond holders who own a majority of the outstanding principal amount of the covered bonds secured by the applicable cover pool, at any time.

(5) NO LOSS OF STATUS.—Covered bonds shall remain subject to this title regardless of whether the applicable cover pool ceases to meet the applicable minimum over-collateralization requirements.

(6) FAILURE TO MEET REQUIREMENTS.—

(A) IN GENERAL.—If a cover pool fails to meet the applicable minimum over-collateralization requirements, and if the failure is not cured within the time specified in the related transaction documents, the failure shall be an uncured default for purposes of section 804(a).

(B) NOTICE REQUIRED.—An issuer of covered bonds shall promptly give the Secretary and the applicable covered bond regulator written notice if the cover pool securing the covered bonds fails to meet the applicable minimum over-collateralization requirements, if the failure is cured within the time specified in the related transaction documents, or if the failure is not so cured.

(c) REQUIREMENTS FOR ELIGIBLE ASSETS.—

(1) REQUIREMENTS.—

(A) LOANS.—A loan shall not qualify as an eligible asset for so long as the loan is delinquent for more than 60 consecutive days.

(B) SECURITIES.—A security shall not qualify as an eligible asset for so long as the security does not meet any credit-quality requirement under this title.

(C) ORIGINATION.—An asset shall not qualify as an eligible asset if the asset was not originated in compliance with any rule or supervisory guidance of a Federal agency applicable to the asset at the time of origination.

(D) NO DOUBLE PLEDGE.—An asset shall not qualify as an eligible asset for so long as the asset is subject to a prior perfected security interest or other prior perfected lien that has been granted in an unrelated transaction. Nothing in this title shall affect such a prior perfected security interest or other prior perfected lien, and the rights of such lien holders.

(2) FAILURE TO MEET REQUIREMENTS.—Subject to paragraph (1)(D), if an asset in a cover pool does not satisfy any applicable requirement described in paragraph (1) or any other applicable standard or criterion described in this title, the oversight program, or the related transaction documents, the asset shall not qualify as an eligible asset for purposes of the asset coverage test described in subsection (b)(2). A disqualified asset shall remain in the cover pool unless and until removed by the issuer in compliance with the provisions of this title, the oversight program, and the related transaction documents. No disqualified asset may be removed from the cover pool after an estate has been created for the related covered bond program under section 804(b)(1) or 804(c)(2), except in connection with the management of the cover pool under section 804(d)(1)(E).

(d) OTHER REQUIREMENTS.—

(1) BOOKS AND RECORDS OF ISSUER.—Each issuer of covered bonds shall clearly mark its books and records to identify the assets that comprise the cover pool securing the covered bonds.

(2) SCHEDULE OF ELIGIBLE ASSETS AND SUBSTITUTE ASSETS.—Each issuer of covered bonds shall deliver to the applicable indenture trustee and the applicable independent asset monitor, on at least a monthly basis, a schedule that identifies all eligible assets and substitute assets in the cover pool securing the covered bonds.

(3) SINGLE ELIGIBLE ASSET CLASS.—No cover pool described in section 802(3)(A) may include eligible assets from more than 1 eligible asset class. No cover pool described in section 802(3)(B) may include covered bonds backed by more than 1 eligible asset class.

SEC. 804. RESOLUTION UPON DEFAULT OR INSOLVENCY.

(a) UNCURED DEFAULT DEFINED.—For purposes of this section, the term ''uncured default'' means a default on a covered bond that has not been cured within the time, if any, specified in the related transaction documents.

(b) DEFAULT ON COVERED BONDS PRIOR TO CONSERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANKRUPTCY.—

(1) CREATION OF SEPARATE ESTATE.—If an uncured default occurs on a covered bond before the issuer of the covered bond enters conservatorship, receivership, liquidation, or bankruptcy, an estate shall be immediately and automatically created by operation of law and shall exist and be administered separate and apart from the issuer or any subsequent conservatorship, receivership, liquidating agency, or estate in bankruptcy for the issuer or any other assets of the issuer. A separate estate shall be created for each affected covered bond program.

(2) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (1) shall be comprised of the cover pool (including over-collateralization in the cover pool) that secures the covered bond. The cover pool shall be immediately and automatically released to and held by the estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer. The estate shall be fully liable on the covered bond and all other covered bonds and related obligations of the issuer (including obligations under related derivative transactions) that are secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. The estate shall not be liable on any obligation of the issuer that is not secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. No conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer may charge or assess the estate for any claim of the conservator, receiver, liquidating agent, or trustee in bankruptcy or the conservatorship, receivership, liquidating agency, or estate in bankruptcy and may not obtain or perfect a security interest in or other lien on the cover pool to secure such a claim.

(3) RETENTION OF CLAIMS.—Any holder of a covered bond or related obligation for which an estate has become liable under paragraph (2) shall retain a claim against the issuer for any deficiency with respect to the covered bond or related obligation. If the issuer enters conservatorship, receivership, liquidation, or bankruptcy, any contingent claim for such a deficiency shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(4) RESIDUAL INTEREST.—

(A) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (1), a residual interest in the estate shall be immediately and automatically issued by operation of law to the issuer.

(B) NATURE OF RESIDUAL INTEREST.—The residual interest under subparagraph (A) shall—

(i) be an exempted security as described in section 805;

(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and

(iii) be evidenced by a certificate executed by the trustee of the estate.

(5) OBLIGATIONS OF ISSUER.—

(A) IN GENERAL.—After the creation of an estate under paragraph (1), the issuer shall—

(i) transfer to or at the direction of the trustee for the estate all property of the estate that is in the possession or under the control of the issuer, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the estate; and

(ii) at the election of the trustee or a servicer or administrator for the estate, continue servicing the applicable cover pool for 120 days after the creation of the estate in return for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be payable from the estate as an administrative expense.

(B) OBLIGATIONS ABSOLUTE.—Neither the issuer, whether acting as debtor in possession or in any other capacity, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer may disaffirm, repudiate, or reject the obligation to turn over property or to continue servicing the cover pool as provided in subparagraph (A).

(c) DEFAULT ON COVERED BONDS UPON CONSERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANKRUPTCY.—

(1) CORPORATION CONSERVATORSHIP OR RECEIVERSHIP.—

(A) IN GENERAL.—If the Corporation is appointed as conservator or receiver for an issuer of covered bonds before an uncured default results in the creation of an estate under subsection (b), the Corporation as conservator or receiver shall have an exclusive right, during the 1-year period beginning on the date of the appointment, to transfer any cover pool owned by the issuer in its entirety, together with all covered bonds and related obligations that are secured by a perfected security interest in or other perfected lien on the cover pool, to another eligible issuer that meets all conditions and requirements specified in the related transaction documents. The Corporation as conservator or receiver may not remove any asset from the cover pool, except to the extent otherwise agreed by a transferee that has assumed the covered bond program pursuant to subparagraph (C).

(B) OBLIGATIONS DURING 1-YEAR PERIOD.—During the 1-year period described in subparagraph (A), the Corporation as conservator or receiver shall fully and timely satisfy all monetary and nonmonetary obligations of the issuer under all covered bonds and the related transaction documents and shall fully and timely cure all defaults by the issuer (other than its conservatorship or receivership) under the applicable covered bond program, in each case, until the earlier of—

(i) the transfer of the applicable covered bond program to another eligible issuer as provided in subparagraph (A); or

(ii) the delivery to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders of a written notice from the Corporation as conservator or receiver electing to cease further performance under the applicable covered bond program.

(C) ASSUMPTION BY TRANSFEREE.—If the Corporation as conservator or receiver transfers a covered bond program to another eligible issuer within the 1-year period as provided in subparagraph (A), the transferee shall take ownership of the applicable cover pool and shall become fully liable on all covered bonds and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(2) OTHER CIRCUMSTANCES.—An estate shall be immediately and automatically created by operation of law and shall exist and be administered separate and apart from an issuer of covered bonds and any conservatorship, receivership, liquidating agency, or estate in bankruptcy for the issuer or any other assets of the issuer, if—

(A) a conservator, receiver, liquidating agent, or trustee in bankruptcy, other than the Corporation, is appointed for the issuer before an uncured default results in the creation of an estate under subsection (b); or

(B) in the case of the appointment of the Corporation as conservator or receiver as described in paragraph (1)(A), the Corporation as conservator or receiver—

(i) does not complete the transfer of the applicable covered bond program to another eligible issuer within the 1-year period as provided in paragraph (1)(A);

(ii) delivers to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders a written notice electing to cease further performance under the applicable covered bond program; or

(iii) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults by the issuer (other than its conservatorship or receivership) under the applicable covered bond program.

A separate estate shall be created for each affected covered bond program.

(3) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (2) shall be comprised of the cover pool (including over-collateralization in the cover pool) that secures the covered bonds. The cover pool shall be immediately and automatically released to and held by the estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer. The estate shall be fully liable on the covered bonds and all other covered bonds and related obligations of the issuer (including obligations under related derivative transactions) that are secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. The estate shall not be liable on any obligation of the issuer that is not secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. No conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer may charge or assess the estate for any claim of the conservator, receiver, liquidating agent, or trustee in bankruptcy or the conservatorship, receivership, liquidating agency, or estate in bankruptcy and may not obtain or perfect a security interest in or other lien on the cover pool to secure such a claim.

(4) CONTINGENT CLAIM.—Any contingent claim against an issuer for a deficiency with respect to a covered bond or related obligation for which an estate has become liable under paragraph (3) shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case for the issuer. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(5) RESIDUAL INTEREST.—

(A) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (2), and regardless of whether any contingent claim described in paragraph (4) becomes fixed or is estimated, a residual interest in the estate shall be immediately and automatically issued by operation of law to the conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer.

(B) NATURE OF RESIDUAL INTEREST.—The residual interest under subparagraph (A) shall—

(i) be an exempted security as described in section 805;

(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and

(iii) be evidenced by a certificate executed by the trustee of the estate.

(6) OBLIGATIONS OF ISSUER.—

(A) IN GENERAL.—After the creation of an estate under paragraph (2), the issuer and its conservator, receiver, liquidating agent, or trustee in bankruptcy shall—

(i) transfer to or at the direction of the trustee for the estate all property of the estate that is in the possession or under the control of the issuer or its conservator, receiver, liquidating agent, or trustee in bankruptcy, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the estate; and

(ii) at the election of the trustee or a servicer or administrator for the estate, continue servicing the applicable cover pool for 120 days after the creation of the estate in return for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be payable from the estate as an administrative expense.

(B) OBLIGATIONS ABSOLUTE.—Neither the issuer, whether acting as debtor in possession or in any other capacity, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer may disaffirm, repudiate, or reject the obligation to turn over property or to continue servicing the cover pool as provided in subparagraph (A).

(d) ADMINISTRATION AND RESOLUTION OF ESTATES.—

(1) TRUSTEE, SERVICER, AND ADMINISTRATOR.—

(A) IN GENERAL.—Upon the creation of any estate under subsection (b)(1) or (c)(2), the applicable covered bond regulator shall—

(i) appoint the trustee for the estate;

(ii) appoint 1 or more servicers or administrators for the cover pool held by the estate; and

(iii) give the Secretary, the applicable indenture trustee, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate.

(B) TERMS AND CONDITIONS OF APPOINTMENT.—All terms and conditions of any appointment under paragraph (1), including the terms and conditions relating to compensation, shall conform to the requirements of this title and the oversight program and otherwise shall be determined by the applicable covered bond regulator.

(C) QUALIFICATION.—The applicable covered bond regulator may require the trustee or any servicer or administrator for an estate to post in favor of the United States, for the benefit of the estate, a bond that is conditioned on the faithful performance of the duties of the trustee or the servicer or administrator. The covered bond regulator shall determine the amount of any bond required under this subparagraph and the sufficiency of the surety on the bond. A proceeding on a bond required under this subparagraph may not be commenced after two years after the date on which the trustee or the servicer or administrator was discharged.

(D) POWERS AND DUTIES OF TRUSTEE.—The trustee for an estate is the representative of the estate and, subject to the provisions of this title, has capacity to sue and be sued. The trustee shall—

(i) administer the estate in compliance with this title, the oversight program, and the related transaction documents;

(ii) be accountable for all property of the estate that is received by the trustee;

(iii) make a final report and file a final account of the administration of the estate with the applicable covered bond regulator; and

(iv) after the estate has been fully administered, close the estate.

(E) POWERS AND DUTIES OF SERVICER OR ADMINISTRATOR.—Any servicer or administrator for an estate—

(i) shall—

(I) collect, realize on (by liquidation or other means), and otherwise manage the cover pool held by the estate in compliance with this title, the oversight program, and the related transaction documents and in a manner consistent with maximizing the value and the proceeds of the cover pool;

(II) deposit or invest all proceeds and funds received in compliance with this title, the oversight program, and the related transaction documents and in a manner consistent with maximizing the net return to the estate, taking into account the safety of the deposit or investment; and

(III) apply, or direct the trustee for the estate to apply, all proceeds and funds received and the net return on any deposit or investment to make distributions in compliance with paragraphs (3) and (4);

(ii) may borrow funds or otherwise obtain credit, for the benefit of the estate, in compliance with paragraph (2) on a secured or unsecured basis and on a priority, pari passu, or subordinated basis;

(iii) shall, at the times and in the manner required by the applicable covered bond regulator, submit to the covered bond regulator, the Secretary, the applicable indenture trustee, the applicable covered bondholders, the owner of the residual interest, and any other person designated by the covered bond regulator, reports that describe the activities of the servicer or administrator on behalf of the estate, the performance of the cover pool held by the estate, and distributions made by the estate; and

(iv) shall assist the trustee in preparing the final report and the final account of the administration of the estate.

