

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, before we recess, let me say that the next amendment up is the McCain amendment, and while we don't have an agreement yet, I am hopeful one will be agreed to right after we come back after the respective caucus luncheons at 2:15 p.m.

I am urging Members, again, we are trying to line up these amendments so we can have an afternoon full of votes—a short debate on amendments and then votes. I don't want to hear later people telling me, "I didn't have enough time," when in fact we are trying to provide time for people. You can't have it both ways. You can't say you needed more time and then not be here or get the time agreements to allow us to move forward.

With that, Mr. President, I yield the floor.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

#### RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 3839 TO AMENDMENT NO. 3739

Mr. McCAIN. Mr. President, I call up amendment No. 3839 and ask for its immediate consideration and ask to set aside pending amendments.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN], for himself, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. BURR, Mrs. HUTCHISON, and Mr. ROBERTS, proposes an amendment numbered 3839 to amendment No. 3739.

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

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

The amendment is as follows:

(The text of the amendment is printed in the RECORD of May 5, 2010, under "Text of Amendments.")

Mr. McCAIN. Mr. President, before we continue, I know the distinguished chairman of the Banking Committee and the manager of the bill want us to move forward. I understand that. As we speak, I am compiling a list of those who want to speak on the amendment on this side. I assure him we will try to

get a time agreement completed as soon as possible. I ask my colleagues on this side of the aisle who want to speak on this amendment to call the cloakroom so we can get that done.

Mr. President, I ask unanimous consent that Senators BURR, HUTCHISON, and ROBERTS be added as cosponsors of this amendment.

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

Mr. McCAIN. Mr. President, I apologize to my colleagues for giving them false information a couple of days ago. It is not \$125.9 billion that we are now pouring into Fannie and Freddie; it is up to \$145 billion that is now being poured in—\$145 billion. I remind my colleagues again that last Christmas Eve at 7 p.m. was when the Treasury Department decided to lift the cap, which had been at \$400 billion. It is now up—\$145 billion. Here we are addressing financial regulatory reform and not looking at \$5 trillion of toxic assets that have already spent \$145 billion off budget. It is off budget. Incredible.

My distinguished friend from Connecticut pointed out yesterday—he says I want a little revisionist history. He says the House financial committee passed bipartisan legislation. It stalled in the committee over here despite the support for it. The Republican-controlled committee then passed a bill and never filed it, never brought it up for a vote here on the floor of the Senate in 2005. That was my friend Senator DODD's statement yesterday.

The fact is—a little revisionist history—on April 1, 2004, the Senate Banking Committee passed the bill, the Federal Housing Enterprise Regulatory Reform Act. All 12 Republicans voted for it. All Democrats, including the distinguished chairman, voted against it, according to the RECORD. So neither bill was taken on the floor because, as we know, we don't move forward with legislation if it is blocked by the other side.

Then Senator DODD went on to say: I became chairman of the Banking Committee in 2007. We arrived at 2008. We had a significant number of hearings. In the summer of 2008, the Banking Committee passed a comprehensive bill—et cetera, et cetera. The Housing and Economic Recovery Act was finally enacted on July 30, 2008. Just 39 days later, Fannie Mae and Freddie Mac were placed into conservatorship.

I remind Senator DODD that back in 2006, there was a group of us, in response to an inspector general's report, who said we need to fix it and fix it now, and that was blocked by the other side.

Senator DODD said: If you think the market took a plunge last Thursday, adopt the McCain amendment. It is a reckless amendment.

What is reckless is the status quo. What is reckless is to totally ignore \$5 trillion in toxic assets, already \$145 bil-

lion of the taxpayers' money being spent. It is reckless for us to go to the American people and say we are fixing the problem that caused the financial meltdown and yet we are ignoring Fannie and Freddie. We are ignoring the trillions of dollars of toxic assets. And don't worry, we will address it later on. That is what the distinguished chairman is going to say—we will address this later on. Later on? Later on? When we have this already done? And it is not on budget. Remarkable.

What the amendment says is that the conservatorship has to end in 24 months. We will give them 2 years to figure all this out. It is reckless, in my view, to say we are not addressing these trillions of dollars in toxic assets, the hemorrhaging of \$145 billion already of taxpayers' dollars, on which there is no expert who believes we will ever see a return.

Finally, I would like to quote the Wall Street Journal editorial of this morning that says, "\$145 Billion and Counting. Fannie and Freddie lose it all for you."

The editorial says:

These efforts to support the Obama anti-foreclosure program resulted in a doubling of loan modifications compared to the previous—

Let me start from the beginning.

Fannie Mae yesterday announced its 11th consecutive quarterly loss—\$11.5 billion—and asked for another \$8.4 billion in taxpayer assistance.

They lost that. They are asking for \$8.4 billion. That puts us well over \$150 billion.

Fannie Mae is the Cal Ripken of bad real-estate deals, reliably pouring taxpayer money into the housing market. Granted, Fannie faces tough competition from its toxic twin, Freddie Mac, which last week announced its own request of another \$10.6 billion from taxpayers.

Once the checks from the Treasury clear, Fan and Fred will have consumed a combined \$145 billion in taxpayer cash, and the end is nowhere in sight. Both companies warned of further losses triggering more government assistance, which is now unlimited after a 2009 Treasury decision.

The losses are unlimited because the companies are now run by the government not to make money, by deliberately subsidizing housing. In yesterday's press release, CEO Mike Williams didn't even pretend that he's running a profit-making business. "In the first quarter, we continued to serve as a leading source of liquidity to the mortgage market, and we made solid progress in our ongoing effort to keep people in their homes," he said. These efforts to support the Obama anti-foreclosure program resulted in a doubling of loan modifications compared to the previous quarter.

Ramping up modifications makes perfect sense in the upside-down world of Fannie Mae. The company also announced that most of the loans it modified in the first three quarters of 2009 had gone delinquent again within six months.

Does anyone get that? Most of the loans that were modified—at the cost

of \$100-and-some billion of taxpayers money—have gone under again, have gone delinquent again within 6 months.

The Wall Street Journal goes on:

Talk about an exciting business opportunity. In case anyone still hasn't gotten the joke, the company also clarified yesterday that its directors "are not obligated to consider the interests of the company" unless the government tells them to do so.

The real joke is that the Obama Administration and Senator Chris Dodd have collaborated on a financial regulatory reform bill that includes no reform of Fannie Mae or Freddie Mac. Senators should rectify this embarrassment as early as today by voting for John McCain's amendment to end this most costly of all bailouts.

My question to the distinguished chairman is, even if he doesn't accept any of the statements I made, is it true that there are trillions of dollars in toxic assets and, if so, what are we going to do about it and when? If not on this bill, where?

The cynicism out there amongst the American people is at the highest level I have ever seen it in the many years I have been privileged to serve. To go to the American people and say we are going to take measures which will prevent another worldwide fiscal meltdown and we are not going to address trillions of dollars in toxic assets we have already poured \$145 billion into—they lifted the cap on Christmas Eve at 7 p.m., so they think it is going to be in excess of \$400 billion over time, and nothing in this piece of legislation, nothing in it has anything to do with Fannie Mae or Freddie Mac. Don't be surprised at the cynicism of the American people.

I want to tell the manager, because he was not here, that I am trying to get a list of speakers, get time agreements and give him a time agreement at least on this side as soon as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 3938 TO AMENDMENT NO. 3739

Mr. DODD. I see my colleagues here. Let me say to my friend from Arizona, what I am going to do is call up an amendment that will be a side-by-side arrangement. I will not ask for any time on this, and I appreciate him getting back so we can get a time certain.

I call up amendment No. 3938.

The PRESIDING OFFICER. Is there objection? The clerk will report the amendment.

The assistant editor of the Daily Digest read as follows:

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 3938 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To require the Secretary of the Treasury to conduct a study on ending the conservatorship of Fannie Mae and Freddie Mac, and reforming the housing finance system)

On page 1455, after line 25, insert the following:

**SEC. 1077. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (in this section referred to as "Freddie Mac"), while minimizing the cost to taxpayers, including such options as—

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) ANALYSES.—The study required under paragraph (1) shall include an analysis of—

(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, pre-payable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;

(H) the role of standardization in the housing finance system;

(I) how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

(J) the options for transition to a reformed housing finance system.

(b) REPORT AND RECOMMENDATIONS.—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Mr. DODD. I realize people want to be heard, but I again urge my colleagues, if we can—every amendment has great value. There are about 60 amendments. At some point we have to draw the line, so I urge people to use as little time as necessary—all the time they think they need, but if we can get to a point where we can vote up or

down on these two amendments, I would appreciate it very much.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, first of all, I thank the chairman for allowing us to debate this amendment this afternoon. I think this is one of the most critical amendments that certainly we have talked about to date, and moving forward, unless we address the issue of the GSEs, as I am going to talk about in a minute, I am not sure we have accomplished anything in this bill.

For all of the potential unintended consequences in this financial regulatory restructuring package, at least one will be entirely intentional—failing to address Freddie Mac and Fannie Mae.

Despite the general theme of the increased "overreaching" regulatory power of this legislation, a glaring example of something that was actually left out is a substantive attempt to address one of the most significant causes of the financial crisis—reform of the government sponsored enterprises, or GSEs, such as Freddie Mac and Fannie Mae.

It has been highlighted from this floor that recent market volatility and a faulty trading construct in our financial markets are illustrations that the bill before us is needed now more than ever. Specifically, the sudden significant drop throughout certain exchanges last week has been pointed to as evidence of the necessity for greater regulation of our markets.

However, when news broke last week that Freddie lost \$8 billion in the first quarter and would yet again be knocking on the taxpayer's door for a \$10.6 billion bailout—another bailout after both Fannie and Freddie had already received \$126 billion in taxpayer dollars—I failed to hear calls for reform from the other side.

And just today it was announced that Fannie Mae will ask for another \$8.4 billion after posting a loss of \$11.5 billion for its first quarter. Shouldn't these entities' repeated failures serve as ample evidence that the future of these "bailout behemoths" must be addressed?

Apparently, this administration feels differently, and has for some time. In fact, while it was busy cutting backroom deals over the health care bill and making noise that a government takeover of health care would reduce the deficit, in the quiet of night on Christmas Eve another deal was made—only this one didn't make it out of the backroom.

At the eleventh hour, after the Senate had finished its vote that holiday eve, the administration pledged to the mortgage its current giants unlimited financial assistance—by lifting \$400 billion cap on emergency aid without even seeking congressional approval.

How can we have a serious conversation about overhauling our financial regulatory structure, yet ignore two entities that have exposed the taxpayers to more than \$5 trillion in risk as of today. As the Wall Street Journal put it recently, "Reforming the financial system without fixing Fannie and Freddie is like declaring a war on terror and ignoring al Qaeda."

