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Senate

(Legislative day of Monday, June 23, 2008)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Grant, O God, that our lawmakers may move forward today as those who are heirs of eternal life. Give them the wisdom to learn contentment with Your purposes, enabling them to experience the eternal here and now. As they move through this day with its shades and shadows, give them freedom—not from difficulties but strength for the challenges that greet them. As they encounter setbacks, may they trust the unfolding of Your loving providence. In the face of misfortunes, empower them to surrender to Your will. Lord, give them the humility to be more concerned about being on Your side than recruiting You to be on their side.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 24, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. TESTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

PROGRAM

Mr. REID. Mr. President, we have a very busy schedule this week. We have some work we need to complete. We have, of course, FISA, the Foreign Intelligence Surveillance Act; we have the supplemental appropriations bill; we have the tax extenders; we have Medicare we need to complete; and, of course, we are on housing today. Regarding that, following any remarks I make and those of the Republican leader, we will return to the House message to accompany H.R. 3221, the housing reform legislation. There will be up to an hour of debate equally divided and controlled between the two leaders or their designees prior to a vote on the motion to invoke cloture on the Dodd-Shelby substitute with respect to the housing reform bill. Senators have until 10:30 a.m. today to file amendments to the Dodd-Shelby substitute.

By virtue of the previous order, the Senate will be in recess from 12:30 until 2:15 today for our weekly business luncheons.

Mr. President, let me say a couple of other things. We are going to do a number of judges this afternoon, the exact number of which we don't have worked out just yet, but we are going to do three circuit court judges and some district court judges. I have to confer with Senator LEAHY on the number of district court judges.

I would also say to my friend the distinguished Republican leader that I spoke to Senator FEINGOLD this morning regarding the FEC nominations, and it appears very clear we should be able to do them today. In regard to that, I wish to underscore my desire—our desire—to constitute the Federal Election Commission so it is working.

Just a brief history, Mr. President. Before Memorial Day, there were four FEC nominations pending—two Republicans, two Democrats. At that time, we offered to confirm those nominees by unanimous consent. The Republicans did not take me up on that offer. There would have been five FEC Commissioners today had that been done. In fact, it would have been prior to that recess. There would have been enough to conduct all official business. There was a thought, I assume, on the part of the Republicans that they wanted a full six, and I understand that. So they rejected the offer I made. They wanted to wait until a replacement for the failed nomination of Hans von Spakovsky was received in the Senate. I told the Republicans in December that von Spakovsky would not be approved by this body. Someone should have been cleared to replace him long before now. Nonetheless, I pledged to swiftly move that new nominee, and we have done that. I implored my Republican colleagues to confirm the four who were ready to go so there would be five to restore the agency so it would be workable. That offer was not accepted. The new nominee has now been nominated, and we have waived both the hearing and the markup to speed this up. That makes good

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

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on the pledge we made to swiftly review the nominee, and we did that, again without a hearing and without a markup.

As I discussed on Friday, Senator FEINGOLD—I didn't mention his name at the time, but it is out in the press since then—would like to meet with each of the nominees. That will be completed today. These meetings are important to the Senator. He has the right to do that. I certainly compliment him for caring so much. Four of the five FEC nominations now pending are relatively new to the Senate, and it is certainly within Senator FEINGOLD's right to speak with them prior to their confirmation. This is not unusual. So I look forward to completing that, unless something comes up that I don't understand, and we should be able to do that today. It is very important.

There has been some concern raised by my colleagues on the other side of the aisle that the Democrats have set out to delay this FEC being reconstituted so that the Democratic National Committee's lawsuit against Senator MCCAIN may be heard in the court. The DNC sued MCCAIN, alleging that he violated campaign finance laws in the treatment of his primary campaign funding. The court dismissed that suit without prejudice, saying the DNC needed to give the FEC 120 days to act on its complaint before coming to court. The 120 days expires today, June 24.

There is simply no truth to the argument that we are playing this game with the FEC. Democrats have been trying to get the FEC running since it went dark in December. Repeatedly, the Republicans have objected to consent request after consent request. This lawsuit of the DNC's has been out there many months. The decision for setting the deadline for FEC action was made prior to our Memorial Day recess, and the offer to confirm the pending nominations was made before that time.