(F) SUPERVISION OF TRUSTEE, SERVICER, AND ADMINISTRATOR.—The applicable covered bond regulator shall supervise the trustee and any servicer or administrator for an estate. The covered bond regulator shall require that all reports submitted under subparagraph (E)(iii) do not contain any untrue statement of a material fact and do not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(G) REMOVAL AND REPLACEMENT OF TRUSTEE, SERVICER, AND ADMINISTRATOR.—If the covered bond regulator determines that it is in the best interests of an estate, the covered bond regulator may remove or replace the trustee or any servicer or administrator for the estate. The removal of the trustee or any servicer or administrator does not abate any pending action or proceeding involving the estate, and any successor or other trustee, servicer, or administrator shall be substituted as a party in the action or proceeding.

(H) PROFESSIONALS.—The trustee or any servicer or administrator for an estate may employ 1 or more attorneys, accountants, appraisers, auctioneers, or other professional persons to represent or assist the trustee or the servicer or administrator in carrying out its duties. The employment of any professional person and all terms and conditions of employment, including the terms and conditions relating to compensation, shall conform to the requirements of this title and the oversight program and otherwise shall be subject to the approval of the applicable covered bond regulator.

(I) APPROVED FEES AND EXPENSES.—Unless otherwise provided in the applicable terms and conditions of appointment or employment, all approved fees and expenses of the trustee, any servicer or administrator, or any professional person employed by the trustee or any servicer or administrator shall be payable from the estate as administrative expenses.

(J) ACTIONS BY OR ON BEHALF OF ESTATE.—The trustee or any servicer or administrator for an estate may commence or continue judicial, administrative, or other actions, in the name of the estate or in its own name on behalf of the estate, for the purpose of collecting, realizing on, or otherwise managing the cover pool held by the estate or exercising its other powers or duties on behalf of the estate.

(K) ACTIONS AGAINST ESTATE.—No court may issue an attachment or execution on any property of an estate. Except at the request of the applicable covered bond regulator or as otherwise provided in this subparagraph or subparagraph (J), no court may take any action to restrain or affect the resolution of an estate under this title. No person (including the applicable indenture trustee and any applicable covered bondholder) may commence or continue any judicial, administrative, or other action against the estate, the trustee, or any servicer or administrator or take any other act to affect the estate, the trustee, or any servicer or administrator that is not expressly permitted by this title, the oversight program, and the related transaction documents, except for a judicial or administrative action to compel the release of funds that—

(i) are available to the estate;

(ii) are permitted to be distributed under this title and the oversight program; and

(iii) are permitted and required to be distributed under the related transaction documents and any contracts executed by or on behalf of the estate.

(L) SOVEREIGN IMMUNITY.—Except in connection with a guarantee provided under paragraph (4) or any other contract executed by the applicable covered bond regulator under this section 804, the Secretary and the covered bond regulator shall be entitled to sovereign immunity in carrying out the provisions of this title.

(2) BORROWINGS AND CREDIT.—

(A) IN GENERAL.—Any servicer or administrator for an estate created under subsection (b)(1) or (c)(2) may borrow funds or otherwise obtain credit, on behalf of and for the benefit of the estate, from any person in compliance with this paragraph (2) solely for the purpose of providing liquidity in the case of timing mismatches among the assets and the liabilities of the estate. Except with respect to an underwriter, section 5 of the Securities Act of 1933, the Trust Indenture Act of 1939, and any State or local law requiring registration for an offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in a security does not apply to the offer or sale under this paragraph (2) of a security that is not an equity security.

(B) CONDITIONS.—A servicer or administrator may borrow funds or otherwise obtain credit under subparagraph (A)—

(i) on terms affording the lender only claims or liens that are fully subordinated to the claims and interests of the applicable indenture trustee and the applicable covered bondholders and all other claims against and interests in the estate, except for the residual interest, if the servicer or administrator certifies to the applicable covered bond regulator that, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; or

(ii) on terms affording the lender claims or liens that have priority over or are pari passu with the claims or interests of the applicable indenture trustee or the applicable covered bondholders or other claims against or interests in the estate, if—

(I) the servicer or administrator certifies to the applicable covered bond regulator that, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; and

(II) the applicable covered bond regulator authorizes the borrowing or credit.

(C) LIMITED LIABILITY.—A servicer or administrator shall not be liable for any error in business judgment when borrowing funds or otherwise obtaining credit under this paragraph (2) unless the servicer or administrator acted in bad faith or in willful disregard of its duties.

(D) STUDY ON BORROWINGS AND CREDIT.—The Comptroller General of the United States shall conduct a study on whether the Federal reserve banks should be authorized to lend funds or otherwise extend credit to an estate under this paragraph (2) and, if so, what conditions and limits should be established to mitigate any risk that the United States Government could absorb credit losses on the cover pool held by the estate. The Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study not later than 6 months after the date of enactment of this Act.

(3) DISTRIBUTIONS BY ESTATE.—All payments or other distributions by an estate shall be made at the times, in the amounts, and in the manner set forth in the covered bonds, the related transaction documents, and any contracts executed by or on behalf of the estate in compliance with this title and the oversight program. To the extent that the relative priority of the liabilities of the estate are not specified in or otherwise ascertainable from their terms, distributions shall be made on each distribution date under the covered bonds, the related transaction documents, or any contracts executed by or on behalf of the estate—

(A) first, to pay accrued and unpaid superpriority claims under paragraph (2)(B)(ii);

(B) second, to pay accrued and unpaid administrative expense claims under paragraph (1)(I), paragraph (2)(B)(ii), section 804(b)(5)(A), or section 804(c)(6)(A);

(C) third, to pay—

(i) accrued and unpaid claims under the covered bonds and the related transaction documents according to their terms; and

(ii) accrued and unpaid pari passu claims under paragraph (2)(B)(ii); and

(D) fourth, to pay accrued and unpaid subordinated claims under paragraph (2)(B)(i).

(4) DISTRIBUTIONS ON RESIDUAL INTEREST.—After all other claims against and interests in an estate have been fully and irrevocably paid or defeased, the trustee shall or shall cause a servicer or administrator to distribute the remainder of the estate to or at the direction of the owner of the residual interest. No interim distribution on the residual interest may be made before that time, unless the applicable covered bond regulator—

(A) approves the distribution after determining that all other claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms; and

(B) provides an indemnity, for the benefit of the estate, assuring that all other claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms.

(5) CLOSING OF ESTATE.—After an estate has been fully administered, the trustee shall close the estate and, except as otherwise directed by the applicable covered bond regulator, shall destroy all records of the estate.

(6) NO LOSS TO TAXPAYERS.—Taxpayers shall bear no losses from the resolution of an estate under this title. To the extent that the Secretary and the Corporation jointly determine that the Deposit Insurance Fund incurred actual losses that are higher because the covered bond program of an insured depository institution was subject to resolution under this title rather than as part of the receivership of the institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Corporation may exercise the powers available under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) to recover an amount equal to those losses after consulting with the Secretary.

SEC. 805. SECURITIES LAW PROVISIONS.

(a) SECURITIES LAWS TREATMENT OF COVERED BONDS.—

(1) TREATMENT OF CERTAIN BANKS AND OTHER ENTITIES.—

(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued or guaranteed by a bank under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)), section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)), and section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applicable.

(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o–9).

(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—

(i) issued or guaranteed by a bank; or

(ii) issued by an eligible issuer described in section 802(9)(F) and sponsored solely by 1 or more banks for the sole purpose of issuing covered bonds.

(D) REGULATIONS.—Each covered bond regulator for 1 or more banks shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of covered bonds described in subparagraph (C), which regulations shall—

(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and

(ii) be consistent with existing regulations governing offers or sales of nonconvertible debt.

(2) TREATMENT OF CERTAIN ASSOCIATIONS AND COOPERATIVE BANKS.—

(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued by an entity under section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)), section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)), and section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applicable.

(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o–9).

(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—

(i) issued by an entity described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)); or

(ii) issued by an eligible issuer described in section 802(9)(F) and sponsored solely by 1 or more such entities for the sole purpose of issuing covered bonds.

(D) REGULATIONS.—Each covered bond regulator for 1 or more entities described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of covered bonds described in subparagraph (C), which regulations shall—

(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and

(ii) shall be consistent with regulations governing offers or sales of nonconvertible debt.

(3) CONSTRUCTION.—No provision of this title, including paragraph (1) or (2), may be construed or applied in a manner that impairs or limits any other exemption that is available under applicable securities laws.

(b) EXEMPTIONS FOR ESTATES.—Any estate that is or may be created under section 804(b)(1) or 804(c)(2) shall be exempt from all State and Federal securities laws, except that such estate—

(1) shall be subject to all anti-fraud provisions of such securities laws;

(2) shall be subject to the reporting requirements established by the applicable covered bond regulator under section 804(d)(1)(E)(iii); and

(3) shall succeed to any requirement of the issuer to file such periodic information, documents, and reports in respect of the covered bonds, as specified in section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) or rules established by an appropriate Federal banking agency.

(c) EXEMPTIONS FOR RESIDUAL INTERESTS.—Any residual interest in an estate that is or may be created under section 804(b)(1) or 804(c)(2) shall be exempt from all State and Federal securities laws.

SEC. 806. AUTHORITY TO COLLECT FEES FROM FINANCIAL COMPANIES.

(a) IN GENERAL.—On the date immediately preceding the date that is 10 years after the date of enactment of this Act, if the Corporation previously has been appointed under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.) as receiver for a covered financial company with a covered bond program, and if the Secretary and the Corporation have jointly determined that the Orderly Liquidation Fund will incur actual losses

that are higher because of the covered bond program and that have not yet been recovered under subsection (n) or (o) of section 210 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390) or other applicable law, the Corporation may assess and collect from financial companies identified in section 210(o)(1)(D)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(o)(1)(D)(ii)) an amount equal to the cost estimate divided by 0.75.

(b) IMMEDIATE TRANSFER OF FUNDS REQUIRED.—The Corporation immediately transfer funds collected under subsection (a) to the Secretary for credit to the Orderly Liquidation Fund.

(c) REFUNDS.—If, within 180 days of the date of the imposition of fees under subsection (a), the Secretary determines that funds collected under subsection (a) are not needed for or used to repay actual losses incurred by the Orderly Liquidation Fund, as described in subsection (a), the Secretary shall refund the collected funds to the assessed financial companies.

SEC. 807. MISCELLANEOUS PROVISIONS.

(a) DOMESTIC SECURITIES.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(a)(1)) is amended—

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

(2) in subparagraph (D), by adding ''or'' at the end; and

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

''(E) covered bonds (as defined in section 802 of the United States Covered Bond Act),''.

(b) NO CONFLICT.—The provisions of this title shall apply, notwithstanding any provision of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), title 11, United States Code, title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), or any other provision of Federal law with respect to conservatorship, receivership, liquidation, or bankruptcy. No provision of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), title 11, United States Code, title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), or any other provision of Federal law with respect to conservatorship, receivership, liquidation, or bankruptcy may be construed or applied in a manner that defeats or interferes with the purpose or operation of this title.

(c) ANNUAL REPORT TO CONGRESS.—The covered bond regulators shall, annually—

(1) submit a joint report to the Congress describing the current state of the covered bond market in the United States; and

(2) testify on the current state of the covered bond market in the United States before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SA 1833. Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Invigorate New Ventures and Entrepreneurs to Succeed Today in America Act of 2012'' or the ''INVEST in America Act of 2012''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL COMPANY CAPITAL FORMATION

Sec. 101. Short title.
Sec. 102. Authority to exempt certain securities.
Sec. 103. Study on the impact of State blue sky laws on regulation a offerings.
Sec. 104. Study and report on effects of exemption.

TITLE II—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

Sec. 201. Short title.
Sec. 202. Definitions.
Sec. 203. Disclosure obligations.
Sec. 204. Internal controls audit.
Sec. 205. Auditing standards.
Sec. 206. Availability of information about emerging growth companies.
Sec. 207. Opt-in right for emerging growth companies.
Sec. 208. Review of tick size on market liquidity.
Sec. 209. Other matters.

TITLE III—CROWDFUNDING

Sec. 301. Short title.
Sec. 302. Crowdfunding exemption.
Sec. 303. Exclusion of crowdfunding investors from shareholder cap.
Sec. 304. Funding portal regulation.
Sec. 305. Relationship with State law.
Sec. 306. Reports to Congress.

TITLE IV—EXPORT-IMPORT BANK REAUTHORIZATION

Sec. 401. Short title.
Sec. 402. Extension of authority.
Sec. 403. Foreign Credit Insurance Association.
Sec. 404. Technical correction.
Sec. 405. Sub-Saharan Africa Advisory Committee.
Sec. 406. Aggregate loan, guarantee, and insurance authority.
Sec. 407. Dual use exports.
Sec. 408. Modifications to provisions relating to textiles.
Sec. 409. Review and report on domestic content policy.
Sec. 410. Strategic plan.
Sec. 411. Review and report on Bank's information technology infrastructure.
Sec. 412. Study by the Comptroller General on risk management.
Sec. 413. Renewable energy and energy efficiency technologies.
Sec. 414. Transparency and accountability of bank financing.
Sec. 415. Annual competitiveness report.
Sec. 416. Prohibitions on financing for certain persons involved in sanctionable activities with respect to Iran.