Many have suggested that now is not the time to restructure these giants; that they will have to be addressed later, indicating that due to the comprehensive nature of their needed reforms, any attempt to address the problems of Freddie and Fannie here would more than double the size of the current financial regulatory reform bill.

Where were these legislative "size standards" when this body was debating health care? That bill was more than 2,000 pages long. Apparently, while we can address too big to fail, these government sinkholes have become too big to legislate.

The fact is that the number of pages in a bill is not the reason Freddie and Fannie are ignored here. And it is not for a lack of understanding the problem. There has been no shortage of hearings on GSEs, in both the House and Senate. The housing policies of this and previous administrations have chained the taxpayers to a self-perpetuating financial illness. Policies such as the Community Reinvestment Act, or CRA, which forces banks to make loans to otherwise unqualified borrowers set the stage for Fannie and Freddie to buy up these bad loans on the secondary mortgage market.

Such backward policies exacerbated the causes of the financial crises. Why would a bank not make these loans knowing they could turn around and sell them to the government? Especially when regulators were encouraging such practices? As a result, Fannie Mae, Freddie Mac and the Federal Housing Administration, or more specifically, the taxpayer, now own or guarantee about half of all outstanding residential mortgages.

It is time we address this enormous problem, the McCain amendment does that and I urge my colleagues to support it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, in deference to the chairman, I will be brief. But I come because I feel compelled today because of the two amendments this body will be dealing with: one is the McCain amendment and another amendment later in the day dealing with underwriting. So I will save the remarks on that for when those amendments are pending.

I agree with Senator CHAMBLISS, and I commend Senator MCCAIN. I come from a lifetime in the real estate busi-

ness. So what I talk about, I do understand its cause and effect in the marketplace. We cannot have responsible reform of financial services and leave out Freddie Mac and Fannie Mae.

One of the reasons that, along with Senator CONRAD, I created the Financial Markets Crisis Commission—which is now meeting, by the way, and will report back at the end of December—is I knew there were pervasive and redundant failures in the system that brought about what became a cataclysmic collapse.

I understand the chairman has been under great pressure to bring this legislation forward, and I have great respect for the chairman and appreciate his work. I wish we had waited until the Financial Markets Crisis Commission reported, but we have not. So let me just for a second address Freddie and Fannie and the McCain amendment.

Freddie and Fannie filled the void the savings and loans created when they failed in the late 1980s. There are a lot of people who will hear this speech who will remember savings and loan days. Those were when savings and loans associations were chartered to make home loans. With the exception of FHA and VA, they basically made them all. There were a few players but not too many.

Those entities, by the way, those savings and loans, had 100 percent risk retention of every loan they made because their depositors put in money for the sole purpose of getting a preferred rate of interest and for mortgage loans to be made to generate the income. But they went under. They went under because of a lot of factors. One was the Federal Government changing in mid-stream the rules under which they operated which caused them to collapse.

Freddie and Fannie immediately filled that void. They did a great job for a long period of time by creating a secondary market for capital to be formed, put into mortgages, the mortgage be securitized, and the securities traded. It worked for a long time.

It worked, quite frankly, until a couple of things happened. One, until the government all of a sudden told Fannie it started having to own a certain percentage of what it called "affordable loans," which later became known as subprime loans. In fact, Fannie Mae became the purchaser of record for the first subprime securities that were created to meet the congressional mandate to end up having these affordable loans, which made a market for those securities which subsequently were sold around the world.

So I wanted to commend the Senator from Arizona. What he brings before us is important. I do not know how we can leave Freddie and Fannie out and talk about real financial services reform in the United States of America. If anything, they need to be a critical part of it.

I recognize this legislation portends there will be a 2-year wind-down unless they improve. Then there will be a liquidation at some point in time. But let me tell you what is going to happen if nothing happens. At some point in time, Freddie and Fannie will have to be liquidated and a new entity will have to be created that will fill the void when that liquidation takes place. We are going to have the mortgage money in this country one way or another because America would not be America without it.

But we cannot tend to have a black hole and an entity that can be used for political purposes, or was used for political purposes, to create a market for securities that ultimately fails and breaks down the financial market.

I commend the Senator from Arizona. I associate myself with the remarks of the other Senator from Georgia. I thank the distinguished Banking Committee chairman for his time.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to rise also and first I want to associate myself with the words from the Senator from Georgia. He is absolutely correct in his history of how Freddie and Fannie got started and what their purpose was and the fact that they are a great idea that went wrong, unfortunately—or went "awry" would be a better term, not wrong. The concept remains a good idea.

I rise to support Senator MCCAIN's proposal because what he is suggesting is a way out of a very deep and dark hole of debt for our Nation and our American taxpayers, which is being generated by the legacy and the present activities of Freddie Mac and Fannie Mae.

Part of this amendment in which I played a role primarily is the issue of bringing on-budget and, therefore, into the light of day just how much the American taxpayers owe as a result of the situation that has occurred in those two businesses. It is estimated that the American taxpayer will end up picking up somewhere around \$400 to \$500 billion in costs as a result of the activities of Freddie and Fannie.

As far as the American taxpayer knows, this will be something that comes out of the sky. I mean, nobody is aware of it. Nobody is thinking about it. Nobody is talking about it. But these are actual debts that are going to get put on our books and which will affect our credit worthiness as a nation and which all Americans will have to pay back.

Why is this going to happen? It is going to happen because during the halcyon days of taking on debt, or taking on obligations in the area of mortgages which were not properly underwritten—and there will be a later amendment by Senator CORKER which I

will support in the area of underwriting—but which were not properly underwritten and which were securitized and basically insured, for all intents and purposes, by Freddie and Fannie, we ended up with a situation where they own a lot of paper which does not have the value it is supposed to have and which is not being paid back at the rate at which it was supposed to be paid back.

Unfortunately, there was a tacit understanding that grew up in the markets that the American taxpayer was going to stand behind that paper. It was never explicit, but it became tacit, and people expected that. Then when the actual event occurred, as these defaults started to accelerate, it became real and the American taxpayer is now having to stand behind all of this debt.

It is certainly going to come as a shock to most Americans that they owe approximately \$½ trillion—\$½ trillion—because of very bad decisions that were made by a group of people who were underwriting and basically securitizing these loans.

Why did that happen? Well, there will be a lot of recrimination on this subject. But the basic reason was that the Congress decided that Americans should own houses whether they could afford the houses or whether the houses sustained the value of their loans, Americans should be able to go out and buy houses. So a lot of houses were sold which did not have the underlying value necessary to support the loans which were made on them, and which the person who bought the house and took out the mortgage did not have the income over the extended period of time of that loan to pay it back. Everybody knew it at the time the house was bought. Everybody knew it at the time the mortgage was made. But they figured: Well, appreciation will always occur in real estate prices. So that will not bother us with the value of the house. Well, maybe this person who got the loan for the house, maybe their income will increase, or when the reset day occurs on that mortgage they will be able to take care of it in some way.

So nobody faced up to the problem at the time, and literally millions, millions of homes were purchased under that basic scenario. That is what caused the implosion, basically, of our financial markets back in late 2008, and Freddie and Fannie are a large part of that implosion. But a lot of the initiative for that came from the Congress, basically asserting that people should be able to get those types of loans, and pushing Freddie and Fannie from using what had been very standard and traditional underwriting standards in the 1990s into much more aggressive standards as they moved into the early 2000 period.

As a result, we had this proliferation of loans which simply did not have the

underlying value and did not have the capacity to be repaid. They were all securitized by Freddie and Fannie. So now the American taxpayer ends up with this huge bill.

I think we have an obligation as a Congress to at least be honest with the American taxpayer on this and tell them this is how big the bill is. And it is huge. It is huge.

So this bill is now hidden in the drawer under the Federal accounting system where we do not even acknowledge that it exists under the Federal budget, even though we know we owe it, even though we know it is going to be put on the books of the Federal Government, even though we know the American taxpayer is going to have to end up picking this up in the long run. We do not even acknowledge it. It is stuck in some drawer somewhere in Washington.

Well, that should not happen any longer. We just had an amendment about transparency with the Federal Reserve. Everybody voted for it. Everybody voted for the transparency amendment on the Federal Reserve. This is the transparency amendment on Freddie and Fannie. This amendment will tell the American taxpayer just how much they really do owe. It will bring on-budget the issue of the debts of these two corporations, which are now the obligations of the Federal Government and therefore the American taxpayer. Absolutely last to be done.

I thank the Senator from Arizona for including in his amendment this language which brings this on-budget the way it should be. It opens the light of day so that the American taxpayer can understand just how much risk has been piled on their backs, how much debt has been piled on their backs as a result of the irresponsible activity, which in large part was initiated by this Congress over the years, forcing out loans and pushing a public policy that these loans should be made.

Secondly, I congratulate the Senator from Arizona for bringing forward an idea, a proposal for how we unwind this situation and how we get out of this situation by putting us on a path, a path toward basically decoupling Freddie and Fannie from the American taxpayer, having those two organizations no longer be dependent on the American taxpayer and having the American taxpayer no longer having to pick up the debts of mistakes made by those two corporations, even when those mistakes were caused, to some significant degree, by the Congress taking actions which were inappropriate—or which were bad policy, not necessarily inappropriate, but definitely bad policy.

So I congratulate the Senator from Arizona. I think this is a good amendment. As has been said, how can we take up financial reform if we do not

take up the single biggest entity, the single biggest two entities, when combined the single biggest entity, that affects the financial markets relative to real estate lending in this country, which is what caused the downturn and the crisis at the end of 2008.

We cannot do it. We cannot claim we have done financial reform if we do not take on and address this issue. I understand that the administration said: Well, we will do it next year. Well, we do not have time. It needs to be done now. We need to address this now. It is a critical issue, and it is at the essence of whether we can get our house right and our ducks in the correct order relative to financial reform.

If we do not straighten out Freddie and Fannie and its relationship to the Federal Government, and specifically its relationship to the American taxpayer, we really have not done anything to solve the long-term problems of how we get our fiscal house in order because that issue of how to make real estate loans in this country is at the essence of how we correct the financial structure of this country.

This amendment, coupled with the amendment that is coming from Senator CORKER on the issue of underwriting, are the two key amendments to this bill which address the two elements which are not addressed but which have to be addressed if we are going to have effective, comprehensive, lasting, and meaningful reform.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, for the information of the manager, I have the following speakers: Senator COBURN for 10 minutes, Senator DEMINT for 10 minutes, Senator THUNE for 10 minutes. I have not been able to nail down Senator SHELBY as to how much time he will take. I would like to sum up for 5 minutes. There will be no more speakers on my side other than those.