What this means is that Democrats offered to confirm the four pending FEC nominees—which would have stopped the DNC suit—before Memorial Day. If we were trying to help the DNC's suit, would we have made that offer? I don't think so. Would we offer to waive the hearing and the markup for both Republican nominees so it would be moved quickly? The answer would be no. Of course we wouldn't have done that, Mr. President. As I have told my colleagues, Democrats want a functional agency as soon as possible. That could have happened in May. It could happen today. We want to do everything we can to reconstitute the FEC. It is extremely important to do that.

I have mentioned the matters we need to complete, and, of course, the one thing I didn't mention was the FAA extension. I asked unanimous consent to do that, and that was objected to yesterday by my friend Senator KYL on behalf of Senator DEMINT. I hope we can get that done. The House is going to pass that today as a temporary extension.

We also are going to bring before the body, within the next 24 hours, the PEPFAR legislation. What is that? It is the AIDS legislation that the President is in favor of and which we have been trying to move. It has been held up on the other side by a Senator or two, and we hope we can complete that. Again, I will ask unanimous consent that be passed today. It is my understanding, having spoken with Senator ENZI, that he and Senator BIDEN have worked something out on that, and hopefully the Senator on the other side who is objecting to this will no longer object to it.

RECOGNITION OF THE MINORITY LEADER

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

FEC NOMINATIONS

Mr. MCCONNELL. Mr. President, with regard to the Federal Election Commission, let me first say that my good friend the majority leader is correct that I was not inclined to reconstitute the FEC with a three-to-two Democratic majority, and that would have been, of course, the case had we gone forward on some but not all of the FEC nominations back before Memorial Day. So it is a fact that, in addition to objecting to Republican nominees of the FEC, which has become something of a tradition around here, there was an additional attempt to gain a majority on the FEC by acting prematurely, before we could confirm a full complement.

Now we have the opportunity to confirm a full complement, and there have been various efforts, it appears, to delay in order to give the DNC an opportunity to file a lawsuit today. Maybe I will be proven wrong today. Maybe they won't file that lawsuit, and then I will feel comforted that the effort to delay confirming all six—or the four additional FEC members whom we are confirming—was not somehow related to litigation being proposed by the DNC. So I hope they will not file that lawsuit, and I guess that will be the best evidence of whether there was an effort underway here to delay it.

I am encouraged by the fact that the majority leader indicates we can confirm these nominees today, and I have given him advance notice that I would like to propound a unanimous consent agreement that we do just that.

Mr. President, I ask unanimous consent that the Senate proceed, at some point today mutually agreeable to the majority leader and the Republican leader, to executive session for the consideration of the following Federal Election Commission nominations: Calendar No. 306, Steven T. Walther; Calendar No. 624, Cynthia L. Bauerly; Calendar No. 625, Caroline C. Hunter; and Calendar No. 626, Donald F. McGahn; and the nomination of Matthew S. Petersen, which is to be discharged from the Rules Committee.

I would further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and finally, the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I hope in a matter of hours that we can agree to the consent request proposed by my friend, the distinguished Republican leader. I don't know what time the last meeting is that Senator FEINGOLD has with the last individual, but as soon as I get word on that, I will immediately come to the floor and accept the offer of the distinguished Republican leader. So I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MCCONNELL. Mr. President, I appreciate the comments of my good friend the majority leader, and I hope we will be able to confirm these nominees today. Also, hopefully the lawsuit by the DNC will not be filed today, further raising the suspicion that the delays of the majority were related to facilitating that legal action.

Mr. President, let me say with regard to this week that this is a week when the Senate, hopefully, can make significant progress. There are three very significant pieces of legislation we hope to deal with this week, as the majority leader indicated.