TITLE V—SMALL BUSINESS INVESTMENT COMPANIES AND LOAN REFINANCING EXTENSION

Sec. 501. Maximum leverage under title III of the Small Business Investment Act of 1958.
Sec. 502. Low-interest refinancing under the Local Development Business Loan Program.

TITLE VI—PRIVATE COMPANY FLEXIBILITY AND GROWTH

Sec. 601. Short title.
Sec. 602. Threshold for registration.
Sec. 603. Treatment of employee securities.
Sec. 604. Commission rulemaking.
Sec. 605. Commission study of enforcement authority under Rule 12g5–1.

TITLE VII—ACCESS TO CAPITAL FOR JOB CREATORS

Sec. 701. Short title.
Sec. 702. Modification of exemption.

TITLE I—SMALL COMPANY CAPITAL FORMATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Small Company Capital Formation Act of 2012''.

SEC. 102. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

(a) IN GENERAL.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking ''(b) The Commission'' and inserting the following:

''(b) ADDITIONAL EXEMPTIONS.—

''(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commission''; and

(2) by adding at the end the following:

''(2) ADDITIONAL ISSUES.—The Commission shall, by rule or regulation, add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

''(A) The aggregate offering amount of all securities offered and sold by the issuer within the preceding 36-month period in reliance on such exemption, including the immediate offering, shall not exceed $50,000,000.

''(B) The securities may be offered and sold publicly.

''(C) The securities shall not be restricted securities, within the meaning of the Federal securities laws and the regulations promulgated thereunder.

''(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities.

''(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

''(F) The Commission shall require the issuer to file audited financial statements with the Commission as part of the offering statement and annually thereafter.

''(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

''(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements and a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

''(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Investor Protection and Securities Reform Act of 2010 (15 U.S.C. 77d note).

''(3) LIMITATION.—Only equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities, may be exempted under a rule or regulation adopted pursuant to paragraph (2).

''(4) PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and

for the protection of investors, the Commission, by rule or regulation, shall require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.''.

(b) TREATMENT AS COVERED SECURITIES FOR PURPOSES OF NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

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

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

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

''(D) a rule or regulation adopted pursuant to section 3(b)(2), and such security is—

''(i) offered or sold on a national securities exchange; or

''(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale; or''.

(c) CONFORMING AMENDMENT.—Section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)) is amended by striking ''section 3(b)'' and inserting ''section 3(b)(1)''.

SEC. 103. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGULATION A OFFERINGS.

Not later than 3 months after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study on the impact of State laws regulating securities offerings (commonly referred to as ''Blue Sky laws'') on offerings made under Regulation A of the Securities and Exchange Commission (17 C.F.R. 230.251 et seq.); and

(2) transmit a report on the findings of the study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 104. STUDY AND REPORT ON EFFECTS OF EXEMPTION.

The Commission, in consultation with State securities administrators with respect to issues over which they have jurisdiction, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committees on Commerce and Financial Services of the House of Representatives 5 years after the date of enactment of this Act on—

(1) the nature, timing, and extent of offerings and issuances in reliance on the exemption under paragraph (2) of section 3(b) of the Securities Act of 1933, as added by this title, during each year of that 5-year period;

(2) an assessment of the risks posed and protections available to investors related to offerings or issuances under such exemption;

(3) the incidence of errors, omissions, misstatements, or fraud associated with offerings in reliance on such exemption;

(4) the impact of such exemption on capital formation for small businesses;

(5) any adjustments to such exemption necessary to protect investors and promote capital formation;

(6) an analysis of the effectiveness and limitations of the civil liability provisions under the Federal securities laws applicable to offerings and issuances in reliance on such exemption, and to any reports or other filings required to be filed by the issuers of such securities with the Commission; and

(7) such other factors as the Commission determines appropriate for inclusion.

TITLE II—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Reopening American Capital Markets to Emerging Growth Companies Act of 2012''.

SEC. 202. DEFINITIONS.

(a) SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

''(19) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under this title shall continue to be deemed an emerging growth company until the earliest of—

''(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

''(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title occurs;

''(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

''(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.''.

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

(1) by redesignating the second paragraph designated as paragraph (77) (relating to asset-backed securities) as paragraph (79); and

(2) by adding at the end the following:

''(80) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under the Securities Act of 1933 shall continue to be deemed an emerging growth company until the earliest of—

''(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

''(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 occurs;

''(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

''(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.''.

(c) OTHER DEFINITIONS.—As used in this title, the following definitions shall apply:

(1) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(2) INITIAL PUBLIC OFFERING DATE.—The term ''initial public offering date'' means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.

(d) EFFECTIVE DATE.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, as added by this section, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before the date of enactment of this Act.

SEC. 203. DISCLOSURE OBLIGATIONS.

(a) FINANCIAL DISCLOSURES.—

(1) SECURITIES ACT OF 1933.—Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)) is amended by adding at the end the following: ''An emerging growth company need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in a registration statement for an initial public offering and in registration statements to be filed with the Commission following an issuer's initial public offering, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any period prior to the earliest audited period presented in connection with its initial public offering.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended by adding at the end the following: ''In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this title or the Securities Act of 1933 (15 U.S.C. 77a et seq.).''.

(b) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations (or any successor thereto), by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to subsection (b). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000.

SEC. 204. INTERNAL CONTROLS AUDIT.

Section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) is amended by inserting '', other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934),'' before ''shall attest to''.

SEC. 205. AUDITING STANDARDS.

Section 103(a)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)(3)) is amended by adding at the end the following:

''(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board requiring mandatory audit firm rotation shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any such additional rules requiring mandatory audit firm rotation that are adopted by the Board after the date of enactment of this

subparagraph shall not apply to an audit of any emerging growth company if the Commission determines that the application of such additional requirements to emerging growth companies is not necessary or appropriate in the public interest.''.

SEC. 206. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES.

(a) PROVISION OF RESEARCH.—Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended by adding at the end the following: ''The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of section 5(c) and paragraph (10) of this subsection not to constitute an offer for sale or offer to sell a security, provided that any research report published or distributed by a broker or dealer that is participating or will participate in the registered offering that is published or distributed in reliance on such exemption complies with such restrictions, disclosure, and filing requirements as the Commission shall determine, including that such research report does not contain any recommendations to purchase or sell such securities. As used in this paragraph, the term 'research report' means a written or electronic communication that includes an analysis of an equity security or an issuer.''

(b) EXPANDING PERMISSIBLE COMMUNICATIONS.—Section 5 of the Securities Exchange Act of 1933 (15 U.S.C. 77e) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) LIMITATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers, as such term is defined in section 230.144A of title 17, Code of Federal Regulations (or any successor thereto), to determine whether such investors might have an interest in a contemplated securities offering, prior to the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

''(2) WRITTEN COMMUNICATIONS.—All written communications (as such term is defined in section 203.405 of title 17, Code of Federal Regulations (or any successor thereto)) provided to potential investors in accordance with this subsection shall be—

''(A) filed by the issuer promptly with the Commission by the later of the date of the filing of the registration statement or the date on which the written communication is first used; and

''(B) deemed to be a prospectus for purposes of section 12(a)(2) (15 U.S.C. 77l(a)(2)).''.

SEC. 207. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

(b) SPECIAL RULE.—If an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

(1) shall—

(A) make such choice at the time at which the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934; and

(B) notify the Securities and Exchange Commission of such choice;

(2) may not select some standards to comply with in such manner and not others, but shall comply with all such standards, to the same extent that a non-emerging growth company is required to comply with such standards; and

(3) shall continue to comply with such standards, to the same extent that a non-emerging growth company is required to comply with such standards, for as long as the company remains an emerging growth company.

SEC. 208. REVIEW OF TICK SIZE ON MARKET LIQUIDITY.

Section 11A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)) is amended by adding at the end the following new paragraph:

''(6) TICK SIZE.—

''(A) STUDY AND REPORT.—

''(i) STUDY.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as 'decimalization', which shall examine—

''(I) the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation;

''(II) the impact that such change has had on liquidity for small and middle capitalization company securities; and

''(III) whether there is sufficient economic incentive to support trading operations in these securities in penny increments.

''(ii) REPORT.—Not later than 270 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study required by clause (i).

''(B) DESIGNATION.—If the Commission determines after the study under subparagraph (A) that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after the date of submission of the report under subparagraph (A)(ii), designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.''.

SEC. 209. OTHER MATTERS.

(a) CONFIDENTIAL SUBMISSION.—Section 6 of the Securities Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

''(e) EMERGING GROWTH COMPANIES.—

''(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 30 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations (or any successor thereto).

''(2) CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.

''(3) FEES.—The Commission may assess such fees and charges for the submission of a draft registration statement by an emerging growth company pursuant to this section as the Commission determines to be reasonable. Notwithstanding any other provision of law, such fees and charges shall be available for use by the Commission for the purpose of administering the provisions of this subsection.''.

(b) STUDY AND REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of, and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on, the implementation of the provisions of this title, as well as on the state of the public markets for initial public offerings, that includes an evaluation of—

(1) the effect of the framework established under this title on facilitating initial public offerings and, if appropriate, ways to improve such framework; and

(2) the adequacy of safeguards and protections for investors in emerging growth companies and, if appropriate, ways to improve such safeguards and protections.

TITLE III—CROWDFUNDING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012'' or the ''CROWDFUND Act''.

SEC. 302. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:

''(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

''(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

''(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

''(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

''(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

''(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

''(D) the issuer complies with the requirements of section 4A(b).''.

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 4 the following:

"SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

''(a) REQUIREMENTS ON INTERMEDIARIES.—A person engaged in the business of effecting transactions in securities for the account of others pursuant to section 4(6) shall—

''(1) register with the Commission as—

''(A) a broker; or

''(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

''(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);

''(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

''(4) ensure that each investor—

''(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

''(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

''(C) answers questions demonstrating—

''(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

''(ii) an understanding of the risk of illiquidity; and

''(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

''(5) take such measures to reduce the risk of fraud, money laundering, or other misconduct with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

''(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

''(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

''(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

''(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

''(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

''(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

''(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

''(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6), an issuer who offers or sells securities shall—

''(1) be organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

''(2) not be—

''(A) subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78p(d)); or

''(B) treated as—

''(i) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

''(ii) an issuer excluded from the Investment Company Act of 1940 (15 U.S.C. 80a et seq.); or

''(iii) such other company as the Commission, by rule or regulation, determines appropriate;

''(3) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

''(A) the name, legal status, physical address, and website address of the issuer;

''(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

''(C) a description of the business of the issuer and the anticipated business plan of the issuer;

''(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

''(i) $100,000 or less—

''(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

''(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

''(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

''(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

''(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

''(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

''(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

''(H) a description of the ownership and capital structure of the issuer, including—

''(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

''(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

''(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

''(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

''(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

''(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

''(4) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

''(5) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

''(6) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

''(7) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

''(c) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—

''(1) ACTIONS AUTHORIZED.—

''(A) IN GENERAL.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

''(B) LIABILITY.—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

''(2) APPLICABILITY.—An issuer shall be liable in an action under paragraph (1), if the issuer—

''(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

''(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

''(3) DEFINITION.—As used in this subsection, the term 'issuer' includes any person who is a director or partner of the issuer, and

the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

''(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

''(e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—

''(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

''(A) to the issuer of the securities;

''(B) to an accredited investor;

''(C) as part of an offering registered with the Commission; or

''(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

''(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

''(f) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

''(g) CERTAIN CALCULATIONS.—

''(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsections (a)(9) and (b)(2) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

''(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B)(ii) and subsection (a)(9) of this section shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.''.

(c) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the ''Commission'') shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this Act; and

(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

''(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.''.

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

SEC. 304. FUNDING PORTAL REGULATION.

(a) EXEMPTION.—

(1) IN GENERAL.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

''(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

''(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

''(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

''(B) is a member of a national securities association registered under section 15A; and

''(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

''(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term 'broker or dealer' includes a funding portal and the term 'registered broker or dealer' includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.''.

(2) RULEMAKING.—The Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this subsection, not later than 270 days after the date of enactment of this Act.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as amended by title II of this Act, is amended by adding at the end the following:

''(81) FUNDING PORTAL.—The term 'funding portal' means any person engaged in the business of effecting transactions in securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

''(A) offer investment advice or recommendations;

''(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

''(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

''(D) hold, manage, possess, or otherwise handle investor funds or securities; or

''(E) engage in such other activities as the Commission, by rule, determines appropriate.''.

SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

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

''(C) section 4(6);''.

(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) of that Act.

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking ''with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.'' and inserting the following: '', in connection with securities or securities transactions

''(A) with respect to—

''(i) fraud or deceit; or

''(ii) unlawful conduct by a broker or dealer; and

''(B) in connection to a transaction described under section 4(6), with respect to—

''(i) fraud or deceit; or

''(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.''.

(c) NOTICE FILINGS PERMITTED.—Section 18(c)(2) of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is amended by adding at the end the following:

''(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50

percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term 'State' includes the District of Columbia and the territories of the United States.''.

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following:

''(2) FUNDING PORTALS.—

''(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

''(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

''(C) DEFINITION.—For purposes of this paragraph, the term 'State' includes the District of Columbia and the territories of the United States.''.

(2) STATE FRAUD AUTHORITY.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking ''or dealer'' and inserting '', dealer, or funding portal''.

SEC. 306. REPORTS TO CONGRESS.