Mr. DODD. Mr. President, I can't do the math that fast. I don't know what that amounted to, but if we add 15 minutes for myself—why don't I ask for 20 and then I will yield back. I will take maybe 10. I don't have any requests for speakers at this time, but I may want to leave space in case others may want to be heard. If we could calculate what the time is, find out about Senator SHELBY, and then lock down the time. I don't need any additional time for a side-by-side. I will use 15 minutes. As soon as we get a number on that, we will let our colleagues know.

I thank my colleague from Arizona.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to spend a few minutes kind of general talking. I wish to give an example because this is a very big bill with a lot of hard work by the Banking Committee and their staffs. I want Members to compare this bill to a loved one

who gets pneumonia. They go to the doctor and they have a cough and a fever and chills. They feel terrible. Think about it. If you would take your loved one to the doctor and the answer you would get is: I think I can take care of that. I can give you something for the cough that will suppress the cough and I will give you something to take care of the fever and I will give you a little something to take care of the pain in your chest. You go on home. You come back if you don't get better. Of course, 2 days later your loved one ends up in the hospital with raging, now bilateral pneumonia and sepsis, bacteria in the blood. This bill is kind of like that. It is kind of like a doctor treating symptoms instead of the real disease.

The real disease was Congress. The real disease was poor underwriting standards, actually no underwriting standards. The real disease was Fannie Mae and Freddie Mac, and the real disease was the rating agencies that haven't been controlled effectively by this proposed legislation. This legislation does nothing for the real disease. It treats a lot of symptoms. It grows government gigantically. It will create more bureaucrats and rules than we can shake a stick at. But it does not fix the underlying problem.

When people dispute that, ask the following question: If you are at home, working and paying your mortgage, guess what. The reason we are not fixing Fannie Mae and Freddie Mac is so you can continue to pay more taxes so Freddie Mac can solve those mortgage problems through your tax dollars and other people not being responsible for theirs.

That is what is going on here. That is why you are going to see \$500 billion in additional losses with Fannie Mae and Freddie Mac, because we are going to get them to keep going until we have satisfied all this, not doing the hard work, not recognizing that we are actually going to need \$5 or \$600 billion more in taxes or we are going to borrow that to take care of this problem. So everybody who is out there today who is working hard, paying the mortgage, and keeping up is going to get to pay extra because we are not going to fix Fannie Mae and Freddie Mac in this bill.

That is why this amendment is so important. We decided in this country a long time ago that we were going to set forth a policy to help people own homes, except we overdid it. We created incentives that would bring out the worst nature in people. If you don't believe that, look at Long Beach Mortgage, where 90 percent of the mortgages they wrote prior to them folding were totally fraudulent. Where was the oversight? There wasn't any—the Office of Thrift Supervision, but we didn't oversee the Office of Thrift Supervision. We created the symptom and

a set of incentives and now we want to leave them right there.

This underlying bill does not address the three main diseases that caused the problems we have. Congress genuflects and redirects any criticism from us to the greedy banks or the greedy loan originators, but they never say anything about us not doing oversight. They never say anything about us not reforming Fannie and Freddie when we knew what was coming in terms of their losses and also the financial difficulties they had. We have a bill that doesn't fix it—a lot of hard work, a lot of good intentions, but it doesn't fix the core problems so they will not occur in the future.

As the Senator from New Hampshire said, if you combine strong underwriting standards and transparency associated with limiting the loss the American taxpayer is going to take on with Fannie Mae and Freddie Mac, you will do something. But the way the bill is now, we will have created big theatrics. Everybody will shake hands and holler and dance around when the bill passes, except the dirty little story will be that we didn't fix the real disease. When that loved one in ICU with double pneumonia and sepsis dies, we go after the person who didn't fix it, who should have fixed it, who had the knowledge to fix it, and we say: You are liable.

Well, we are liable. We ought to be fixing this. The very fact is we are not.

The McCain amendment is a commonsense amendment. I understand the reservations. They don't want another \$400 billion of recognized debt. They don't want to account for the losses that are continuing to flow, \$20 billion so far in the first quarter of this year, out of those two institutions. The Senator from New Hampshire way underestimated the cost to the American taxpayer and what it will ultimately be by not fixing this.

My appeal to the chairman of the committee is to seriously look, give us good answers on why we are not fixing Fannie Mae and Freddie Mac. What are the real reasons we are not fixing that? What are the real reasons we are not creating strong, transparent underwriting standards so the problem doesn't occur in the future? What is the real reason? What is the real reason we don't hold accountable the rating agencies and take away the conflict of interest thoroughly—not partially but thoroughly—from the rating agencies?

The rating agencies are supposed to be a check. Had they been doing their jobs, we wouldn't have had all these securities sold that were worthless or were nonperforming. But they don't do their job. We didn't do our job. Fannie Mae and Freddie Mac didn't do their job. Yet we are not going to address the core issues that created the setup and framework we are now experi-

encing as an economy. To me, that creates a tremendous amount of liability on our part. We ought to have to be in explanation of every ounce of our being on why we don't fix the real disease that caused this problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me speak for 5 minutes. I ask the Chair to inform me when I have done so.

First, let me notify my colleagues, we don't have a time agreement yet, but I hope we will shortly on the McCain amendment and the amendment I will offer as a side-by-side on this issue.

I ask unanimous consent to have printed in the RECORD letters from the National Association of Home Builders and the National Association of REALTORS, both of which oppose the McCain amendment.

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

NATIONAL ASSOCIATION OF  
HOME BUILDERS,

Washington, DC., May 6, 2010.

Hon. JOHN MCCAIN,

U.S. Senate, Washington, DC.

DEAR SENATOR JOHN MCCAIN: On behalf of the 175,000 members of the National Association of Home Builders (NAHB), I am writing to express our strong concerns with an amendment offered by Senator John McCain (R-AZ) dealing with the future of the housing Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac.

Fannie Mae and Freddie Mac have been, and remain, critical components of the U.S. housing finance system. NAHB is working with Congress to craft a thoughtful approach to the future of these institutions, as well as the future of the housing finance system itself. However, we remain concerned about how to get from the current structure to a future arrangement without undermining ongoing financial rescue efforts and disrupting the operation of the overall housing finance system. Any changes should be undertaken with extreme care and with sufficient time to ensure that U.S. home buyers and renters are not placed in harm's way, and that the mortgage funding and delivery system operate efficiently and effectively as a new system is put in place.

NAHB is concerned that the provisions in the McCain amendment, if the GSEs are deemed viable, dealing with portfolio limitations, loan limit repeals and escalating mandatory down payments would greatly limit the GSEs' ability to participate in the secondary housing market and lead the housing market into recovery. Moreover, NAHB is concerned that the McCain amendment could effectively end the current housing finance delivery system without offering a thoughtful replacement.

Again, NAHB has strong concerns with the impact the McCain amendment would have on the current housing finance system, and urges the Senate to address the future of Fannie Mae and Freddie Mac in a thoughtful and deliberative manner.

Best regards,

JOSEPH STANTON,

Senior Vice President and Chief Lobbyist,  
Government Affairs

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

U.S. SENATE,  
Washington, DC.

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

#### CORKER-GREGG-ISAKSON AMENDMENT

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

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

#### MCCAIN-SHELBY-GREGG AMENDMENT

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

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

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

First, the aggressive reduction of their portfolio will prevent them from being an ef-

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

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

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

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

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

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

I appreciate the opportunity to share with you the views of more than 1.1 million real estate practitioners and respectfully request that you oppose the McCain-Shelby-Gregg (#3839) and the Corker-Gregg-Isakson (#3834)

amendments to S. 3217, the Restoring American Financial Stability Act of 2010.

Sincerely,

VICKI COX GOLDER, CRB,  
2010 President,  
National Association  
of Realtors®.

Mr. DODD. I say this with all due respect, but the McCain amendment says that in 24 months we get rid of Fannie and Freddie. I don't call that reform. They are just getting rid of something. What are the implications of just getting rid of Fannie and Freddie? The fact is, Fannie Mae and Freddie Mac, at this juncture, account for 96.5 percent of all funding for all mortgages today. The amendment could undermine the supply without establishing any alternative, and there is no alternative. It just says in 24 months you get rid of Fannie and Freddie. That is a wonderful conclusion, except for the fact that what you get for that—and I don't make up these numbers—is higher interest rates on mortgages, declining values in properties, the possibility of eliminating the 30-year fixed rate mortgage, which only exists because, frankly, we have had the Fannie Mae and Freddie Mac mortgage program.

This program needs to be fixed. There is no question about it. We need an alternative housing financing system. That is without question. But this amendment doesn't offer any. It just says get rid of the one we have.

As the letter from the National Association of REALTORS reads:

[It] places Fannie Mae and Freddie Mac on a fast track to dissolution. REALTORS believe that reform of these institutions, that have played a pivotal role in the evolution of the U.S. housing market, is necessary; however, now is not the time for drastic action. Especially, considering the current role in stabilizing the housing market. [The McCain] amendment does not offer a replacement to fill the enormous gap that the shuttered GSEs will leave.

That is what we are being asked to do. In the letter from the National Association of Home Builders, they write:

Fannie Mae and Freddie Mac have been, and remain, critical components of the U.S. housing finance system. However, we remain concerned about how to get from the current structure to a future arrangement without undermining ongoing financial rescue efforts and disrupting the operation of the overall housing financing system. Any changes should be undertaken with extreme care and with sufficient time to ensure that U.S. home buyers and renters are not placed in harm's way, and that the mortgage funding and delivery system operate efficiently and effectively as a new system is put in place.

We have to do this carefully. It was the housing problems that got us into this mess. It was not Fannie and Freddie. It was this notion of a deregulated environment that occurred. All the problems emerged in the unregulated sector—unregulated brokers, unregulated mortgage companies. They were luring people into mortgages they could not afford, with no documentation, no background checks whatsoever. That is the genesis of this whole

issue. Read a new book, "The Big Short," if you want a good read about the genesis of this problem. I should not be in the business of promoting books, but that book will lay out what happened. Fannie and Freddie contributed to the problem further out, but the problem began in a totally unregulated environment, an unregulated environment that was promoted by the Chairman of the Federal Reserve and his advocates and supporters over the years. That is the origin of the mess that got us into this. Today there is no backup. If 96.5 percent of mortgages are backed by these two institutions right now, what replaces it? There isn't any with this amendment. We are left in a free fall. Who gets hurt? Average Americans. Clearly, we have to step up. Our amendment that we will offer as a substitute demands within 6 months a plan be laid out. There are a lot of different ideas on how to do it. We have had a lot of hearings and discussions on what ought to replace the present housing financing system. But I don't know of anyone who has come to one single conclusion on what the best alternative is. Some have advocated a public utility concept. That has very attractive features to it and is one I would be inclined to be supportive of. There are other ideas on how to do this, but to just eliminate it altogether, without an alternative, at a time when we are just beginning to get back on our feet, housing values are beginning to creep up, housing sales are beginning to move forward?