After a failed attempt to address the housing crisis without Republican input, Democrats finally agreed last week to allow our input. As a result, we now have a bipartisan housing bill that addresses many of our concerns. I think it could be made even better with some further amendments, which I am hopeful we will have an opportunity to offer, even if cloture is invoked, because as much as I would like to see this bill move forward, there are some housing-related amendments that have been shut out of the process so far, and I am hoping the majority leader and I can discuss how we might be able to dispose of those expeditiously before we clear that bill here in the Senate this week.

We must also complete two important and long overdue national security measures—the supplemental troop funding bill that the President first requested more than 500 days ago and an updated terrorist surveillance bill that the Senate first approved last August but which expired more than 4 months ago, after House Democratic inaction. It is worth noting that on both national security measures, Democrats will be approving something Republicans have supported all along.

Regarding the supplemental, Republicans have argued for the past year

and a half that Congress has a solemn duty to fund our troops while they are on the field of battle. Regarding FISA, Republicans have argued for more than a year that the intelligence community should have the tools it needs to listen in on conversations between terrorists overseas and that companies that may have allowed them to do so should not be punished for helping.

I remain hopeful the Senate will be able to get these important issues accomplished this week, and maybe a bipartisan Medicare agreement as well, and other matters that can be dealt with. It is interesting how quickly the Senate can move when there is a broad bipartisan consensus behind measures. It may have taken a while for our friends on the other side to come around to our view and the view of most Americans on these issues, but for the sake of our troops, our families, and our security, we are glad they finally did. I hope the majority leader and I, working together, can figure a way through this massive amount of legislation in a very few days that allows us to reach a successful conclusion on many legislative fronts that will give both sides an opportunity to leave here at the end of the week believing this was a week of significant accomplishment for the Senate and for the American people.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 3221, which the clerk will report.

The assistant legislative clerk read as follows:

A message from the House of Representatives to accompany H.R. 3221, an act to provide needed housing reform and for other purposes.

Pending:

Reid (for Dodd/Shelby) amendment No. 4983 (to the House amendment striking section 1 through title V and inserting certain language to the Senate amendment to the bill), of a perfecting nature.

Bond amendment No. 4987 (to amendment No. 4983), to enhance mortgage loan disclosure requirements with additional safeguards for adjustable rate mortgages with an initial fixed rate and loans that contain prepayment penalty.

Dole amendment No. 4984 (to amendment No. 4983), to improve the regulation of appraisal standards.

Sununu amendment No. 4999 (to amendment No. 4983), to amend the United States Housing Act of 1937 to exempt qualified public housing agencies from the requirement of preparing an annual public housing agency plan.

Kohl amendment No. 4988 (to amendment No. 4983), to protect the property and security of homeowners who are subject to foreclosure proceedings.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 1 hour of debate equally divided between the two leaders or their designees prior to the vote on the motion to invoke cloture.

Who yields time?

Mr. SHELBY. I yield the Senator from Idaho 10 minutes.

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

Mr. CRAPO. Mr. President, I ask unanimous consent to set aside temporarily the pending amendment and call up amendment No. 5009 to delay for 1 year the merchant card reporting requirement.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. CRAPO. Mr. President, I ask unanimous consent to set aside temporarily the pending amendment and call up amendment No. 5010, my amendment to strike the merchant card reporting requirement.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. CRAPO. Mr. President, I ask unanimous consent to set aside temporarily the pending amendment and call up amendment No. 5002.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. CRAPO. Mr. President, I ask unanimous consent to set aside temporarily the pending amendment and call up amendment No. 5003, my amendment to eliminate the FHA reverse mortgage cap.

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. CRAPO. Mr. President, like many of my colleagues, I am frustrated that we have not been allowed to call up germane amendments for the past few days. This is a substantial piece of legislation and Senators should have had the opportunity to have up and down votes. I have filed four amendments and I would like to talk briefly about two of them that deal with the merchant card reporting requirement.

In an effort to find revenue offsets, I am concerned that Congress is rushing to adopt a flawed merchant card reporting proposal that establishes a new tax compliance burden on small business and does not provide enough time to develop and implement this new system. Little is really known about the true costs of this proposal and the Finance Committee hasn't had an opportunity to have the IRS demonstrate in a hearing that the information collected could be used in a meaningful way to drive tax compliance.