(a) IN GENERAL.—The Commission, after consultation with the securities commission (or any agency or office performing like functions) of the States and State attorneys general, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 1 year after the date on which the Commission issues final rules under section 2(c), and every 2 years thereafter through the date that is 7 years after that date of issuance.

(b) REPORTS.—Each report provided pursuant to subsection (a) shall include—

(1) a description of the material risks posed to investors in securities issued pursuant to section 4(6) of the Securities Act of 1933, as added by this title, including risks related to valuations, subsequent corporate actions by the issuer, dilution of ownership interests or rights, and any other risks to investors that the Commission shall determine;

(2) a description of the performance of investments made in securities issued pursuant to that section 4(6), to the extent that such information is available to the Commission;

(3) a description of fraud or misconduct allegations related to issuances made pursuant to that section 4(6), including a description of actions by and complaints to the Commission involving material misstatements, material omissions, or other material problems associated with offerings in reliance on such exemption, provided that the description shall be limited to concluded enforcement actions or information that is otherwise publicly available;

(4) the approximate number of offerings made pursuant to that section 4(6);

(5) a summary of information relating to purchasers of securities offered pursuant to that section 4(6), including investor income and net worth levels, the number of investments in such offerings made by such investors, and the average sizes of such investments, to the extent that such information is available to the Commission;

(6) a summary of information relating to issuers of securities relying on that section 4(6), including their asset sizes, revenues, numbers of investors, and the amounts raised, to the extent that such information is available to the Commission;

(7) a description of any emerging trends in offerings or issuances made pursuant to that section 4(6);

(8) recommendations regarding enhancements, including additional issuer, broker, dealer, or funding portal requirements, regulatory oversight, or disclosures, that may improve protections for investors purchasing securities issued pursuant to that section 4(6); and

(9) any other information that the Commission deems necessary or appropriate.

(c) STATE REPORTS.—

(1) IN GENERAL.—If the securities commission (or any agency or office performing like functions) of a State or State attorney general issues a report in writing to the Commission identifying any emerging trends that have undermined investor protections, or other risks pertaining to investor protection, in offerings or issuances relying upon section 4(6) of the Securities Act of 1933, as added by this title, other than in connection with a review conducted by the Commission pursuant to this section, the Commission shall—

(A) conduct a preliminary review of such report; and

(B) respond in writing to such report, not later than 120 days after the date of receipt of such report, with the results of its preliminary review.

(2) COPIES OF REPORT.—The Commission shall provide a copy of any report of the securities commission (or any agency or office performing like functions) of a State or State attorney general described in paragraph (1) and the response of the Commission to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 90 days after the date on which such response is provided.

(d) DEFINITION OF STATE.—For purposes of this section, the term ''State'' includes and territory of the United States and the District of Columbia.

TITLE IV—EXPORT-IMPORT BANK REAUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Export-Import Bank Reauthorization Act of 2012''.

SEC. 402. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2011'' and inserting ''2015''.

SEC. 403. FOREIGN CREDIT INSURANCE ASSOCIATION.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (F).

SEC. 404. TECHNICAL CORRECTION.

Section 2(b)(2)(B)(ii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by striking subclauses (I), (IV), and (VII) and by redesignating subclauses (II), (III), (V), (VI), (VIII), and (IX) as subclauses (I), (II), (III), (IV), (V), and (VI), respectively.

SEC. 405. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking ''2011'' and inserting ''2015''.

SEC. 406. AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking ''2011,'' at the end of subparagraph (E) and inserting ''2011, $100,000,000,000;''; and

(3) by adding at the end the following:

''(F) during fiscal year 2012, $110,000,000,000;

''(G) during fiscal year 2013, $120,000,000,000;

''(H) during fiscal year 2014, $130,000,000,000; and

''(I) during fiscal year 2015, $140,000,000,000.''.

SEC. 407. DUAL USE EXPORTS.

Section 4 of Public Law 109–438 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking ''2011'' and inserting ''2015''.

SEC. 408. MODIFICATIONS TO PROVISIONS RELATING TO TEXTILES.

(a) REPRESENTATION OF THE TEXTILE INDUSTRY ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(B)) is amended by striking ''and State government'' and inserting ''State government, and the textile industry''.

(b) ANNUAL REPORT REGARDING TEXTILE AND APPAREL GOODS.—Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end the following new subsection:

''(g) TEXTILE AND APPAREL SUPPLY CHAIN FINANCING.—The Bank shall include in its annual report to the Congress—

''(1) a description of the efforts of the Bank to provide financing to the United States textile and apparel industry for exports of textile and apparel goods manufactured in the United States that are used as components in global textile and apparel supply chains; and

''(2) the amount of support the Bank provided for the export of textiles and apparel goods for each of the 3 years preceding the report.''.

SEC. 409. REVIEW AND REPORT ON DOMESTIC CONTENT POLICY.

(a) IN GENERAL.—The Export-Import Bank of the United States shall conduct a review of its domestic content policy for medium- and long-term transactions. The review shall examine and evaluate the effectiveness of the Bank's policy—

(1) in maintaining and creating jobs in the United States; and

(2) in contributing to a stronger national economy through the export of goods and services.

(b) FACTORS TO CONSIDER.—In conducting the review under subsection (a), the Bank shall consider the following:

(1) Whether the domestic content policy accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning, engineering, design, development, production, return on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States.

(2) The ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies and the impact that such financing has in enabling companies with operations in the United States to contribute to a stronger United States economy by increasing employment through the export of goods and services.

(3) The effects of the domestic content policy on the manufacturing and service workforce of the United States.

(4) Any recommendations the members of the Bank's Advisory Committee have regarding the Bank's domestic content policy.

(5) The effect that changes to the Bank's domestic content requirements would have

in providing companies an incentive to create and maintain operations in the United States and to increase jobs in the United States.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Bank shall submit a report on the results of the review conducted under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

SEC. 410. STRATEGIC PLAN.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 408, is further amended by adding at the end the following new subsection:

''(h) STRATEGIC PLAN FOR THE BANK.—

''(1) IN GENERAL.—The Bank shall include in its annual report to the Congress under subsection (a) of this section, not less than every 4 years, beginning in 2012, a 5-year strategic plan that provides—

''(A) a comprehensive mission statement covering the major functions and operations of the Bank;

''(B) general goals and objectives, including outcome-oriented goals, for the major functions of the Bank;

''(C) a description of the Bank's highest-priority goals and how they can be achieved within the 5-year plan period, according to clearly defined milestones; and

''(D) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations;

''(2) PROGRESS.—The progress the Bank is making in meeting the milestones established by the strategic plan shall be updated in each annual report the Bank submits to the Congress.

''(3) AVAILABILITY OF ANNUAL REPORT.—The Bank shall make its annual report available on its public website.''.

SEC. 411. REVIEW AND REPORT ON BANK'S INFORMATION TECHNOLOGY INFRASTRUCTURE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall conduct a review of the Bank's information technology infrastructure and report to Congress on—

(1) how the Bank will modernize and continue to maintain the technology infrastructure, taking into consideration commercially available technologies or other cost-savings measures; and

(2) how modernization, maintenance, and other cost-saving measures will result—

(A) in improved service delivery to customers of the Bank;

(B) in generally improving the Bank's performance; and

(C) in mitigating taxpayer exposure to losses.

SEC. 412. STUDY BY THE COMPTROLLER GENERAL ON RISK MANAGEMENT.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report—

(1) on the financial position of the Bank and the risks it poses for American taxpayers; and

(2) that contains recommendations to the Bank on how to properly account for risk and ensure the solvency of the Bank.

(b) REPORT.—The report submitted under subsection (a) shall evaluate—

(1) the effectiveness of the Bank's risk management;

(2) the adequacy of the Bank's loan loss reserves;

(3) the exposure and potential for exposure to losses from each of the products offered by the Bank;

(4) the overall risk of the Bank's portfolio, taking into account—

(A) market risk;

(B) credit risk;

(C) political risk;

(D) industry-concentration risk;

(E) geographic-concentration risk;

(F) obligor-concentration risk; and

(G) foreign-currency risk;

(5) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (4);

(6) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (4), and how the fees are affected by United States participation in international agreements; and

(7) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (4).

(c) RECOMMENDATIONS AND REPORT BY THE BANK.—If the Bank does not adopt the recommendations provided under subsection (a) by the Comptroller General, the Bank shall submit to Congress, not later than 60 days after the Bank receives the report, a report on why the Bank has not adopted the recommendations.

SEC. 413. RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES.

(a) IN GENERAL.—The Export-Import Bank of the United States should work to increase the export of renewable energy technologies and end-use energy efficiency technologies with a goal of significantly expanding, year-after-year, the Bank's annual aggregate loan, guarantee, and insurance authorizations supporting those technologies.

(b) INCREASED REPORTING REQUIREMENTS.—The Export-Import Bank of the United States shall include in its annual report to the Congress an analysis of any barriers to realizing the Bank's congressional directive to increase the Bank's financing for renewable energy technology and end-use energy efficiency technology and any tools the Bank needs to assist the Bank in overcoming those barriers. The analysis shall include barriers such as—

(1) inadequate staffing;

(2) inadequate financial products;

(3) lack of capital authority; and

(4) limitations imposed by domestic markets.

SEC. 414. TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(3A) TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.—

''(A) PREAPPROVAL NOTICE.—Not later than 14 days before any meeting of the Board of Directors for final approval of a transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under paragraph (3) with respect to the transaction, the Bank shall post a notice on the Bank's website that includes—

''(i) a description of the transaction proposed to be financed;

''(ii) the identities of the obligor, principal supplier, and guarantor involved in the transaction; and

''(iii) a description of any item with respect to which Bank financing is being sought.

''(B) MANNER OF DISCLOSURE.—Any information required to be disclosed under subparagraph (A) shall be disclosed in a manner that does not disclose any information that is confidential or proprietary business information, that would violate section 1905 of title 18, United States Code (commonly referred to as the 'Trade Secrets Act'), or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.

''(C) POST CONSIDERATION.—Not later than 30 days after the final approval of a transaction the value of which exceeds $100,000,000, the Bank shall post a notice on the Bank's website that includes the information required under subparagraph (A) in a manner that complies with subparagraph (B).''.

SEC. 415. ANNUAL COMPETITIVENESS REPORT.

Section 8A(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the end the following:

''(11) CASE PROCESSING.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's processing of transactions, timeliness in reviewing transactions and processing applications, adherence to financial standards, clarity and ease of use of applications, and general customer service during the application and approval process for each of the Bank's major programs.

''(12) OPERATIONS.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's documentation requirements, certifications, and processing of applications for medium- and long-term program transactions compared to the processing of applications by other export credit agencies.

''(13) PROCESS IMPROVEMENT.—A description of the recommendations made by the Bank's Advisory Committee and the advisory committee on Sub-Saharan Africa established under section 2(b)(9)(B) regarding improving the Bank's processing of transactions and customer service. The Bank shall make every reasonable effort to act on the recommendations of the advisory committees and shall include a separate section detailing the actions taken by the Bank to comply with the recommendations.''.

SEC. 416. PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES WITH RESPECT TO IRAN.

(a) PROHIBITION ON FINANCING FOR PERSONS THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVITIES.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, to a person in connection with the exportation of any good or service unless the person makes the certification described in paragraph (2).

(2) CERTIFICATION DESCRIBED.—The certification described in this paragraph is a certification by a person—

(A) that neither the person nor any other person owned or controlled by the person—

(i) engages in any activity described in section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) for which the person may be subject to sanctions under that Act;

(ii) exports sensitive technology, as defined in section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515), to Iran; or

(iii) engages in any activity prohibited by part 560 of title 31, Code of Federal Regulations (commonly known as the ''Iranian Transactions Regulations''), unless the activity is disclosed to the Office of Foreign Assets Control of the Department of the Treasury when the activity is discovered; or

(B) if the person or any other person owned or controlled by the person has engaged in an activity described in subparagraph (A), that—

(i) in the case of an activity described in subparagraph (A)(i)—

(I) the President has waived the imposition of sanctions with respect to the person that engaged in that activity pursuant to section 4(c), 6(b)(5), or 9(c) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(II)(aa) the President has invoked the special rule described in section 4(e)(3) of that Act with respect to the person that engaged in that activity; or

(bb)(AA) the person that engaged in that activity determines, based on its best knowledge and belief, that the person meets the criteria described in subparagraph (A) of such section 4(e)(3) and has provided to the President the assurances described in subparagraph (B) of that section; and

(BB) the Secretary of State has issued an advisory opinion to that person that the person meets such criteria and has provided to the President those assurances; or

(III) the President has determined that the criteria have been met for the exception provided for under section 5(a)(3)(C) of the Iran Sanctions Act of 1996 to apply with respect to the person that engaged in that activity; or

(ii) in the case of an activity described in subparagraph (A)(ii), the President has waived, pursuant to section 401(b)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(b)(1)), the application of the prohibition under section 106(a) of that Act (22 U.S.C. 8515(a)) with respect to that person.

(b) PROHIBITION ON FINANCINGS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, in connection with a financing in which a person that is a borrower or controlling sponsor, or a person that is owned or controlled by such borrower or controlling sponsor, is subject to sanctions under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(c) ADVISORY OPINIONS.—

(1) AUTHORITY.—The Secretary of State is authorized to issue advisory opinions described in subsection (a)(2)(B)(i)(II).