Again, if we leave this sector of the economy with the kind of disruption created by this amendment, then we could fall right back into a recession. We have lost 8.5 million jobs, 7 million homes have been lost, 4 million homes today are underwater in the United States, and 250,000 have been seized in the first 3 months of this year. If we want to contribute to that, if that is what our goal is in this bill, to decide on a whim and offering an amendment just to strike these two entities that exist with all their problems, that this is the way to deal with the housing problem, it would be a drastic mistake to make, having an amendment such as this be adopted. That is the reason I feel strongly about it. That does not, in any way, take a backseat to the notion we have to come up with an alternative housing financing system. That is absolutely certain. This amendment does not do that. It just gets rid of the present one without replacing it with anything. That is not the way to engage in the kind of reform that is needed.

I think my 5 minutes have expired.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, before I yield to Senator THUNE, in response to Senator DODD's statement, I am incredulous that we would somehow believe

Fannie and Freddie were not among the prime reasons for this financial meltdown.

Peter Wallison, who is a fellow in financial policy studies at the American Enterprise Institute and is a leading expert on banking and securities regulation, has written extensively about this issue and says:

The roots of the financial crisis date back to 1993, when Fannie Mae and Freddie Mac—

With the encouragement, by the way, of Members of Congress, including the passage of the Community Reinvestment Act, which basically forced people to give home loan mortgages to people who could never pay them back—he goes on to say—

begin stocking up on subprime mortgage assets and other risky loans while reporting them as prime. The agencies' conflict of interest between lending to low-income borrowers and minimizing risk-taking activity may be to blame for their behavior, however, it is certain that the government's failure to properly regulate the enterprises has created one of the worst policy disasters in history.

On Christmas Eve, when most Americans' minds were on other things, the Treasury Department announced it was removing the \$400 billion cap from what the administration believes will be necessary to keep Fannie Mae and Freddie Mac solvent. This action confirms that the decade-long congressional failure to more closely regulate these two government-sponsored enterprises (GSEs) will rank for U.S. taxpayers as one of the worst policy disasters in our history.

That is the view of most economists. How in the world someone as knowledgeable as the distinguished chairman of the committee does not recognize this is one of the prime reasons for the failure, this is one of the prime reasons why 48 percent of the homes in Arizona are underwater, where people are throwing keys in the middle of the living room floor because they cannot afford to make the payments.

The enablers were Fannie Mae and Freddie Mac—the enablers of all this. Time after time, this Congress—this Congress—put pressure on them to increase their home loan mortgages to people who could never afford to pay their mortgages. We know that is the cause of it, and how the Senator from Connecticut can somehow allege that Fannie and Freddie were not—as Mr. Wallison says, the "action confirms that the decade-long congressional failure to more closely regulate these two government-sponsored enterprises will rank for U.S. taxpayers as one of the worst policy disasters in our history."

This morning, Mr. Wallison is quoted as saying:

Right now we have a consensus that something needs to be done. The sensible thing to do is to put Congress in a position where they have to act within a certain period of time.

That is what this amendment does. They have to act in a certain period of time. The Senator wants to know who should be making home loans? Community banks. Community banks should

be making home loans to people. They should be able to extend lines of credit to small businesses. But the main thing is, it should not be given to a government-sponsored enterprise to keep it in business, where the hundreds of billions of taxpayer dollars being spent is unlimited.

I yield the floor. Senator THUNE, I believe, has 10 minutes.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from South Dakota.

Mr. THUNE. Madam President, I thank my colleague from Arizona for yielding me time.

I would say Fannie Mae and Freddie Mac is a pox on all of us. But shame on us if we do not try to do something in this legislation to address this issue. What the McCain-Shelby-Gregg amendment does is responsible. It does allow for a wind-down of this conservatism. But, as the Senator from Arizona has pointed out, it goes squarely at what I think most economists argue was a huge contributor to the meltdown we experienced a couple years ago: the runaway lending and irresponsible lending practices that were involved with the plight we now see with Freddie Mac and Fannie Mae, where they have, up until, I think, this last quarter—or taking the last quarter combined, it is about \$145 billion now that the taxpayers are on the hook for.

As the Senator from Arizona pointed out, last Christmas Eve the administration lifted the cap. There was a \$400 billion cap on the amount of taxpayer assistance that could be provided to these two institutions. But now that cap has been lifted. Imagine the scale and dimension of what we are talking about, when we already have \$145 billion of taxpayer exposure. We assume it could be as much as \$400 billion. But just in case, the administration lifts the cap because it could go well beyond that, which suggests, if history is any indication, it will go well beyond that.

What this does is say we need to exercise some responsibility with regard to the regulation of all the financial institutions in this country. What the Senator from Connecticut, in his bill, does—with the financial services regulation reform bill—is to attempt to get at what contributed, in many respects, to the meltdown we experienced a couple years ago. But it ignores perhaps, as has been pointed out by the Senator from Arizona, one of the biggest contributors to that problem; that is, these two toxic institutions, Freddie Mac and Fannie Mae.

The administration has said they need time to come up with a plan. The side-by-side that is going to be offered by the Democrats is going to be a study. We are going to study this for about 6 months. I think their argument is, it would be dangerous to rush the process. I think the contrary is true. I believe it is dangerous to ignore this

problem any longer. We cannot afford to wait so more taxpayer money can be lost, can be wasted in trying to keep these two entities afloat.

As I said before, last week we were informed that Freddie Mac needs an additional \$10.6 billion in taxpayer funds due to an \$8 billion loss in the first quarter of 2010. Since September of 2008, that brings the taxpayers' invoice for Freddie Mac to \$61.3 billion.

Fannie Mae reported a first quarter loss of more than \$13 billion, needing \$3.4 billion from the government, putting their bill to the American taxpayers at \$83.6 billion.

So the grand total of taxpayer loss from these two entities since their takeover in 2008 is a whopping \$145 billion.

The losses racked up by Freddie Mac and Fannie Mae exceed—exceed—the government's losses on AIG, General Motors, and Chrysler. Yet the current legislation in the Senate is completely silent on these two entities. That is outrageous. We cannot continue to funnel unlimited amounts of taxpayer money into Freddie and Fannie and have no plan to end this siphon.

In a time when we are faced with crushing debt and out-of-control deficits, we are willing to turn a blind eye to a \$145 billion problem, which is going to only magnify over time. Last Christmas Eve, the administration lifted the cap of \$400 billion, which is what initially was put in place that would limit the amount of taxpayer exposure. But what we are now saying is that may not be enough. Yet we do nothing—nothing—in this legislation to remedy this problem.

Obviously, the administration knew there was more bad news ahead when they decided to lift the cap on government assistance on Christmas Eve of last year. The Obama administration decided that taxpayers could afford unlimited funding for Freddie and Fannie rather than keep a \$400 billion cap on assistance in place. It is frightening they believe that \$400 billion is not going to be enough—unlimited funding may not be enough. Who knows where this ends.

That is why I think it is important right now that we deal with this issue, and the McCain-Shelby-Gregg amendment does it in a responsible way by winding down and providing a timeline. It sets a 30-month date out there by which this conservatorship has to be wound down.

If you look at what the current exposure is in terms of Freddie and Fannie, they own or guarantee over 30 million home loans, worth about \$5.5 trillion. The CBO estimates that Freddie and Fannie could cost the taxpayers as much as \$380 billion through 2020. As I said before, my assumption is that because we lifted—"we," the administration lifted—the cap on the \$400 billion of exposure, the assumption is, it is

going to go much higher than that. So I think we have to ask ourselves this fundamental question: Is this the direction in which we want to continue heading or is it time to change course?

The time to change course is now while we are debating a bill that is designed to address the very problems we encountered a couple years ago. Freddie and Fannie, as the Senator from Arizona said, were at the very heart, the very core of that issue.

According to a recent Washington Post article, with the government's conservatorship of Freddie and Fannie and the increase in FHA and VA loans, the government backed nearly 97 percent of home loans in the first quarter of 2010. Madam President, 97 percent of loans are backed by the U.S. Government. Is this where we want to end up? Is this where we want to head? Is this the best course for our housing market? Is this the role the Federal Government should be taking when it comes to housing in this country?

I firmly believe it is time we change course. I think there is great value—we all agree there is great value—in home ownership and helping families achieve the American dream of owning their own homes. But we have to bring personal responsibility back into the conversation. We need to go back to a time when families saved up money to make a downpayment on a house. They went to their banks. They provided the necessary documentation to prove they could pay back their loans, and they bought a house that was within their budgets. Buying and owning a home should be a goal people work to achieve, not a government mandate funded by the taxpayers. That essentially is what we have created.

So I believe it is about time to take responsibility for our actions. My constituents in my State who bought houses they could afford and paid their bills on time want to see Congress start taking some responsibility. I believe the McCain-Shelby-Gregg amendment does just that. It shows our commitment to getting our fiscal house in order in Washington, DC.

As I said, it is a sound plan for winding down the government backstop to Freddie Mac and Fannie Mae. It mandates that conservatorship will end in 30 months or less. Freddie Mac and Fannie Mae will have to reduce their portfolios by 10 percent each year, and if they are not viable enough to exist after the 30 months they will be liquidated. If they are a viable company after the 30 months, they would only enjoy their Federal GSE status for another 3 years.

The amendment repeals the affordable housing goals that persuaded the two entities to enter into the subprime loan business in the first place, which I believe was the slippery slope that got us into all the problems, all the troubles we are facing today.

It creates new underwriting requirements on loans purchased by Freddie and Fannie. Freddie and Fannie will have to reduce their mortgage assets by more than 50 percent within 2 years and increase their capital reserves. It repeals the temporary increase in the conforming loan limit, returning it to \$417,000. The two would have to pay State and local taxes, register with the SEC, and pay a fee to the government to repay their debts to the taxpayer.

These are all responsible reforms. Contrary to the assertions that have been made by the other side, this amendment is the correct way to proceed in dealing with these two giant institutions that have lost their way and are costing the taxpayers literally billions and billions and billions of dollars every quarter that passes that we do not take steps to fix this problem.

The amendment would reinstate the \$400 billion cap that the administration lifted in December so the taxpayers know for certain they are not going to be on the hook for unlimited financial support.

The amendment establishes a new special inspector general at the GAO to investigate and report to Congress on these two entities. Freddie and Fannie would be included in the Federal budget until their conservatorship has ended, which is the fiscally responsible thing to do when we all know they do, in fact, have an impact on our budget and on our debt.

As I said, I have heard the arguments on the other side of the aisle, and I think they are ignoring the clear will of the American people. The American people get this. They know why we are where we are. They are sick and tired of subsidizing the mistakes of Freddie Mac and Fannie Mae. We need to put an end to the taxpayer bailout.