(2) NOTICE TO CONGRESS.—If the Secretary issues an advisory opinion pursuant to paragraph (1), the Secretary shall notify the appropriate congressional committees of the opinion not later than 30 days after issuing the opinion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES; PERSON.—The terms ''appropriate congressional committees'' and ''person'' have the meanings given those terms in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) CONTROLLING SPONSOR.—The term ''controlling sponsor'' means a person providing controlling direct private equity investment (excluding investments made through publicly held investment funds, publicly held securities, public offerings, or similar public market vehicles) in connection with a financing.

TITLE V—SMALL BUSINESS INVESTMENT COMPANIES AND LOAN REFINANCING EXTENSION

SEC. 501. MAXIMUM LEVERAGE UNDER TITLE III OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) AUTHORIZATION.—For fiscal year 2013, the Administrator of the Small Business Administration may make $4,000,000,000 in guarantees of debentures for programs under title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.).

(b) FAMILY OF FUNDS.—Section 303(b)(2)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)(B)) is amended by striking ''$225,000,000'' and inserting ''$350,000,000''

SEC. 502. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.

Section 1122(b) of the Small Business Jobs Act of 2010 (15 U.S.C. 696 note) is amended by striking ''2 years'' and inserting ''3 years''.

TITLE VI—PRIVATE COMPANY FLEXIBILITY AND GROWTH

SEC. 601. SHORT TITLE.

This title may be cited as the ''Private Company Flexibility and Growth Act''.

SEC. 602. THRESHOLD FOR REGISTRATION.

Section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)) is amended by striking ''shall—'' and all that follows through ''register such'' and inserting ''shall, not later than 120 days after the last day of any fiscal year of the issuer on which the issuer has total assets exceeding $10,000,000 and a class of equity securities (other than an exempted security) held of record by 750 persons, register such''.

SEC. 603. TREATMENT OF EMPLOYEE SECURITIES.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: ''For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of the term 'held of record' shall not include, subject to such limitations as the Commission shall determine, securities that are held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from or otherwise not subject to the registration requirements of section 5 of the Securities Act of 1933.''.

SEC. 604. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall, not later than one year after the date of enactment of this Act—

(1) revise its rules at section 240.12g5-1 of title 17, Code of Federal Regulations to implement the amendments made by sections 602 and 603;

(2) adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in a transaction that was exempt from the registration requirements of section 5 of the Securities Act of 1933; and

(3) revise the definition of the term ''held of record'' pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to include beneficial owners of such class of securities.

SEC. 605. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12G5–1.

The Securities and Exchange Commission shall examine its authority to enforce its rules in section 240.12g5-1 of title 17, Code of Federal Regulations, to determine if new enforcement tools are needed to enforce the anti-evasion provision contained in subsection (b)(3) of that rule, and shall, not later than 270 days after the date of enactment of this Act, transmit any recommendations to Congress.

TITLE VII—ACCESS TO CAPITAL FOR JOB CREATORS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Access to Capital for Job Creators Act''.

SEC. 702. MODIFICATION OF EXEMPTION.

(a) MODIFICATION OF RULES.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule or regulation, revise its rules—

(1) to permit the general solicitation of accredited investors, either by adopting a new exemption under the Securities Act of 1933 or by revising its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of that title 17 shall not apply to offers and sales of securities made pursuant to that section 230.506, provided that all purchasers of the securities are accredited investors;

(2) to require the offeror and issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as are determined by the Commission; and

(3) to include the terms and conditions relating to the forms of permissible solicitation and advertising.

(b) OTHER REQUIRED REVISIONS.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that—

(1) securities sold under such revised exemption may not be offered to persons other than qualified institutional buyers; and

(2) that securities are only sold to persons that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers.

(c) RULE OF CONSTRUCTION.—Offers and sales of securities under section 230.506 of title 17, Code of Federal Regulations, as revised by the rules and regulations required by this Act, shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

SA 1834. Mr. REID proposed an amendment to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following new section:

SEC. ___.

This Act shall become effective 7 days after enactment.

SA 1835. Mr. REID proposed an amendment to amendment SA 1834 proposed by Mr. REID to the amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE,

Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''7 days'' and insert ''6 days''.

SA 1836. Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following:

TITLE VIII—EXPORT-IMPORT BANK REAUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Export-Import Bank Reauthorization Act of 2012''.

SEC. 802. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2011'' and inserting ''2015''.

SEC. 803. FOREIGN CREDIT INSURANCE ASSOCIATION.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (F).

SEC. 804. TECHNICAL CORRECTION.

Section 2(b)(2)(B)(ii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by striking subclauses (I), (IV), and (VII) and by redesignating subclauses (II), (III), (V), (VI), (VIII), and (IX) as subclauses (I), (II), (III), (IV), (V), and (VI), respectively.

SEC. 805. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking ''2011'' and inserting ''2015''.

SEC. 806. AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking ''2011,'' at the end of subparagraph (E) and inserting ''2011, $100,000,000,000;''; and

(3) by adding at the end the following:

''(F) during fiscal year 2012, $110,000,000,000;

''(G) during fiscal year 2013, $120,000,000,000;

''(H) during fiscal year 2014, $130,000,000,000; and

''(I) during fiscal year 2015, $140,000,000,000.''.

SEC. 807. DUAL USE EXPORTS.

Section 4 of Public Law 109–438 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking ''2011'' and inserting ''2015''.

SEC. 808. MODIFICATIONS TO PROVISIONS RELATING TO TEXTILES.

(a) REPRESENTATION OF THE TEXTILE INDUSTRY ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(B)) is amended by striking ''and State government'' and inserting ''State government, and the textile industry''.

(b) ANNUAL REPORT REGARDING TEXTILE AND APPAREL GOODS.—Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end the following new subsection:

''(g) TEXTILE AND APPAREL SUPPLY CHAIN FINANCING.—The Bank shall include in its annual report to the Congress—

''(1) a description of the efforts of the Bank to provide financing to the United States textile and apparel industry for exports of textile and apparel goods manufactured in the United States that are used as components in global textile and apparel supply chains; and

''(2) the amount of support the Bank provided for the export of textiles and apparel goods for each of the 3 years preceding the report.''.

SEC. 809. REVIEW AND REPORT ON DOMESTIC CONTENT POLICY.

(a) IN GENERAL.—The Export-Import Bank of the United States shall conduct a review of its domestic content policy for medium- and long-term transactions. The review shall examine and evaluate the effectiveness of the Bank's policy—

(1) in maintaining and creating jobs in the United States; and

(2) in contributing to a stronger national economy through the export of goods and services.

(b) FACTORS TO CONSIDER.—In conducting the review under subsection (a), the Bank shall consider the following:

(1) Whether the domestic content policy accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning, engineering, design, development, production, return on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States.

(2) The ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies and the impact that such financing has in enabling companies with operations in the United States to contribute to a stronger United States economy by increasing employment through the export of goods and services.

(3) The effects of the domestic content policy on the manufacturing and service workforce of the United States.

(4) Any recommendations the members of the Bank's Advisory Committee have regarding the Bank's domestic content policy.

(5) The effect that changes to the Bank's domestic content requirements would have in providing companies an incentive to create and maintain operations in the United States and to increase jobs in the United States.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Bank shall submit a report on the results of the review conducted under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

SEC. 810. STRATEGIC PLAN.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 808, is further amended by adding at the end the following new subsection:

''(h) STRATEGIC PLAN FOR THE BANK.—

''(1) IN GENERAL.—The Bank shall include in its annual report to the Congress under subsection (a) of this section, not less than every 4 years, beginning in 2012, a 5-year strategic plan that provides—

''(A) a comprehensive mission statement covering the major functions and operations of the Bank;

''(B) general goals and objectives, including outcome-oriented goals, for the major functions of the Bank;

''(C) a description of the Bank's highest-priority goals and how they can be achieved within the 5-year plan period, according to clearly defined milestones; and

''(D) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations;

''(2) PROGRESS.—The progress the Bank is making in meeting the milestones established by the strategic plan shall be updated in each annual report the Bank submits to the Congress.

''(3) AVAILABILITY OF ANNUAL REPORT.—The Bank shall make its annual report available on its public website.''.

SEC. 811. REVIEW AND REPORT ON BANK'S INFORMATION TECHNOLOGY INFRASTRUCTURE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall conduct a review of the Bank's information technology infrastructure and report to Congress on—

(1) how the Bank will modernize and continue to maintain the technology infrastructure, taking into consideration commercially available technologies or other cost-savings measures; and

(2) how modernization, maintenance, and other cost-saving measures will result—

(A) in improved service delivery to customers of the Bank;

(B) in generally improving the Bank's performance; and

(C) in mitigating taxpayer exposure to losses.

SEC. 812. STUDY BY THE COMPTROLLER GENERAL ON RISK MANAGEMENT.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report—

(1) on the financial position of the Bank and the risks it poses for American taxpayers; and

(2) that contains recommendations to the Bank on how to properly account for risk and ensure the solvency of the Bank.

(b) REPORT.—The report submitted under subsection (a) shall evaluate—

(1) the effectiveness of the Bank's risk management;

(2) the adequacy of the Bank's loan loss reserves;

(3) the exposure and potential for exposure to losses from each of the products offered by the Bank;

(4) the overall risk of the Bank's portfolio, taking into account—

(A) market risk;

(B) credit risk;

(C) political risk;

(D) industry-concentration risk;

(E) geographic-concentration risk;

(F) obligor-concentration risk; and

(G) foreign-currency risk;

(5) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (4);

(6) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (4), and how the fees are affected by United States participation in international agreements; and

(7) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (4).

(c) RECOMMENDATIONS AND REPORT BY THE BANK.—If the Bank does not adopt the recommendations provided under subsection (a) by the Comptroller General, the Bank shall submit to Congress, not later than 60 days after the Bank receives the report, a report on why the Bank has not adopted the recommendations.

SEC. 813. RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES.

(a) IN GENERAL.—The Export-Import Bank of the United States should work to increase the export of renewable energy technologies and end-use energy efficiency technologies with a goal of significantly expanding, year-after-year, the Bank's annual aggregate loan, guarantee, and insurance authorizations supporting those technologies.

(b) INCREASED REPORTING REQUIREMENTS.—The Export-Import Bank of the United States shall include in its annual report to the Congress an analysis of any barriers to realizing the Bank's congressional directive to increase the Bank's financing for renewable energy technology and end-use energy efficiency technology and any tools the Bank needs to assist the Bank in overcoming those barriers. The analysis shall include barriers such as—

(1) inadequate staffing;

(2) inadequate financial products;

(3) lack of capital authority; and

(4) limitations imposed by domestic markets.

SEC. 814. TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(3A) TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.—

''(A) PREAPPROVAL NOTICE.—Not later than 14 days before any meeting of the Board of Directors for final approval of a transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under paragraph (3) with respect to the transaction, the Bank shall post a notice on the Bank's website that includes—

''(i) a description of the transaction proposed to be financed;

''(ii) the identities of the obligor, principal supplier, and guarantor involved in the transaction; and

''(iii) a description of any item with respect to which Bank financing is being sought.

''(B) MANNER OF DISCLOSURE.—Any information required to be disclosed under subparagraph (A) shall be disclosed in a manner that does not disclose any information that is confidential or proprietary business information, that would violate section 1905 of title 18, United States Code (commonly referred to as the 'Trade Secrets Act'), or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.

''(C) POST CONSIDERATION.—Not later than 30 days after the final approval of a transaction the value of which exceeds $100,000,000, the Bank shall post a notice on the Bank's website that includes the information required under subparagraph (A) in a manner that complies with subparagraph (B).''.

SEC. 815. ANNUAL COMPETITIVENESS REPORT.

Section 8A(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the end the following:

''(11) CASE PROCESSING.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's processing of transactions, timeliness in reviewing transactions and processing applications, adherence to financial standards, clarity and ease of use of applications, and general customer service during the application and approval process for each of the Bank's major programs.

''(12) OPERATIONS.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's documentation requirements, certifications, and processing of applications for medium- and long-term program transactions compared to the processing of applications by other export credit agencies.

''(13) PROCESS IMPROVEMENT.—A description of the recommendations made by the Bank's Advisory Committee and the advisory committee on Sub-Saharan Africa established under section 2(b)(9)(B) regarding improving the Bank's processing of transactions and customer service. The Bank shall make every reasonable effort to act on the recommendations of the advisory committees and shall include a separate section detailing the actions taken by the Bank to comply with the recommendations.''.

SEC. 816. PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES WITH RESPECT TO IRAN.

(a) PROHIBITION ON FINANCING FOR PERSONS THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVITIES.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, to a person in connection with the exportation of any good or service unless the person makes the certification described in paragraph (2).

(2) CERTIFICATION DESCRIBED.—The certification described in this paragraph is a certification by a person—

(A) that neither the person nor any other person owned or controlled by the person—

(i) engages in any activity described in section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) for which the person may be subject to sanctions under that Act;

(ii) exports sensitive technology, as defined in section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515), to Iran; or

(iii) engages in any activity prohibited by part 560 of title 31, Code of Federal Regulations (commonly known as the ''Iranian Transactions Regulations''), unless the activity is disclosed to the Office of Foreign Assets Control of the Department of the Treasury when the activity is discovered; or

(B) if the person or any other person owned or controlled by the person has engaged in an activity described in subparagraph (A), that—

(i) in the case of an activity described in subparagraph (A)(i)—

(I) the President has waived the imposition of sanctions with respect to the person that engaged in that activity pursuant to section 4(c), 6(b)(5), or 9(c) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(II)(aa) the President has invoked the special rule described in section 4(e)(3) of that Act with respect to the person that engaged in that activity; or

(bb)(AA) the person that engaged in that activity determines, based on its best knowledge and belief, that the person meets the criteria described in subparagraph (A) of such section 4(e)(3) and has provided to the President the assurances described in subparagraph (B) of that section; and

(BB) the Secretary of State has issued an advisory opinion to that person that the person meets such criteria and has provided to the President those assurances; or

(III) the President has determined that the criteria have been met for the exception provided for under section 5(a)(3)(C) of the Iran Sanctions Act of 1996 to apply with respect to the person that engaged in that activity; or

(ii) in the case of an activity described in subparagraph (A)(ii), the President has waived, pursuant to section 401(b)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(b)(1)), the application of the prohibition under section 106(a) of that Act (22 U.S.C. 8515(a)) with respect to that person.

(b) PROHIBITION ON FINANCINGS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, in connection with a financing in which a person that is a borrower or controlling sponsor, or a person that is owned or controlled by such borrower or controlling sponsor, is subject to sanctions under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(c) ADVISORY OPINIONS.—

(1) AUTHORITY.—The Secretary of State is authorized to issue advisory opinions described in subsection (a)(2)(B)(i)(II).

(2) NOTICE TO CONGRESS.—If the Secretary issues an advisory opinion pursuant to paragraph (1), the Secretary shall notify the appropriate congressional committees of the opinion not later than 30 days after issuing the opinion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES; PERSON.—The terms ''appropriate congressional committees'' and ''person'' have the meanings given those terms in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) CONTROLLING SPONSOR.—The term ''controlling sponsor'' means a person providing controlling direct private equity investment (excluding investments made through publicly held investment funds, publicly held securities, public offerings, or similar public market vehicles) in connection with a financing.

SA 1837. Mr. REID proposed an amendment to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following new section:

SEC. ___.

This title shall become effective 5 days after enactment.

SA 1838. Mr. REID proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

SEC. ___.

This Act shall become effective 3 days after enactment.

SA 1839. Mr. REID proposed an amendment to amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''3 days'' and insert ''2 days''.

SA 1840. Mr. REID proposed an amendment to amendment SA 1839 proposed by Mr. REID to the amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''2 days'' and insert ''1 day''.

SA 1841. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ____—FOREIGN EARNINGS REINVESTMENT

SEC. _01. SHORT TITLE.

This title may be cited as the ''Foreign Earnings Reinvestment Act''.

SEC. ____. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM A CONTROLLED FOREIGN CORPORATION.

(a) APPLICABILITY OF PROVISION.—

(1) IN GENERAL.—Subsection (f) of section 965 is amended to read as follows:

''(f) ELECTION; ELECTION YEAR.—

''(1) IN GENERAL.—The taxpayer may elect to apply this section to—

''(A) the taxpayer's last taxable year which begins before the date of the enactment of the Foreign Earnings Reinvestment Act, or

''(B) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

''(C) ELECTION YEAR.—For purposes of this section, the term 'election year' means the taxable year—

''(i) which begins after the date that is one year before the date of the enactment of the Foreign Earnings Reinvestment Act, and

''(ii) to which the taxpayer elects under paragraph (1) to apply this section.''.

(2) CONFORMING AMENDMENTS.—

(A) EXTRAORDINARY DIVIDENDS.—Section 965(b)(2) of such Code is amended—

(i) by striking ''June 30, 2003'' and inserting ''September 30, 2011'', and

(ii) by adding at the end the following new sentence: ''The amounts described in clauses (i), (ii), and (iii) shall not include any amounts which were taken into account in determining the deduction under subsection (a) for any prior taxable year.''.

(B) DETERMINATIONS RELATING TO RELATED PARTY INDEBTEDNESS.—Section 965(b)(3)(B) of such Code is amended by striking ''October 3, 2004'' and inserting ''September 30, 2011''.

(C) APPLICABLE FINANCIAL STATEMENT.—Section 965(c)(1) of such Code is amended by striking ''June 30, 2003'' each place it appears and inserting ''September 30, 2011''.

(D) DETERMINATIONS RELATING TO BASE PERIOD.—Section 965(c)(2) of such Code is amended by striking ''June 30, 2003'' and inserting ''September 30, 2011''.

(b) DEDUCTION INCLUDES CURRENT AND ACCUMULATED FOREIGN EARNINGS.—

(1) IN GENERAL.—Paragraph (1) of section 965(b) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the sum of the current and accumulated earnings and profits described in section 959(c)(3) for the year a deduction is claimed under subsection (a), without diminution by reason of any distributions made during the election year, for all controlled foreign corporations of the United States shareholder.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 965(c) of such Code, as amended by subsection (a), is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5), as paragraphs (1), (2), (3), and (4), respectively.

(B) Paragraph (4) of section 965(c) of such Code, as redesignated by subparagraph (A), is amended to read as follows:

''(4) CONTROLLED GROUPS.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.''.

(c) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (1) of section 965(a) of the Internal Revenue Code of 1986 is amended by striking ''85 percent'' and inserting ''75 percent''.

(2) BONUS DEDUCTION IN SUBSEQUENT TAXABLE YEAR FOR INCREASING JOBS.—Section 965 of such Code is amended by adding at the end the following new subsection:

''(g) BONUS DEDUCTION.—

''(1) IN GENERAL.—In the case of any taxpayer who makes an election to apply this section, there shall be allowed as a deduction for the first taxable year following the election year an amount equal to the applicable percentage of the cash dividends which are taken into account under subsection (a) with respect to such taxpayer for the election year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is the amount which bears the same ratio (not greater than 1) to 10 percent as—

''(A) the excess (if any) of—

''(i) the qualified payroll of the taxpayer for the calendar year which begins with or within the first taxable year following the election year, over

''(ii) the qualified payroll of the taxpayer for calendar year 2010, bears to

''(B) 10 percent of the qualified payroll of the taxpayer for calendar year 2010.''

''(3) QUALIFIED PAYROLL.—For purposes of this paragraph:

''(A) IN GENERAL.—The term 'qualified payroll' means, with respect to a taxpayer for any calendar year, the aggregate wages (as defined in section 3121(a)) paid by the corporation during such calendar year.

''(B) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—

''(i) ACQUISITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer acquires the trade or business of a predecessor, then the qualified payroll of such taxpayer for any calendar year shall be increased by so much of the qualified payroll of the predecessor for such calendar year as was attributable to the trade or business acquired by the taxpayer.

''(ii) DISPOSITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer disposes of a trade or business, then—

''(I) the qualified payroll of such taxpayer for calendar year 2010 shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer, and

''(II) if the disposition occurs after the beginning of the first taxable year following the election year, the qualified payroll of such taxpayer for the calendar year which begins with or within such taxable year shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer.

''(C) SPECIAL RULE.—For purposes of determining qualified payroll for any calendar year after calendar year 2011, such term shall not include wages paid to any individual if such individual received compensation from the taxpayer for services performed—

''(i) after the date of the enactment of this paragraph, and

''(ii) at a time when such individual was not an employee of the taxpayer.''.

(3) REDUCTION FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—Paragraph (4) of section 965(b) of such Code (relating to limitations) is amended to read as follows:

''(4) REDUCTION IN BENEFITS FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—

''(A) IN GENERAL.—If, during the period consisting of the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1) and the succeeding 23 calendar months, the taxpayer does not maintain an average employment level at least equal to the taxpayer's prior average employment, an additional amount equal to $75,000 multiplied by the number of employees by which the taxpayer's average employment level during such period falls below the prior average employment (but not exceeding the aggregate amount allowed as a deduction pursuant to subsection (a)(1)) shall be taken into income by the taxpayer during the taxable year that includes the final day of such period.

''(B) AVERAGE EMPLOYMENT LEVEL.—For purposes of this paragraph, the taxpayer's average employment level for a period shall be the average number of full-time United States employees of the taxpayer, measured at the end of each month during the period.

''(C) PRIOR AVERAGE EMPLOYMENT.—For purposes of this paragraph, the taxpayer's 'prior average employment' shall be the average number of full-time United States employees of the taxpayer during the period consisting of the 24 calendar months immediately preceding the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1).

''(D) FULL-TIME UNITED STATES EMPLOYEE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'full-time United States employee' means an individual who provides services in the United States as a full-time employee, based on the employer's standards and practices; except that regardless of the employer's classification of the employee, an employee whose normal schedule is 40 hours or more per week is considered a full-time employee.

''(ii) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—Such term does not include—

''(I) any individual who was an employee, on the date of acquisition, of any trade or business acquired by the taxpayer during the 24-month period referred to in subparagraph (A), and

''(II) any individual who was an employee of any trade or business disposed of by the taxpayer during the 24-month period referred to in subparagraph (A) or the 24-month period referred to in subparagraph (C).

''(E) AGGREGATION RULES.—In determining the taxpayer's average employment level and prior average employment, all domestic members of a controlled group shall be treated as a single taxpayer.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SA 1842. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VII—LIQUIDITY PROTECTION FOR PRIVATE COMPANIES

SEC. 801. SHORT TITLE.

This title may be cited as the ''Liquidity Protection for Private Companies Act of 2012''.

SEC. 802. CLARIFICATION OF PERMITTED ACTIVITIES FOR MARKET-MAKERS.

Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following:

''(g) PROTECTION OF LIQUIDITY.—Rules issued under this section shall not impede the ability of a regulated firm to provide reasonable liquidity to its clients, customers, or counterparties. Any such rules proposed or promulgated prior to the date of enactment of the Liquidity Protection for Private Companies Act of 2012 shall have no force or effect.''.

SEC. 803. ELIMINATION OF PREFERENTIAL TREATMENT OF U. S. TREASURIES AND MORTGAGE BACKED SECURITIES.

(a) IN GENERAL.—Section 13(d)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(d)(1)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) through (J) as subparagraphs (A) through (I), respectively.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) in subsection (c)(4), by striking ''subsection (d)(1)(G)'' and inserting ''subsection (d)(1)(F)''; and

(2) in subsection (f)—

(A) by striking ''paragraph (d)(1)(G)'' each place that term appears and inserting ''subsection (d)(1)(F)''; and

(B) in paragraph (3)(A)—

(i) in clause (i), by striking ''subsection (d)(1)(G)'' and inserting ''subsection (d)(1)(F)''; and

(ii) in clause (ii), by striking ''subsection (d)(1)(G)(v)'' and inserting ''subsection (d)(1)(F)(v)''.

SA 1843. Mr. MORAN (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—FINANCIAL INSTITUTIONS EXAMINATION FAIRNESS AND REFORM

SEC. 801. SHORT TITLE.

This title may be cited as the ''Financial Institutions Examination Fairness and Reform Act''.

SEC. 802. TIMELINESS OF EXAMINATION REPORTS.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.

''(a) IN GENERAL.—

''(1) FINAL EXAMINATION REPORT.—A Federal financial institutions regulatory agency shall provide a final examination report to a financial institution not later than 60 days after the later of—

''(A) the exit interview for an examination of the institution; or

''(B) the provision of additional information by the institution relating to the examination.

''(2) EXIT INTERVIEW.—If a financial institution is not subject to a resident examiner program, the exit interview shall occur not later than the end of the 9-month period beginning on the commencement of the examination, except that such period may be extended by the Federal financial institutions regulatory agency by providing written notice to the institution and the Office of Examination Ombudsman describing with particularity the reasons that a longer period is needed to complete the examination.

''(b) EXAMINATION MATERIALS.—Upon the request of a financial institution, the Federal financial institutions regulatory agency shall include with the final report under this section an appendix listing all examination or other factual information relied upon by the agency in support of a material supervisory determination.''.

SEC. 803. EXAMINATION STANDARDS.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1013. EXAMINATION STANDARDS.

''(a) IN GENERAL.—In the examination of financial institutions—

''(1) a commercial loan shall not be placed in non-accrual status solely because the collateral for such loan has deteriorated in value;

''(2) a modified or restructured commercial loan shall be removed from non-accrual status if the borrower demonstrates the ability to perform on such loan over a maximum period of 6 months, except that with respect to loans on a quarterly, semiannual, or longer repayment schedule such period shall be a maximum of 3 consecutive repayment periods;

''(3) a new appraisal on a performing commercial loan shall not be required unless an advance of new funds is involved;

''(4) in classifying a commercial loan in which there has been deterioration in collateral value, the amount to be classified shall be the portion of the deficiency relating to the decline in collateral value and repayment capacity of the borrower.

''(b) WELL CAPITALIZED INSTITUTIONS.—The Federal financial institutions regulatory agencies may not require a financial institution that is well capitalized to raise additional capital in lieu of an action prohibited under subsection (a).

''(c) CONSISTENT LOAN CLASSIFICATIONS.—The Federal financial institutions regulatory agencies shall develop and apply identical definitions and reporting requirements for non-accrual loans.''.

(b) DEFINITION OF MATERIAL SUPERVISORY DETERMINATION.—Section 309(f)(1)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806(f)(1)(A)) is amended—

(1) in clause (ii), by striking ''and'' at the end; and

(2) by inserting after clause (iii) the following:

''(iv) any issue specifically listed in an exam report as a matter requiring attention by the institution's management or board of directors; and''.

SEC. 804. EXAMINATION OMBUDSMAN.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1014. OFFICE OF EXAMINATION OMBUDSMAN.

''(a) ESTABLISHMENT.—There is established in the Council an Office of Examination Ombudsman.

''(b) HEAD OF OFFICE.—There is established the position of the Ombudsman, who shall serve as the head of the Office of Examination Ombudsman, and who shall be hired separately by the Council and shall be independent from any member agency of the Council.