I think it is important to the credibility of our economy and our credibility with the American taxpayers—but it is important to the credibility of the markets and to our economy—that they understand we are serious about solving this problem. That is why the McCain-Shelby-Gregg amendment is the correct way to proceed. We are going to have a vote on that very soon, and I hope we will not leave this subject, that we will not dispose of this financial services regulation reform bill without addressing this very important topic.

To suggest for a minute, as the other side has, that somehow we can do a study, we can put this off for 6 months—and who knows. By the time they complete the study, they will have to think about the results of that study and formulate a plan, and that will take another 6 months or a year. Every single month, every single quarter that goes by, we continue to hemorrhage more and more money at the cost of billions and billions of dollars to the American taxpayers. They have

had enough. We should say we have had enough and we are going to bring some discipline. This amendment does that, and I hope my colleagues will support it.

I yield the remainder of my time.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SHELBY. Madam President, as part of the debate on the McCain-Shelby-Gregg amendment, I wish to take this opportunity this afternoon to discuss the history of Fannie Mae and Freddie Mac from my perspective. By doing this, I want to emphasize past Republican attempts at regulating and reforming these institutions, while also discussing their role in the financial crisis.

The government-sponsored enterprises that we call Fannie Mae and Freddie Mac were key players in the collapse of the U.S. housing market. Their multitrillion dollar portfolios gave them the purchasing power to drive markets. In addition, false presumptions about their housing finance expertise and their connections to the government gave them further power to influence the housing market. And let us not forget the GSEs' nationwide lobbying and public affairs apparatus that was designed to keep reformers at bay and their supporters flush with cash.

When the GSEs began to buy subprime securities, other firms, including most of the Wall Street banks, took this as a signal that subprime mortgage securities were safe and worthwhile investments. In effect, Fannie Mae and Freddie Mac placed the Good Housekeeping "Seal of Approval" on these risky instruments. As a result, the rest of the market engaged in this practice, and the race to the bottom began. Ultimately, the GSEs' collapse lit a wildfire that burned throughout the financial markets.

Due to their miscalculations, Fannie Mae and Freddie Mac have been placed in conservatorship and have already cost the taxpayers well over \$100 billion. Just last week, we learned that the GSEs will need another \$20 billion in taxpayer assistance for their losses during the previous quarter.

This did not have to happen. For years, the warning signs were flashing, and Republicans made multiple attempts to adopt the necessary reforms. Unfortunately, those efforts were opposed by Democrats in the Senate Banking Committee and ultimately caused the many efforts put forth by Republicans to stall in the Senate.

In 2003, as chairman of the Banking Committee at that time, I held multiple hearings on proposals for improving the regulation of the GSEs. I wish to read a portion of my opening statement from one of those hearings. I quote from that time:

The enterprises are large institutions. Collectively, Fannie Mae and Freddie Mac carry \$1.6 trillion in assets on their balance sheets and have outstanding debt of almost \$1.5 trillion. The Federal Home Loan Bank System is not far behind, with combined assets of over \$780 billion and outstanding advances to member institutions of \$495 billion. Due to the importance of the housing GSEs' mission, and the size of their assets, I believe that the enterprises require a strong, credible regulator.

I further read from the statement then:

I remain concerned that the current regulatory structure for housing the GSEs is neither strong nor credible.

At this same hearing, it became apparent that the two parties had very different perspectives regarding the need for reform. One of my Democratic colleagues noted—and it is in the record:

There is an old expression, if it ain't broke, don't fix it. I think some of us here in the Senate believe that when we try to fix things that aren't really broken, we can end up doing more harm than good.

Notwithstanding the mindset on the other side of the aisle, my Republican colleagues and I persevered, and we remained engaged in the effort to reform the GSEs by holding numerous hearings and closely tracking the GSEs' activities at that time.

We decided those who believed "things aren't really broken" were wrong. In the face of strong Democratic opposition and a relentless lobbying campaign by the GSEs and their supporters, we proceeded with a markup of the Federal Housing Enterprise Regulatory Reform Act of 2004.

I wish to again read portions of my brief opening statement from that markup which lays out the issues and the responses we crafted to address the problems of the GSEs then:

This afternoon the committee will consider S. 1508, a bill to address regulation of the housing GSEs.

Today, we are faced with the most important decisions considered by this committee in years—determining the strength, independence and credibility of regulation of our nation's Government Sponsored Housing Enterprises. The strength, independence and credibility of this regulatory system have tremendous implications for the future health and vitality of our housing markets, our capital markets, and the economy as a whole.

I continue to quote the statement:

Freddie Mac and Fannie Mae currently have \$1.7 billion debt outstanding. To provide some perspective, our nation's Treasury debt in the hands of the public stands at just over \$4 trillion. The Federal Home Loan Bank System has also grown significantly since the 1990s and has a vastly expanded membership base.

Its current regulator is not up to the task of providing adequate oversight of its significant role.

My statement continued:

Fannie Mae is the second largest financial institution in the United States. Freddie Mac is fourth. Their debt is held by foreign central banks, insurance companies, money center banks and community banks. Because of the interest rate risk these GSEs must manage, they have an extensive network of derivative contracts. Should one of these institutions encounter significant financial difficulty it could make the S&L crisis pale by comparison.

I was here speaking as an early member of the Banking Committee, as was Senator DODD, during the bailout of the S&Ls. And it was no pretty matter. It ended up costing the taxpayers at least \$130 billion.

I continue:

This experience has only reaffirmed my resolve to ensure such a debacle never revisits the taxpayer. And, quite simply, the real truth is we cannot afford a crisis of the magnitude a failing GSE would pose.

I approach this markup today with a firm appreciation of the gravity and relevance of what we do here today. I state again, as I have before—I support the housing missions of the GSEs. Home ownership is the primary source of wealth for many Americans. It fosters strong communities and promotes stability for children and families.

But, and I believe there is consensus in this Committee on this one point at least, they are not well-regulated and, therefore, pose significant risk to the taxpayer and the markets they serve.

To be clear: they are not well-regulated because the regulatory structures and authorities that Congress created are insufficient and weak by design.

And that is what the draft before us is all about. Reaffirming the important mission of GSEs, creating a regulator that has all the tools and independence that other first class financial regulators require, and protecting the taxpayer. These are the guiding principles that animate the draft that I have put forth before the Banking Committee today.

Unfortunately for the taxpayers of this country, politics got in the way of advancing credible public policy then. Apparently, the Democrats felt it was better to block necessary change, adhere to the status quo, and ignore the risk to the financial system, all while leaving the taxpayers fully exposed.

We, the same Republicans who have been characterized by Democrats as being pro-Wall Street and antiregulation throughout this process, were trying to create a stronger regulator, raise capital standards, reduce risk taking, and put in place a resolution regime that would limit taxpayer exposure in the event of a firm failure.

That was a number of years back. I wish to revisit the words of one of my then-Democratic colleagues who made the following statement—and it is in the record—as we debated the merits of the Republican GSE reform bill at that time:

Lord only knows where the economy would be today if it were not for the stability of the housing market in the midst of so much turbulence and the ability of Americans to draw

down some of their home equity to engage in consumer purchases.

Then, as we stood on the precipice of a housing and financial meltdown, my Democratic colleagues were opposing more regulation and promoting more consumer spending. As if that were not bad enough, we were encouraging homeowners to raid the home's equity to finance their purchases. And look where it brought us.

Another Democrat took issue with the fact that we attempted to give the regulator the power to place a GSE into receivership:

Receivership, first, it does not have to be in the bill, but, second, to allow a regulator who may not like this institution to then sort of dole out little pieces of it one way or another and weaken the fundamental structure of Fannie and Freddie easily leads to its demise.

I am not sure whether my colleagues then understood the basic concept behind establishing an orderly resolution process, but I hope the lesson has now been learned. Ironically, Democratic opposition to strong reform actually produced the exact outcome my colleague feared. When reform stalled in the face of Democratic objections, investors once again viewed Fannie Mae and Freddie Mac as "too big to fail." They were confident that Congress and the U.S. Government would never allow them to go under. This, of course, gave the GSEs a significant financing cost advantage which led to their explosive growth and excessive risk taking.

Finally, and most telling, one of my Democratic colleagues was concerned about how Wall Street might interpret the regulatory changes that Republicans were advocating, stating:

It is a fact that just mere speculation about the prospects of some provisions in the bill is sending shock waves through Wall Street.

Really?

When Wall Street became concerned that our legislation at that time would provide a stronger regulator, require higher capital standards, mandate less risk taking, and establish a well-designed resolution regime, the Democrats came to Wall Street's rescue, not the Republicans.

When the choice was between Main Street and Wall Street, the Democrats made it absolutely clear whose side they were on. They chose Wall Street, and Wall Street ultimately paved the road that led to this collapse.

I ask unanimous consent to have printed in the RECORD a copy of the recorded vote of the proceedings of that day in the Senate Banking Committee. That result was a party-line vote with all 12 Republicans voting for GSE reform and all Democrats opposing it.

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

MARKUP OF S. 1508, THE FEDERAL HOUSING ENTERPRISE REGULATORY REFORM ACT OF 2004

The Committee met, pursuant to notice, at 2:10 p.m., in room SD-538, Dirksen Senate Office Building, Senator Richard Shelby (Chairman of the Committee) presiding.

Present: Senators Shelby, Bennett, Allard, Enzi, Hagel, Santorum, Bunning, Crapo, Sununu, Dole, Chafee, Sarbanes, Dodd, Johnson, Reed, Schumer, Bayh, Carper, Stabenow, and Corzine.

STATEMENT OF CHAIRMAN RICHARD SHELBY

Chairman Shelby. The Committee will come to order.

This afternoon, the Committee will consider S. 1508, a bill to address the regulation of the housing GSEs. I will start by acknowledging the original cosponsors of this bill—Senator Hagel, Senator Sununu, and Senator Dole—and I want to commend them for their dedication and their work, originally, and including putting together what we have today.

Today, we are faced with the most important decisions considered by this Committee in years; that is, determining . . .

I now move and ask a roll call vote on the original bill, the substitute. Call the roll.

The Clerk. Mr. Chairman?  
Chairman Shelby. Aye.  
The Clerk. Mr. Bennett?  
Senator Bennett. Aye.  
The Clerk. Mr. Allard?  
Chairman Shelby. Aye, by proxy.  
The Clerk. Mr. Enzi?  
Senator Enzi. Aye.  
The Clerk. Mr. Hagel?  
Senator Hagel. Aye.  
The Clerk. Mr. Santorum?  
Chairman Shelby. Aye, by proxy.  
The Clerk. Mr. Bunning?  
Senator Bunning. Aye.  
The Clerk. Mr. Crapo?  
Chairman Shelby. Aye, by proxy.  
The Clerk. Mr. Sununu?  
Senator Sununu. Aye.  
The Clerk. Mrs. Dole?  
Chairman Shelby. Aye, by proxy.  
The Clerk. Mr. Chafee?  
Senator Chafee. Aye.  
The Clerk. Mr. Sarbanes?  
Senator Sarbanes. No.  
The Clerk. Mr. Dodd?  
Senator Dodd. No.  
The Clerk. Mr. Johnson?  
Senator Sarbanes. No, by proxy.  
The Clerk. Mr. Reed?  
Senator Reed. No.  
The Clerk. Mr. Schumer?  
Senator Sarbanes. No, by proxy.  
The Clerk. Mr. Bayh?  
Senator Bayh. No.  
The Clerk. Mr. Miller?  
Chairman Shelby. Aye, by proxy.  
The Clerk. Mr. Carper?  
Senator Carper. No.  
The Clerk. Ms. Stabenow?  
Senator Stabenow. No.  
The Clerk. Mr. Corzine?  
Senator Corzine. No.  
The Clerk. Chairman, the ayes are 12, the nays 9.

Chairman Shelby. The bill is adopted.

Mr. SHELBY. Madam President, that was not the end of the story, though. More than 1 year later, we tried again to pass these important reforms. The Banking Committee held more hearings leading to the markup of S. 190, the Federal Housing Enterprise Regulatory Reform Act of 2005. I will not read my entire statement from this

markup, but I will read a part of it that describes the commonsense steps that we were attempting to take with our newest effort to pass then GSE reform. I quote from that markup:

My legislation creates a new regulator with combined oversight for both the safety and soundness and the housing mission of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System.

The new regulator will have general regulatory authority over all housing GSEs, including enhanced authority over capital requirements, and enforcement and prompt corrective action authorities that are comparable to those of the bank regulatory agencies.

Among other enhanced regulatory authorities, the bill we will consider today includes clear direction on portfolio review for compliance with safety and soundness, mission and systemic risk.

Under this proposal, the enterprises are permitted to hold those assets which promote the enterprises' mission in the housing market.

The bill also transfers the product review function from HUD to the new regulator and creates a two-tier approval process through which the enterprises must receive approval prior to offering any new product.

The bill also establishes new criteria for approval of a product that will ensure the enterprises remain focused on their statutory mission of facilitating a secondary mortgage market.

The new regulator will also have the power to conduct an orderly resolution of a failing or insolvent GSE through a receivership process. This clear and definitive process for dealing with a troubled enterprise is a critical tool for the credibility and strength of a new regulator.

Madam President, unfortunately, the Democrats did not share my view of increasing regulations on the GSEs, and their comments during the second attempt to pass meaningful reforms are telling. One of my Democratic colleagues stated then, "When the sink is leaking, you do not tear down the house, especially if the house has served you well." Another recalled a critique he read of the bill before the markup, which claimed, "It is like trying to cure the common cold with chemotherapy."

In fact, at one hearing, one of my Democratic colleagues expressed an interest in hearing how the roles of the GSEs might be increased, when he explained:

I am not only interested in hearing about the role GSEs currently play in the mortgage market, I am also interested in how their commitment to home ownership and affordable housing can be expanded.

In the end, the result of our 2005 markup was the same as our 2004 markup—a strict party-line vote with all 11 Republicans supporting the reforms and all 9 Democrats opposing them. Unfortunately, the Democrats once again sided with Wall Street and the special interests by rejecting GSE reform and any attempt to move the legislation beyond the Banking Committee.

Madam President, I ask unanimous consent to have printed in the RECORD

a copy of that recorded vote in the Banking Committee.

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

MARKUP OF THE NOMINATIONS OF HON. CHRISTOPHER COX, TO BE CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION; HON. ROEL C. CAMPOS, TO BE COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION; ANNETTE L. NAZARETH, TO BE COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION; JOHN C. DUGAN, TO BE COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY; HON. JOHN M. REICH, TO BE DIRECTOR, OFFICE OF THRIFT SUPERVISION; AND MARTIN J. GRUENBERG, TO BE MEMBER AND VICE-CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION, AND OF S. 705, MEETING THE HOUSING AND SERVICE NEEDS OF SENIORS ACT OF 2005; H.R. 804, TO EXCLUDE FROM CONSIDERATION AS INCOME CERTAIN PAYMENTS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM; S. 1047, THE PRESIDENTIAL \$1.00 COIN ACT OF 2000; AND S. 190, THE FEDERAL HOUSING ENTERPRISE REGULATORY REFORM ACT OF 2005

The question is on reporting the Committee print of S. 190 as amended here to the full Senate.

- The Clerk will call the roll.
- The Clerk. Chairman Shelby.
- Chairman Shelby. Aye.
- The Clerk. Mr. Bennett.
- Senator Bennett. Aye.
- The Clerk. Mr. Allard.
- Chairman Shelby. Aye by proxy.
- The Clerk. Mr. Enzi.
- Chairman Shelby. Aye by proxy.
- The Clerk. Mr. Hagel.
- Chairman Shelby. Aye by proxy.
- The Clerk. Mr. Santorum.
- Senator Santorum. Aye.
- The Clerk. Mr. Bunning.
- Senator Bunning. Aye.
- The Clerk. Mr. Crapo.
- Senator Crapo. Aye.
- The Clerk. Mr. Sununu.
- Senator Sununu. Aye.
- The Clerk. Mrs. Dole.
- Senator Dole. Aye.
- The Clerk. Mr. Martinez.
- Senator Martinez. Aye.
- The Clerk. Mr. Sarbanes.
- Senator Sarbanes. No.
- The Clerk. Mr. Dodd.
- Senator Dodd. No.
- The Clerk. Mr. Johnson.
- Senator Sarbanes. No by proxy.
- The Clerk. Mr. Reed.
- Senator Reed. No.
- The Clerk. Mr. Schumer.
- Senator Sarbanes. No by proxy.
- The Clerk. Mr. Bayh.
- Senator Sarbanes. No by proxy.
- The Clerk. Mr. Carper.
- Senator Carper. No.
- The Clerk. Ms. Stabenow.
- Senator Sarbanes. No by proxy.
- The Clerk. Mr. Corzine.
- Senator Sarbanes. No by proxy.
- The Clerk. Mr. Chairman, the yeas are 11, the nays nine.

Chairman Shelby. S. 190 as amended is ordered reported to the full Senate.

Mr. SHELBY. I would like to point out another bit of irony right now. Many of my colleagues who recently complained about the process regarding consideration of this bill were some of the same people who took every measure to block all consideration of

GSE reform. Actions have consequences, and in this particular instance, they were almost immediate. As soon as it was apparent that GSE reform was dead, Fannie Mae and Freddie Mac took steps to dramatically increase their risk.

The Government Accountability Office, GAO, detailed this in a September 2009 report. The GAO discovered that in 2004 and 2005, the enterprises:

... embarked on aggressive strategies to purchase mortgages and mortgage assets with questionable underwriting standards. For example, they purchased a large volume of what are known as Alt-A mortgages, which typically did not have documentation of borrowers' incomes and had higher loan-to-value ratios or debt-to-income ratios.

Furthermore, purchases of private-label MBS increased rapidly as a percentage of retained mortgage portfolios from 2003 to 2006. By the end of 2007, the enterprises collectively held more than \$313 billion in private-label mortgage-backed securities, of which \$94 billion was held by Fannie Mae and \$218.9 billion held by Freddie Mac.

Recently, Daniel Mudd, Fannie Mae's former chief operating officer and chief executive officer, testified:

While the market was changing, Fannie Mae struggled to meet aggressively increasing HUD goals. The goals were extremely challenging, increased significantly every year, and permitted no leeway to account for the challenging lending environment. Certain mortgages that may not have met our traditional standards could not be ignored.

While Mr. Mudd may be correct that these mortgages aided their ability to meet their HUD goals, it also should be noted that the GAO in this same report did not see these purchases as a benefit to their mission, stating:

The rapid increase in the enterprises' mortgage portfolios and the associated interest-rate risk did not result in a corresponding benefit to the achievement of their housing mission.

Ultimately, this increased risk played a significant role in the demise of Fannie Mae and Freddie Mac.

I would like to read one final section of that 2009 GAO report here this afternoon.

According to the Federal Housing Finance Administration, while these questionable mortgage assets accounted for less than 20 percent of the enterprises' total assets, they represented a disproportionate share of credit-related losses in 2007 and 2008.

For example, by the end of 2008, Fannie Mae held approximately \$295 billion in Alt-A loans, which accounted for about 10 percent of the total single-family mortgage book of business. Similarly, Alt-A mortgages accounted for nearly half of Fannie Mae's \$27.1 billion in credit losses of its single-family guarantee book of business in 2008.

At a June 2009 congressional hearing, former OFHEO Director James Lockhart said that 60 percent of the triple-A rated private label MBS purchased by the enterprises had since been downgraded to below investment grade. He also stated that investor concerns about the extent of the enterprises' holdings of such assets and the potential associated losses compromised their capacity to raise needed capital and issue debt at acceptable rates.

Madam President, we all know what happened once they were unable to raise capital, but let's also remember the consequences that followed our failure to properly regulate Fannie Mae and Freddie Mac.

Charles Duhigg of the New York Times, part of a group of journalists who produced "The Reckoning," a series that explored the roots of the financial crisis, wrote in 2008 that:

The ripple effect of Fannie's plunge into riskier lending was profound. Fannie's stamp of approval made shunned borrowers and complex loans more acceptable to other lenders, particularly small and less sophisticated banks.

James Lockhart supported this conclusion in his testimony before the Financial Crisis Inquiry Commission on April 9 of this year when he observed that the GSEs:

... indirectly encouraged lower standards by purchasing private label securities. They also encouraged lower standards by not aggressively pursuing the obligations to repurchase mortgages if they did not comply with the enterprises' underwriting requirements.

Madam President, during the debate on this bill before us, we have heard numerous times that we need to have a tighter grip on Wall Street to prevent those large Wall Street firms from harming small businesses on Main Street.

If only my Democratic colleagues had been less concerned with Wall Street's reaction in 2004 and 2005, perhaps we could have protected not only those less sophisticated smaller banks on Main Street but also the millions of consumers caught up in the resulting inflated housing market and the millions of taxpayers who have had to foot the bill for the resulting debacle. Instead, the stalling of this legislation by Democrats at that time ended any attempts of meaningful GSE reform until mid-2008, when Fannie Mae and Freddie Mac were already in serious trouble.

The simple truth is that we didn't act when we could have effected real change. Republicans were ready to enact real reform and—unfortunately for the taxpayer—Democrats were not. Let's not make the same mistake again here today.