''(c) STAFFING.—The Ombudsman is authorized to hire staff to support the activities of the Office of Examination Ombudsman.

''(d) DUTIES.—The Ombudsman shall—

''(1) receive and, at the Ombudsman's discretion, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

''(2) hold meetings, at least once every three months and in locations designed to encourage participation from all sections of the United States, with financial institutions, their representatives, or another entity acting on behalf of such institutions, to discuss examination procedures, examination practices, or examination policies;

''(3) review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

''(4) conduct a continuing and regular program of examination quality assurance for all examination types conducted by the Federal financial institutions regulatory agencies;

''(5) process any supervisory appeal initiated under section 1015 or section 309(e) of the Riegle Community Development and Regulatory Improvement Act of 1994; and

''(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council's recommendations for improvements in examination procedures, practices, and policies.

''(e) CONFIDENTIALITY.—The Ombudsman shall keep confidential all meetings, discussions, and information provided by financial institutions.''.

(b) DEFINITION.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(4) the term 'Ombudsman' means the Ombudsman established under section 1014.''.

SEC. 805. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1015. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

''(a) IN GENERAL.—A financial institution shall have the right to appeal a material supervisory determination contained in a final report of examination.

''(b) NOTICE.—

''(1) TIMING.—A financial institution seeking an appeal under this section shall file a written notice with the Ombudsman within 60 days after receiving the final report or examination that is the subject of such appeal.

''(2) IDENTIFICATION OF DETERMINATION.—The written notice shall identify the material supervisory determination that is the subject of the appeal, and a statement of the reasons why the institution believes that the determination is incorrect or should otherwise be modified.

''(3) INFORMATION TO BE PROVIDED TO INSTITUTION.—Any information relied upon by the agency in the final report that is not in the possession of the financial institution may be requested by the financial institution and shall be delivered promptly by the agency to the financial institution.

''(c) HEARING BEFORE INDEPENDENT ADMINISTRATIVE LAW JUDGE.—

''(1) IN GENERAL.—The Ombudsman shall determine the merits of the appeal on the record, after an opportunity for a hearing before an independent administrative law judge.

''(2) HEARING PROCEDURES.—If a hearing is requested by the financial institution, the hearing shall—

''(A) take place not later than 60 days after the notice of the appeal was received by the Ombudsman; and

''(B) be conducted pursuant to the procedures set forth under sections 556 and 557 of title 5, United States Code.

''(3) JUDGE RECOMMENDATION; STANDARD OF REVIEW.—In any hearing under this subsection—

''(A) the administrative law judge shall recommend to the Ombudsman what determination should be made; and

''(B) in making such recommendation, the administrative law judge shall not defer to the opinions of the examiner or agency, but shall independently determine the appropriateness of the agency's decision based upon the relevant statutes, regulations, and other appropriate guidance.

''(d) FINAL DECISION.—A decision by the Ombudsman on an appeal under this section shall—

''(1) be made not later than 60 days after the record has been closed; and

''(2) be final agency action, and shall bind the agency whose supervisory determination was the subject of the appeal and the financial institution making the appeal.

''(e) REPORT.—The Ombudsman shall report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate on actions taken on appeals under this section, including the types of issues that financial institutions have appealed and the results of those appeals. In no case shall such a report contain information about individual financial institutions or any confidential or privileged information shared by financial institutions.

''(f) RETALIATION PROHIBITED.—A Federal financial institutions regulatory agency may not—

''(1) retaliate against a financial institution, including service providers, or any institution-affiliated party, for exercising appellate rights under this section; or

''(2) delay or deny any agency action that would benefit a financial institution or any institution-affiliated party on the basis that an appeal under this section is pending under this section.''.

SEC. 806. ADDITIONAL AMENDMENTS.

(a) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) is amended—

(1) in subsection (a), by inserting after ''appropriate Federal banking agency'' the following: '', the Bureau of Consumer Financial Protection,'';

(2) in subsection (b)—

(A) in paragraph (2), by striking ''the appellant from retaliation by agency examiners'' and inserting ''the insured depository institution or insured credit union from retaliation by an agency referred to in subsection (a)'';

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(C) by striking ''In establishing'' and inserting the following:

''(1) IN GENERAL.—In establishing''; and

(D) by adding at the end the following:

''(2) RETALIATION.—For purposes of this subsection and subsection (e), retaliation includes delaying consideration of, or withholding approval of, any request, notice, or application that otherwise would have been approved, but for the exercise of the institution's or credit union's rights under this section.''; and

(3) in subsection (e)(2)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(D) ensure that appropriate safeguards exist for protecting the insured depository institution or insured credit union from retaliation by any agency referred to in subsection (a) for exercising its rights under this subsection.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)) is amended by inserting ''the Bureau of Consumer Financial Protection,'' before ''any Federal banking agency'' each place that term appears.

(c) FEDERAL CREDIT UNION ACT.—Section 205(j) of the Federal Credit Union Act (12 U.S.C. 1785(j)) is amended by inserting ''the Bureau of Consumer Financial Protection,'' before ''the Administration'' each place that term appears.

(d) TECHNICAL CORRECTIONS.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(1) in section 1003(1) (12 U.S.C. 3302(1)), by striking ''the Office of Thrift Supervision,''; and

(2) in section 1005 (12 U.S.C. 3304), by striking ''One-fifth'' and inserting ''One-fourth''.

SA 1844. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. CLARIFICATION OF QUALIFIED MORTGAGE EXCEPTION.

(a) IN GENERAL.—Section 129C(b) of the Truth in Lending Act (15 U.S.C. 1639c(b)), as added by section 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended—

(1) in the subsection heading, by striking ''PRESUMPTION OF ABILITY TO REPAY'' and inserting ''EXCEPTION FOR QUALIFIED MORTGAGES'';

(2) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Subsection (a) shall not apply to a residential mortgage loan that is a qualified mortgage.''; and

(3) in paragraph (3), by amending subparagraph (B) to read as follows:

''(B) LOAN DEFINITION.—The following agencies shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A):

''(i) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

''(ii) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

''(iii) The Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h)).

''(iv) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376).

SA 1845. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REFORM OF PROHIBITION ON SWAP ACTIVITY ASSISTANCE.

Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8305) is amended—

(1) in subsection (b), by adding at the end the following:

''(3) COVERED DEPOSITORY INSTITUTION.—The term 'covered depository institution' means—

''(A) an insured depository institution; and

''(B) a United States uninsured branch or agency of a foreign bank that has a prudential regulator.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''INSURED'' and inserting ''COVERED'';

(B) by striking ''an insured'' and inserting ''a covered'';

(C) by striking ''such insured'' and inserting ''such covered''; and

(D) by striking ''or savings and loan holding company'' and inserting ''savings and loan holding company, or foreign banking organization (as defined in section 211.21(o) of title 12, Code of Federal Regulations (commonly known as 'Regulation K'), or any successor to such regulation)'';

(3) in subsection (e), by striking ''an insured'' and inserting ''a covered'';

(4) in subsection (f)—

(A) by striking ''an insured'' and inserting ''a covered''; and

(B) by striking ''the insured'' each place that term appears and inserting ''the covered'';

(5) in subsection (g), by striking ''insured'' and inserting ''covered''; and

(6) in subsection (m), by striking ''An insured'' and inserting ''A covered''.

SA 1846. Mr. CARDIN (for himself, Ms. LANDRIEU, and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REMOVAL OF SUNSET DATES FOR CERTAIN PROVISIONS OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) MAXIMUM BOND AMOUNT.—Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking ''does not exceed'' and all that follows and inserting ''does not exceed $5,000,000.''.

(b) DENIAL OF LIABILITY.—Section 411(e)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(e)(2)) is amended by striking ''bonds exceeds'' and all that follows and inserting ''bonds exceeds $5,000,000,''.

SA 1847. Mr. REID (for Mr. BOOZMAN (for himself and Mr. PRYOR)) proposed an amendment to the bill H.R. 886, to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service; as follows:

At the end, add the following:

SEC. 8. FINANCIAL ASSURANCES.

The Secretary shall take such actions as may be necessary to ensure that—

(1) minting and issuing coins under this Act will not result in any net cost to the United States Government;

(2) no funds, including applicable surcharges, shall be disbursed to any recipient designated in section 7 until the total cost of designing and issuing all of the coins authorized by this Act (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping) is recovered by the United States Treasury, consistent with sections 5112(m) and 5134(f) of title 31, United States Code.

NOTICE OF HEARING

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, March 22, 2012 at 10 a.m. in SD–430 Dirksen Senate Office Building to conduct a hearing entitled ''Stay-at-Work and Back-to-Work Strategies: Lessons from the Private Sector.''

For further information regarding this meeting, please contact the committee at (202) 228–3453.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to hold a hearing entitled, ''Risk Management and Commodities in the 2012 Farm Bill,'' during the session of the Senate on March 15, 2012, at 9 a.m. in room SH 216 of the Hart Senate Office Building.

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

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 15, 2012, at 9:30 a.m.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works Subcommittee on Clean Air and Nuclear Safety be authorized to meet during the session of the Senate on March 15, 2012, at 10 a.m. in Dirksen 406 to conduct a joint hearing entitled, ''Lessons from Fukushima One Year Later: NRC's Implementation of Recommendations for Enhancing Nuclear Reactor Safety in the 21st Century.''

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

COMMITTEE ON FINANCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on March 15, 2012, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled, ''Russia's WTO Accession—Implications for the United States.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on March 15, 2012, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct a hearing entitled ''Indian Water Rights: Promoting the Negotiation and Implementation of Water Settlements in Indian Country.''

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on March 15, 2012, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 15, 2012, at 2:30 p.m.

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

SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs' Subcommittee on Housing, Transportation, and Community Development be authorized to meet during the session of the Senate on March 15, 2012, at 2:30 p.m., to conduct a hearing entitled ''Strengthening the Housing Market and Minimizing Losses to Taxpayers.''

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

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Mr. President, I ask unanimous consent that a member of my staff, Lake Dishman, be granted floor privileges for the remainder of the 112th Congress.

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

HALE SCOUTS ACT

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 473.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 473) to provide for the conveyance of approximately 140 acres of land in the Ouachita National Forest in Oklahoma to the Indian Nations Council, Inc., of the Boy Scouts of America, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any related statements be printed in the RECORD.

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

The bill (H.R. 473) was ordered to a third reading, was read the third time, and passed.

UNITED STATES MARSHALS SERVICE 225TH ANNIVERSARY COMMEMORATIVE COIN ACT

Mr. REID. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 886 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 886) to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

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

Mr. REID. Mr. President, I ask unanimous consent that the Boozman-Pryor amendment, which is at the desk, be agreed to; that the bill, as amended, be read a third time and passed; that the motion to reconsider be laid upon the table with no intervening action or debate; and that any statements related to the bill be printed in the RECORD.

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

The amendment (No. 1847) was agreed to, as follows:

AMENDMENT NO. 1847

At the end, add the following:

SEC. 8. FINANCIAL ASSURANCES.

The Secretary shall take such actions as may be necessary to ensure that—

(1) minting and issuing coins under this Act will not result in any net cost to the United States Government;

(2) no funds, including applicable surcharges, shall be disbursed to any recipient designated in section 7 until the total cost of designing and issuing all of the coins authorized by this Act (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping) is recovered by the United States Treasury, consistent with sections 5112(m) and 5134(f) of title 31, United States Code.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 886) was read the third time and passed, as follows:

H.R. 886

Resolved, That the bill from the House of Representatives (H.R. 886) entitled ''An Act to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.'', do pass with the following amendment:

At the end, add the following:

SEC. 8. FINANCIAL ASSURANCES.

The Secretary shall take such actions as may be necessary to ensure that—

(1) minting and issuing coins under this Act will not result in any net cost to the United States Government;

(2) no funds, including applicable surcharges, shall be disbursed to any recipient designated in section 7 until the total cost of designing and issuing all of the coins authorized by this Act (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping) is recovered by the United States Treasury, consistent with sections 5112(m) and 5134(f) of title 31, United States Code.

RECOGNIZING THE 191ST ANNIVERSARY OF THE INDEPENDENCE OF GREECE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 398, submitted earlier today.

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

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 398) recognizing the 191st anniversary of the independence of Greece and celebrating Greek and American Democracy.