The McCain-Shelby-Gregg GSE amendment takes several important steps to reform the GSEs. It provides transparency to the conservatorships of the GSEs by establishing much needed investigative oversight. It also requires Fannie Mae and Freddie Mac to be included in the Federal budget as long as they are in conservatorship or receivership status. It reestablishes taxpayer protections that were abolished by the Obama administration last Christmas Eve, and it requires that Congress be involved in any decision to spend additional resources to stabilize the housing markets. Finally, it establishes a definite end to the ongoing conservatorships of Fannie Mae and Freddie Mac and paves a responsible path forward by refocusing their

efforts, installing proper safeguards, and untangling the U.S. taxpayer from this mess.

I urge my Democratic colleagues to ignore Wall Street and the special interests lobbying against this amendment. Join the Republicans in doing something good for the American taxpayer—support the McCain-Shelby-Gregg amendment.

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

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

Mr. DODD. Madam President, I ask unanimous consent that the only debate remaining on the pending Dodd and McCain amendments be 20 minutes, with 10 minutes accorded to each amendment; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Dodd amendment No. 3938, to be followed by a vote in relation to the McCain amendment No. 3839, with no amendment in order to either amendment prior to the vote; further, that upon disposition of the amendments described above and as if in executive session, the Senate proceed to executive session and proceed to vote on confirmation of the following nominations in the order listed: Executive Calendar No. 704 and 729; that upon confirmation, the motions to reconsider be considered made and laid upon the table, any statements relating to the nominees be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; that after the first vote in this sequence, the remaining votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Well, Madam President, let me now proceed with my time. I know my colleague from Arizona will come over to be heard.

Let me emphasize again to my colleagues that the McCain amendment is opposed by the National Association of Realtors, the homebuilders, and the credit unions for the simple reason that the amendment doesn't do anything except end Fannie Mae and Freddie Mac. That is hardly reform. It replaces it with nothing, so we end up in a free fall in this country when it comes to providing affordable mortgages for middle-income families.

Granted, Fannie Mae and Freddie Mac need to be reformed, and the amendment we will vote on first off—that I will be proposing—in fact requires that the administration, by January, submit a specific plan that would

call for how to reform Fannie Mae and Freddie Mac and what to replace it with in a housing financing system. Not to have a housing financing system, just to leave us without one altogether, as we would achieve with the McCain amendment, just eliminating Fannie Mae and Freddie Mac with no replacement within the year, is hardly what we need to do at this time.

We have been through a lot. This problem began in the housing market, in an unregulated segment of our economy. For years, the previous administration and others advocated a totally unregulated market. Because of those attitudes, we ended up where we did—with brokers and mortgage companies that were providing mortgages to people without any documentation, without any underwriting standards whatsoever, and we ended up, of course, with 7 million homes lost, 4 million underwater today, and 250,000 seized just in the last number of months, since the outset of this year.

The McCain amendment would actually leave us in a very fragile situation, and that is the point the homebuilders, the realtors, and the credit unions are making in their strong opposition to this amendment.

Our amendment lays out a timeframe in which the administration would have to submit a specific set of plans so we could then, in the next Congress, move forward.

As my colleague from New Hampshire has pointed out, the issue of replacing and coming up with an alternative housing finance system is very complex. There are a lot of different ideas out there about which plan ought to replace the one we have working today. Obviously that is something the Congress will have to consider.

I mentioned earlier Fannie Mae, Freddie Mac, and the FHA together account for 96.5 percent of the funding for mortgages today. The McCain amendment would undermine this supply without establishing a reasonable alternative. It is irresponsible public policy at a very uncertain time. As Senator GREGG said earlier, on the debate in the Wall Street reform bill the GSE issue is “too complex to do in this bill.”

The McCain amendment would require the Federal Housing Finance Agency to either end the conservatorship of Fannie and Freddie or disband them, put them into receivership within 2 years. That is all. The amendment poses no alternative to Fannie Mae and Freddie Mac. It would totally privatize the mortgage market other than FHA.

We have had some experience with how the housing market behaves when it is completely privatized. It is called subprime and exotic mortgage markets. As we know, it was this unregulated market, fanned by Wall Street, that pushed out those irresponsible mortgages that they knew people could

not afford which led to our current problems. With a still fragile housing market in dangerous times, the McCain amendment would push us back into this downward spiral.

The amendment would do the following. It results in an increase in mortgage rates for home buyers and homeowners. Try to explain that as you go back to your States, if this amendment were adopted. It reduces the availability of mortgage credit in communities across our country, including communities with relatively low-cost housing. This would result in reductions in existing housing values at a time when the housing market is just starting to recover some value.

Further, this amendment would reduce the availability of mortgage credit to first-time home buyers, to low- and moderate-income families seeking to buy or refinance a home by eliminating housing goals. It goes on by delaying or to put home ownership out of reach to many families. It raises the minimum downpayment requirements to 10 percent. A minimum 10 percent for families starting out, with better underwriting standards, that kind of criterion excludes a lot of young families starting out who wish to buy their first home. It reduces the availability of mortgage credit for affordable rental housing by eliminating the housing goals, and it undermines the efforts to get loan modifications and affordable refinances to homeowners trying to save their homes.

Last, it results in the potential elimination of a 30-year fixed rate prepayable mortgage.

This last point is something I do not think most Americans are aware of. We are the only country in the world that provides a 30-year fixed rate mortgage for families. That is the source of wealth creation for most Americans. It is not buying stocks on Wall Street or getting involved in fancy credit default swaps and over-the-counter derivatives and all of this casino gambling that goes on. Average Americans accumulate wealth when they can afford to buy a home and hold on to that property, watching equity increase. That equity provides a source of income for retirement years, helps provide for the college education of their kids, and equity in a neighborhood provides stability for that neighborhood and strengthens communities. If you eliminate the 30-year fixed rate mortgage, you have dealt a huge blow to working families in this country. I do not think we want to look like Europe when it comes to home mortgages, and that is how we will end up if the McCain amendment is adopted.

For all of those reasons, as I said, homebuilders, realtors, and credit unions oppose this amendment.

Reform of the GSEs—everyone agrees we need to make that reform. However, the homebuilders say in their letter to Senator MCCAIN:

. . . we remain concerned about how to get from the current structure to future arrangements without . . . disrupting the operation of the overall housing finance system. Any changes should be undertaken with care. . . .

I agree. We should keep in mind that the Congress created a strong new regulatory regime for Fannie Mae and Freddie Mac in 2008. Their regulator is maintaining strong oversight of these enterprises, while they continue to provide crucial assistance to the housing market.

Longer term reform of Fannie and Freddie would require a thoughtful reconsideration of the structure of the whole housing finance system. This will require hearings about exactly what structure we want to put in place to finance housing in this country. This will require hearings with many stakeholders and others involved in the serious discussions to determine what that system ought to be.

To wipe out the present system—I have to tell you a quick story. It may seem unrelated to the subject at hand.

Many years ago, when I was the ripe old age of 22, I was a Peace Corps volunteer in the Dominican Republic and I went to one of the mountain villages near the border of Haiti and I asked the people what they thought their needs were. They said, What do you think we need to do, of this young American. I looked over at the old schoolhouse they had, one room, made of palm wood with a dirt floor. I said I think you need a new school. They said that is a pretty good idea. We agree with you. What should we do first? I said, first tear down the old school.

It was my first project. For the next 2 years they had no school in town. It took that long. We didn't know where to build the school. We didn't know where the property was, we didn't have the materials, so we gathered in people's homes to become the school. In effect, that is what the McCain amendment is going to do.

I made a mistake at age 22. Before deciding to build what you are going to have, don't tear down what you have without knowing what you are going to replace it with. Eventually we got a school built in that town, but they went through a rough 2 years because this young American didn't understand that while the old school wasn't great and it was in desperate need of repair, tearing it down and leaving them with no school left that little community without the ability to have a decent place to house and teach their kids. That analogy applies here because what the McCain amendment does is tear down without building anything in its place.

Again, I will take a back seat to no one. Democrats should have done a better job. Republicans—I listen to my colleague from Alabama talk about the history of Fannie and Freddie. Believe me, I have an alternative history. But

we can go back and forth on that endlessly. Let's suffice to say this: We all should have done a better job at this and finger pointing doesn't get us anywhere. We are not in the business of trying to rewrite history today, we are trying to see to how best to ensure the coming generation will never have to go through what this generation has. What we are offering here is a specific idea of how to get us to that new plan of housing finance. You don't get there by eliminating what we have today and putting everything else at risk as a result of what is included in this amendment.

Under our amendment, the Treasury specifically is told not "may" but it "shall" do following things: Come up and tell us how we are going to wind down and liquidate Fannie and Freddie; the privatization of the two GSEs; the breakup of the GSEs into small companies; and other options that may be available.

This is a tough study. This isn't one to kind of paint this over; it demands a report back, "shall," how specifically we can do this in a time certain. It is not perfect. I wish I had some magical reform to offer everyone today.

We have looked at this for weeks and months and there is a significant debate over what that housing financing system ought to be. I can't tell you with any certainty what is the best idea at this juncture. I know this much, to tear down what we have and replace it with nothing would be the height of irresponsibility. It would put our country's economy into a tailspin, in my view, at the very time we are beginning to come out of our difficulties—290,000 new jobs created in the last month alone. In the last previous months, 121,000 more than we anticipated. Housing starts are picking up, values are picking up again. Why at this very hour would we step back?

For all those reasons, I say respectfully, the McCain amendment I hope will be rejected by our colleagues and our substitute amendment will be supported.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have been around this body for a long time. I have seen the side-by-sides. This is one of the classics that we have seen time after time. If you don't like a tough amendment, then have one that requires a study. Let's study the problem. And the purpose of this amendment as stated, and I quote from the amendment:

To require the Secretary of the Treasury to conduct a study on ending the conservatorship of Fannie Mae and Freddie Mac and reforming the housing finance system.

Reforming the housing finance system—I thought reforming the housing finance system was part of the deal here. I had no idea we were not going

to reform the housing finance system when we advertised this legislation to the American people as to assure them that there would never be another financial meltdown which was caused by the housing finance system.

What does the side-by-side amendment do? It will require the Secretary of Treasury to conduct a study. Do you mean to tell me the Secretary of Treasury, after the greatest financial meltdown in history since the Great Depression, has to conduct a study? He has to conduct a study to figure out why we have just spent \$145 billion, lifted the \$400 billion cap at 7 p.m. on Christmas Eve? The system cries out for reform now. As is stated by literally every expert in America, it was the housing meltdown, abetted by the enablers Fannie and Freddie, that caused the financial meltdown. So we are doing nothing about it except asking the Secretary of Treasury to conduct a study. Remarkable. Remarkable.

Again I want to quote from the Wall Street Journal that says it well enough. It says:

This action confirms the decade-long congressional failure to more closely regulate these two government-sponsored enterprises will rank for U.S. taxpayers as one of the worst policy disasters in our history.

One of the worst policy disasters in our history, and we are doing nothing about it except conduct a study. That ought to do it.

I am not calling for the abolition of Fannie and Freddie. I am calling for them to stop being in the government trough. I am saying that Fannie and Freddie ought to be doing their job in competition with everybody else who finances home loan mortgages in America. The history of these organizations is replete with enabling by the Congress of the United States—including, by the way, incredible compensation for the so-called people who were supervising these organizations as they went into the tank—one of them \$93 million for a year or two of supervising going farther and farther into toxic assets.

All I can say is if we pass this legislation without this amendment, do not look the American people in the eye and say we have reformed the financial system in America. Do not look the American people in the eye and say we will never again have a financial collapse in this country. Do not say we are going to turn off the spigot of Federal tax dollars—already \$145 billion.

Why did the Treasury lift the cap of \$400 billion that we were going to spend to help with these toxic assets of Fannie and Freddie if they didn't think it was going to be more than \$400 billion?

So what are we doing in response? Sitting by and watching hundreds of billions of dollars of the taxpayers' money being used to bail out these two

government-sponsored enterprises to the great cost of the American taxpayer. Again I say to my colleagues: Don't wonder why the American people are fed up. Don't wonder why the American people are in virtual peaceful revolt, when we continue to pour good money after bad, to the tune of hundreds of billions of dollars, without reforming the institutions that caused it. We are not fulfilling our responsibilities to the American taxpayers.

I am asking my colleagues, don't vote for another study. If you are going to vote against my amendment, fine, but let's not continue this charade and vote for another study.

I yield to the Senator from Alabama what time remains.

The PRESIDING OFFICER. The Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There is 4 minutes 30 seconds remaining.

Mr. SHELBY. Mr. President, earlier today in the Senate I spoke about the past actions or, rather, inactions of this body that led us to the current situation with Fannie Mae and Freddie Mac. I now will take just a few minutes to discuss the current status of these institutions as Senator MCCAIN has mentioned. I will also explain the specifics of the McCain-Shelby-Gregg amendment and why I believe we must adopt it.

Since September of 2008, we have had to spend more than \$150 billion to bail out these GSEs. By some estimates, this amount exceeds the total cost of the savings and loan bailouts that occurred in the late 1980s and early 1990s. Let me repeat that. Bailing out the GSEs has now cost as much or more than the entire savings and loan crisis, and it is continuing.

Having spent such considerable amounts of taxpayer dollars, one would think that the GSEs would be topic No. 1 as we consider financial reform. Unfortunately, that is not the case. As recently reported by Gretchen Morgenson, a Pulitzer Prize writer of the New York Times:

Freddie [has] warned that its credit losses were likely to continue rising throughout 2010.

Even more troubling, while the GSEs have considerable legacy problems associated with the older loans in their portfolios, they are being used by the Obama Administration to take on additional risks.

On Christmas Day of last year, the Obama administration announced it would relax important taxpayer protections at GSEs, and it would prop them up with unlimited taxpayer funding. That is exactly what they are doing today.

The administration took this step so it would have the flexibility to con-

tinue its efforts to support the housing market. Some now are questioning those efforts. In the New York Times piece I mentioned, Ms. Morgenson quotes Dean Baker, codirector of the Center for Economic and Policy Research, who noted:

I do not understand why people are not talking about it [referring to Freddie's losses] . . . it seems to me the most fundamental question is, have they on an ongoing basis been paying too much for loans ever since they went into conservatorship?

This begs the question of why the GSEs would overpay at this point. What is to be gained? Ms. Morgenson posits a rather compelling theory:

Mr. Baker's concern that Freddie may be racking up losses by overpaying for mortgages derives from his suspicion that the government might be encouraging it to do so as a way to bolster the operations of mortgage lenders.

I hope not. In the past, those huge piles of money that have consistently been spent found their way into the pockets of Democratic operatives such as Frank Raines, Jim Johnson, Jamie Gorelick, Tim Howard, and President Obama's Chief of Staff, Rahm Emanuel. Now similar piles are floating around, not necessarily to Democrats but certainly on behalf of their pet initiatives.

The only constant in either scenario has been the taxpayer has been stuck with footing the bill. I believe this afternoon this must end. It is finally time to protect the taxpayer. The McCain-Shelby-Gregg amendment will do that.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. All time has expired, I hope.

The PRESIDING OFFICER. The Senator from Arizona has 1 minute remaining.

Mr. DODD. I think it is safe to say we can yield back our time.

I ask for the yeas and nays on the Dodd amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The question is on agreeing to the Dodd amendment.

The clerk will call the roll. The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The result was announced—yeas 63, nays 36, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—63

Akaka	Brown (OH)	Dodd
Baucus	Burris	Dorgan
Bayh	Cantwell	Durbin
Begich	Cardin	Feinstein
Bennet	Carper	Franken
Bingaman	Casey	Gillibrand
Boxer	Collins	Hagan
Brown (MA)	Conrad	Harkin

Inouye	McCaskill	Schumer
Johanns	Menendez	Shaheen
Johnson	Merkley	Snowe
Kaufman	Mikulski	Specter
Kerry	Murkowski	Stabenow
Klobuchar	Murray	Tester
Kohl	Nelson (NE)	Udall (CO)
Landrieu	Nelson (FL)	Udall (NM)
Lautenberg	Pryor	Voinovich
Leahy	Reed	Warner
Levin	Reid	Webb
Lieberman	Rockefeller	Whitehouse
Lincoln	Sanders	Wyden

NAYS—36

Alexander	Crapo	Kyl
Barrasso	DeMint	LeMieux
Bennett	Ensign	Lugar
Bond	Enzi	McCain
Brownback	Feingold	McConnell
Bunning	Graham	Risch
Burr	Grassley	Roberts
Chambliss	Gregg	Sessions
Coburn	Hatch	Shelby
Cochran	Hutchison	Thune
Corker	Inhofe	Vitter
Cornyn	Isakson	Wicker

NOT VOTING—1

Byrd

The amendment (No. 3938) was agreed to.

Mr. INOUE. I move to reconsider and to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3839

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3839.

Mr. MCCAIN. 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 bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

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

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—43

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bayh	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Feingold	Risch
Brown (MA)	Graham	Roberts
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Thune
Coburn	Inhofe	Vitter
Cochran	Isakson	Voinovich
Collins	Johanns	Wicker
Corker	Kyl	
Cornyn	LeMieux	

NAYS—56

Akaka	Casey	Johnson
Baucus	Conrad	Kaufman
Begich	Dodd	Kerry
Bennet	Dorgan	Klobuchar
Bingaman	Durbin	Kohl
Boxer	Feinstein	Landrieu
Brown (OH)	Franken	Lautenberg
Burris	Gillibrand	Leahy
Cantwell	Hagan	Levin
Cardin	Harkin	Lieberman
Carper	Inouye	Lincoln

McCaskill	Reed	Tester
Menendez	Reid	Udall (CO)
Merkley	Rockefeller	Udall (NM)
Mikulski	Sanders	Warner
Murray	Schumer	Webb
Nelson (NE)	Shaheen	Whitehouse
Nelson (FL)	Specter	Wyden
Pryor	Stabenow	

NOT VOTING—1

Byrd

The amendment (No. 3839) was rejected.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I have spoken to the distinguished Republican leader. It is my understanding we are going to do these two judges by voice vote, and following that, it is my understanding the two managers have worked out an arrangement to have a couple more amendments voted on within the next half hour or 45 minutes.

EXECUTIVE SESSION

TIMOTHY S. BLACK TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

JON E. DEGUILIO TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA

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 legislative clerk read the nominations of Timothy S. Black, of Ohio, to be United States District Judge for the Southern District of Ohio and Jon E. DeGuilio, of Indiana, to be United States District Judge for the Northern District of Indiana.

The PRESIDING OFFICER. Is there further debate?

The Republican leader is recognized.

Mr. McCONNELL. Yes. I just want to address the majority leader.

I say to my friend from Nevada, we are having voice votes on two judges?

Mr. REID. Yes.

Mr. McCONNELL. Let me indicate that Senator CORKER is prepared to offer an amendment and take a very short time agreement.

Mr. REID. And Senator MERKLEY has agreed, also, and Senator KLOBUCHAR.

Mr. DODD. If I could just interject, I believe Senator BENNET, after the judges, would be prepared to speak for about 10 minutes on his amendment, and then we could have a voice vote on that amendment. We do not even need a recorded vote on that amendment. It is a bipartisan amendment.

Mr. McCONNELL. Right, and then Senator CORKER and Senator MERKLEY and a vote.

Mr. DODD. And 30 minutes equally divided, I think we are talking about, for both amendments.

Mr. McCONNELL. Yes.

Mr. REID. If we could do the judges now.

Mr. LEAHY. Mr. President, this week, the President nominated Elena Kagan to the Supreme Court. I trust that her nomination will be treated better than President Obama's other judicial nominations, including these. President Obama nominated Jon DeGuilio to fill a judicial emergency vacancy in Indiana last year. He was unanimously reported by the bipartisan membership of the Senate Judiciary Committee in early March. His nomination has been held hostage for 2 months. President Obama nominated Judge Timothy Black last January, and he was reported unanimously in early February. His nomination has been held hostage for 3 months for no good purpose and with no explanation. Republican objection to their consideration has stalled both these nominations. Now that they are finally receiving votes, I suspect they will be confirmed unanimously, as have so many of President Obama's nominations. So why the delay? Why the weeks and weeks, and months and months, of obstruction? This obstruction is of nominees that Senate Republicans support. This is wrong. I have called for it to end, but the Republican Senate leadership persists in this practice.

By this date in President Bush's first term, 56 of President Bush's judicial nominations had been confirmed. Now that President Obama is in the White House, Republicans have allowed votes on only 23 of his Federal circuit and district court nominees.

The two nominations we consider today, that of Timothy S. Black to the Southern District of Ohio and Jon E. DeGuilio to the Northern District of Indiana, should have been considered and confirmed months ago. Both nominations have the support of Democratic and Republican home State senators. Both received positive ratings from the American Bar Association's Standing Committee on the Federal judiciary. Both were reported favorably by the Judiciary Committee months ago by voice vote, without any dissent—Judge Black on February 11 and Mr. DeGuilio on March 4.

As of today, there are 24 of President Obama's judicial nominations favorably reported by the Senate Judiciary Committee stalled on the Senate's Executive Calendar. The Senate has confirmed only 23, even though these nominations were reported as far back as November. Even after the Senate acts today, there will be 22 judicial nominees still pending, and 16 of those nominations were reported without a single negative vote. These should be easy for the Senate to consider in a timely manner and confirm. Yet Republicans continue to stall.

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

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

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

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

The Republican pattern of obstructionism we have seen since President Obama took office has led to this unprecedented backlog in nominations on the Senate calendar awaiting final consideration. We should end the backlog by restoring the Senate's tradition of moving promptly to consider noncontroversial nominees with up-or-