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

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

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

The resolution (S. Res. 398) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 398

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States, many of whom read Greek political philosophy in the original Greek, drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821 that ''it is in your land that liberty has fixed her abode and. . .in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you'';

Whereas the Greek national anthem, the ''Hymn to Liberty'', includes the words, ''Most heartily was gladdened George Washington's brave land'';

Whereas the people of the United States generously offered humanitarian assistance to the people of Greece during their struggle for independence;

Whereas Greece, in one of the most consequential ''David vs. Goliath'' victories for freedom and democracy in modern times, refused to surrender to the Axis forces and inflicted a fatal wound at a crucial moment in World War II, forcing Hitler to change his timeline and delaying the attack on Russia where the Axis Forces met defeat;

Whereas Winston Churchill said, ''If there had not been the virtue and courage of the Greeks, we do not know which the outcome of World War II would have been.'';

Whereas hundreds of thousands of Greek civilians were killed in Greece during World War II in defense of the values of the Allies;

Whereas, throughout the 20th century, Greece was one of a few countries that allied with the United States in every major international conflict;

Whereas Greece is a strategic partner and ally of the United States in bringing political stability and economic development to the volatile Balkan region, having invested billions in the countries of the region, thereby helping to create many tens of thousands of new jobs, and having contributed more than $750,000,000 in development aid for the region;

Whereas the Government and people of Greece actively participate in peacekeeping and peace-building operations conducted by international organizations, including the United Nations, the North Atlantic Treaty Organization, the European Union, and the Organization for Security and Co-operation in Europe, and have more recently provided critical support to the North Atlantic Treaty Organization operation in Libya;

Whereas Greece received worldwide praise for its extraordinary handling during the 2004 Olympic Games of more than 14,000 athletes and more than 2,000,000 spectators and journalists, a feat the Government and people of Greece handled efficiently, securely, and with hospitality;

Whereas Greece, located in a region where Christianity meets Islam and Judaism, maintains excellent relations with Muslim nations and Israel;

Whereas the Government of Greece has taken important steps in recent years to further cross-cultural understanding and rapprochement and cooperation in various fields with Turkey, and has also upgraded its relations with other countries in the region, including Israel, thus enhancing the stability of the wider region;

Whereas the Governments and people of Greece and the United States are at the forefront of efforts for freedom, democracy, peace, stability, and human rights;

Whereas those and similar ideals have forged a close bond between the people of Greece and the United States; and

Whereas it is proper and desirable for the United States to celebrate March 25, 2012, Greek Independence Day, with the Greek people and to reaffirm the democratic principles from which these two great nations were born: Now, therefore, be it

Resolved, That the Senate—

(1) extends warm congratulations and best wishes to the people of Greece as they celebrate the 191st anniversary of the independence of Greece;

(2) expresses support for the principles of democratic governance to which the people of Greece are committed; and

(3) notes the important role that Greece has played in the wider European region and in the community of nations since gaining its independence 191 years ago.

ORDERS FOR MONDAY, MARCH 19, 2012

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until Monday, March 19, at 2 p.m.; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to a period of morning business until 4:30 p.m., with Senators permitted to speak therein for up to 10 minutes each; that following morning business, the Senate resume consideration of Calendar No. 334, H.R. 3606, the IPO bill; further, that the filing deadline for first-degree amendments to the Reed of Rhode Island substitute amendment and H.R. 3606 be at 4 p.m. on Monday.

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

PROGRAM

Mr. REID. Mr. President, there will be no votes on Monday. The Senate should expect the next vote on Tuesday morning prior to the weekly caucus meetings.

ADJOURNMENT UNTIL MONDAY, MARCH 19, 2012, AT 2 P.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 4:33 p.m., adjourned until Monday, March 19, 2012, at 2 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 15, 2012:

THE JUDICIARY

GINA MARIE GROH, OF WEST VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA.

MICHAEL WALTER FITZGERALD, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S1685–S1762

Measures Introduced: Eleven bills and two resolutions were introduced, as follows: S. 2192–2202, and S. Res. 397–398. **Pages S1733–34**

Measures Passed:

HALE Scouts Act: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of H.R. 473, to provide for the conveyance of approximately 140 acres of land in the Ouachita National Forest in Oklahoma to the Indian Nations Council, Inc., of the Boy Scouts of America, and the bill was then passed. **Page S1760**

United States Marshals Service 225th Anniversary Commemorative Coin Act: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of H.R. 886, to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service, and the bill was then passed, after agreeing to the following amendment proposed thereto: **Pages S1760–61**

Reid (for Boozman/Pryor) Amendment No. 1847, to improve the bill. **Page S1761**

191st Anniversary of the Independence of Greece: Senate agreed to S. Res. 398, recognizing the 191st anniversary of the independence of Greece and celebrating Greek and American democracy. **Page S1761**

Measures Considered:

Reopening American Capital Markets to Emerging Growth Companies Act—Agreement: Senate began consideration of H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies, taking action on the following amendments proposed thereto: **Pages S1693–96, S1714–29**

Pending:

Reid (for Reed) Amendment No. 1833, in the nature of a substitute. **Page S1693**

Reid Amendment No. 1834 (to Amendment No. 1833), to change the enactment date. **Page S1693**

Reid Amendment No. 1835 (to Amendment No. 1834), of a perfecting nature. **Page S1693**

Reid (for Cantwell) Amendment No. 1836 (to the language proposed to be stricken by Amendment No. 1833), to reauthorize the Export-Import Bank of the United States. **Pages S1693–94**

Reid Amendment No. 1837 (to Amendment No. 1836), to change the enactment date. **Page S1694**

Reid motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs, with instructions, Reid Amendment No. 1838, to change the enactment date. **Page S1694**

Reid Amendment No. 1839 (to (the instructions) Amendment No. 1838), of a perfecting nature. **Page S1694**

Reid Amendment No. 1840 (to Amendment No. 1839), of a perfecting nature. **Page S1694**

A motion was entered to close further debate on Reid (for Reed) Amendment No. 1833 (listed above), and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, March 20, 2012. **Page S1693**

A motion was entered to close further debate on Reid (for Cantwell) Amendment No. 1836 (to the language proposed to be stricken by Amendment No. 1833) (listed above), and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur upon disposition of Reid (for Reed) Amendment No. 1833. **Page S1694**

A motion was entered to close further debate on the bill, and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur upon disposition of Reid (for Cantwell) Amendment No. 1836 (to the language proposed to be stricken by Amendment No. 1833). **Page S1694**

A unanimous-consent agreement was reached providing that at 4:30 p.m. on Monday, March 19, 2012, Senate resume consideration of the bill, and that the filing deadline for first-degree amendments

to Reid (for Reed) Amendment No. 1833 and the bill be at 4 p.m. on Monday, March 19, 2012.

Page S1761

Nominations Confirmed: Senate confirmed the following nominations:

By 95 yeas to 2 nays (Vote No. EX. 49), Gina Marie Groh, of West Virginia, to be United States District Judge for the Northern District of West Virginia. **Pages S1711–14, S1762**

By 91 yeas to 6 nays (Vote No. EX. 50), Michael Walter Fitzgerald, of California, to be United States District Judge for the Central District of California. **Pages S1711–14, S1762**

Measures Placed on the Calendar: **Pages S1685, S1733**

Executive Communications: **Page S1733**

Additional Cosponsors: **Page S1734**

Statements on Introduced Bills/Resolutions: **Pages S1734–41**

Additional Statements: **Pages S1731–32**

Amendments Submitted: **Pages S1741–60**

Notices of Hearings/Meetings: **Page S1760**

Authorities for Committees to Meet: **Page S1760**

Privileges of the Floor: **Page S1760**

Record Votes: Two record votes were taken today. (Total—50) **Pages S1713–14**

Adjournment: Senate convened at 9:30 a.m. and adjourned at 4:33 p.m., until 2 p.m. on Monday, March 19, 2012. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S1761.)

Committee Meetings

(Committees not listed did not meet)

RISK MANAGEMENT AND COMMODITIES

Committee on Agriculture, Nutrition, and Forestry: Committee concluded a hearing to examine risk management and commodities in the 2012 farm bill, after receiving testimony from Michael Scuse, Acting Under Secretary of Agriculture for Farm and Foreign Agricultural Services; Hope Hills, Spicebush Creek Farms, Bangor, Michigan; Bob Carden, Carden and Associates, Winter Haven, Florida; Steve Rutledge, Approved Insurance Providers, West Des Moines, Iowa; Steve Wellman, American Soybean Association, Syracuse, Nebraska; Pam Johnson, National Corn Growers Association, Floyd, Iowa; Erik Younggren, National Association of Wheat Growers, Hallock, Minnesota; Jimbo Grissom, Western Peanut Growers Association, Seminole, Texas; Travis Henry Satterfield, U.S. Rice Producers Association, Benoit, Mississippi; Chuck Coley, National Cotton Council, Vienna, Georgia; Roger Johnson, National Farmers Union, and Bob Stallman, American Farm Bureau Federation, both of Washington, D.C.; Ryan W. Best, National FFA Organization, Portales, New Mexico; and Jarvis Garetson, Copeland, Kansas.

APPROPRIATIONS: DEPARTMENT OF TRANSPORTATION

Committee on Appropriations: Subcommittee on Transportation, Housing and Urban Development, and Related Agencies concluded a hearing to examine proposed budget estimates for fiscal year 2013 for the Department of Transportation, after receiving testimony from Ray LaHood, Secretary of Transportation.

APPROPRIATIONS: DEPARTMENT OF VETERANS AFFAIRS

Committee on Appropriations: Subcommittee on Military Construction and Veterans Affairs, and Related Agencies concluded a hearing to examine proposed budget estimates for fiscal year 2013 for the Department of Veterans Affairs, after receiving testimony from Eric K. Shinseki, Secretary, Robert A. Petzel, Under Secretary for Health, Allison Hickey, Under Secretary for Benefits, Steve L. Muro, Under Secretary for Memorial Affairs, Roger W. Baker, Assistant Secretary for Information and Technology, and W. Todd Grams, Executive in Charge, Office of Management, and Chief Financial Officer, all of the Department of Veterans Affairs.

APPROPRIATIONS: FEDERAL BUREAU OF INVESTIGATION

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies concluded open and closed hearings to examine proposed budget estimates for fiscal year 2013 for the Federal Bureau of Investigation, after receiving testimony from Robert S. Mueller III, Director, Federal Bureau of Investigation, Department of Justice.

APPROPRIATIONS: GOVERNMENT ACCOUNTABILITY OFFICE, GOVERNMENT PRINTING OFFICE, CONGRESSIONAL BUDGET OFFICE

Committee on Appropriations: Subcommittee on Legislative Branch concluded a hearing to examine proposed budget estimates for fiscal year 2013 for the Government Accountability Office, Government Printing Office, and the Congressional Budget Office, after receiving testimony from Gene L. Dodaro, Comptroller General of the United States, Government Accountability Office; Davita Vance-Cooks, Acting Public Printer, Government Printing Office;

and Douglas W. Elmendorf, Director, Congressional Budget Office.

DEFENSE AUTHORIZATION REQUEST AND FUTURE YEARS DEFENSE PROGRAM

Committee on Armed Services: Committee concluded a hearing to examine the Department of the Navy in review of the Defense Authorization request for fiscal year 2013 and the Future Years Defense Program, after receiving testimony from Ray Mabus, Secretary of the Navy, Admiral Jonathan Greenert, Chief of Naval Operations, and General James F. Amos, Commandant of the Marine Corps, all of the Department of Defense.

STRENGTHENING THE HOUSING MARKET

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Housing, Transportation and Community Development concluded a hearing to examine strengthening the housing market and minimizing losses to taxpayers, after receiving testimony from John C. Dilorio, 1st Alliance Lending, East Hartford, Connecticut; Mark A. Calabria, Cato Institute, Washington, D.C.; and Laurie S. Goodman, Amherst Securities Group, New York, New York.

ENHANCING NUCLEAR REACTOR SAFETY

Committee on Environment and Public Works: Committee with the Subcommittee on Clean Air and Nuclear Safety concluded a joint hearing to examine lessons from Fukushima one year later, focusing on the Nuclear Regulatory Commission's implementation of recommendations for enhancing nuclear reactor safety in the 21st century, after receiving testimony from Gregory B. Jaczko, Chairman, and Kristine L. Svinicki, George Apostolakis, William D. Magwood IV, and William C. Ostendorff, each a Commissioner, all of the Nuclear Regulatory Commission.

RUSSIA'S WORLD TRADE ORGANIZATION ACCESSION—IMPLICATIONS

Committee on Finance: Committee concluded a hearing to examine Russia's World Trade Organization accession—implications for the United States, after receiving testimony from Samuel R. Allen, Deere and Company, Moline, Illinois; Ronald J. Pollett, GE Russia and CIS, Moscow, Russia; Watty Taylor, Montana Stockgrowers Association Inc., Helena; Paul Williams, American Society of Composers, Authors and Publishers, New York, New York; and Alan Larson, Covington and Burling LLP, Washington, D.C.

INDIAN WATER RIGHTS

Committee on Indian Affairs: Committee concluded an oversight hearing to examine Indian water rights, focusing on promoting the negotiation and implementation of water settlements in Indian country, after receiving testimony from David J. Hayes, Deputy Secretary, Mike Connor, Commissioner, Bureau of Reclamation, and Del Laverdure, Principal Deputy Assistant Secretary for Indian Affairs, all of the Department of the Interior; John Echohawk, Native American Rights Fund, Boulder, Colorado; Maria O'Brien, Western States Water Council, Albuquerque, New Mexico; Judith V. Royster, University of Tulsa College of Law Native American Law Center, Tulsa, Oklahoma; and Michael Bogert, Crowell and Moring, Washington, D.C.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to the call.

House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 10 a.m. on Friday, March 16, 2012 in pro forma session.

Committee Meetings

No hearings were held.

Joint Meetings

No joint committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D242)*

S. 1134, to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values. Signed on March 14, 2012. (Public Law 112–100)

S. 1710, to designate the United States courthouse located at 222 West 7th Avenue, Anchorage, Alaska, as the James M. Fitzgerald United States Courthouse. Signed on March 14, 2012. (Public Law 112–101)

COMMITTEE MEETINGS FOR FRIDAY, MARCH 16, 2012

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No hearings are scheduled.

Next Meeting of the SENATE

2 p.m., Monday, March 19

Senate Chamber

Program for Monday: After the transaction of any morning business (not to extend beyond 4:30 p.m.), Senate will resume consideration of H.R. 3606, Reopening American Capital Markets to Emerging Growth Companies Act, with the filing deadline for first-degree amendments to Reid (for Reed) Amendment No. 1833 and H.R. 3606 to be at 4 p.m.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Friday, March 16

House Chamber

Program for Friday: To be announced.

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