The merchant card reporting proposal would require that the institution that makes the payment to the merchant—payment facilitator—for a payment card—both credit cards and debit cards—report annually to the Internal Revenue Service—IRS—the name, address, and aggregate amounts of payments for the calendar year of each participating merchant. Additionally, the payment facilitator or the electronic payment organization must validate the taxpayer identification number—TIN—of the participating merchant. If the number does not match, then the payment facilitator or the electronic payment organization must withhold 28-percent from the merchant.

This unprecedented level of reporting to the Federal Government will likely impose substantial implementation costs that will be passed on to many compliant small business taxpayers. Small business owners will also have to ensure that their records conform with the additional information reported by the merchant card processor. This is an additional compliance step, which will add to the already high cost of tax compliance for small business owners, who currently spend on average over $74 per hour to meet tax paperwork and compliance burdens that already exist.

The structure of the merchant card system does not make complying with the proposal feasible in a couple of years. Merchants are not currently identified in systems by social security numbers or taxpayer identification numbers. Instead, merchants are generally assigned a merchant identification number. If implemented, this proposal would require institutions to spend several years trying to match merchants to social security numbers of taxpayer identification numbers.

I appreciate the fact that the underlying legislation extends the effective date for reporting to December 31, 2011, and the effective date for backup withholding to December 31, 2012. However, I do not believe this provides enough time to make the changes to existing systems and processes, build and test new reporting systems, perform taxpayer identification number matching, and hire and train the personnel needed to implement and comply with the new reporting requirements.

In addition, a higher dollar reporting threshold is necessary to eliminate reporting on casual sellers rather than persons engaged in business, and it should be granted to all payment settlement entities.

My preference would be that we strike this section until we identify the costs to business, the total costs of implementing the new reporting regime with the IRS, and the ability of the IRS to use the information in a meaningful way to close the tax gap. If that amendment is defeated, then the Senate should provide an additional year to implement this system. But as I indicated, we will not have an opportunity to vote on these amendments or other amendments that other Senators want to bring because we have been stopped from calling up germane amendments as we move forward on this legislation.

As I indicated, I also tried to bring up several other amendments—an amendment to reduce the $300 billion loan authority to $68 billion, which is the number that CBO expects the FHA refinancing program to actually utilize, and the number that was used to

calculate the score of the new program. Yet we will not be allowed to match the projections to the reality of the legislation.

I also asked permission to bring up my amendment, No. 5003, to eliminate the FHA reverse mortgage cap, something which this Senate floor has already voted to do and which was in the FHA modernization legislation that this Senate has already passed. Yet it is now not included in this legislation, and we are not going to be given an opportunity, once again, to include it.

There is important material in this legislation that needs to move forward, but the legislation also contains serious flaws. I am concerned that the process we are following has not allowed this Senate to truly work its will on this legislation as it moves forward.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SHELBY. Mr. President, I will suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SHELBY. I ask unanimous consent that the time be equally divided, charged against each side equally.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ENSIGN. Mr. President, I ask unanimous consent to temporarily set aside the pending amendment so I may offer amendment No. 5020.

Mr. SHELBY. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

AMENDMENT NO. 5020

Mr. ENSIGN. Mr. President, I am sorry to see objection has been raised. This is the amendment that we are trying to get brought up on the housing bill that passed with an 88-to-8 vote in the Senate the last time we were considering the housing bill. This is the tax bill that will extend the renewable energy tax credits for the United States. It includes solar, wind, geothermal, and many other forms of renewable energy that are so important at this time of high energy prices in the United States. It seems absolutely ridiculous to this Senator that with an amendment that passed 88 to 8 in the Senate, one of the few bipartisan actions we have taken for a long time around here, that there would be objection to adding it onto this bill.

So over the next couple of days, I want to let the managers of this bill know that there are some procedural things that can go on so it is going to take them a little more time to get this bill done than they would otherwise have liked to have done.

I alert them this Senator will be exercising his full rights to try to get this renewable energy tax credit put on this bill.

So it is a critical piece of legislation. It is not only critical to get it done, it is critical to get it done soon, because a lot of jobs in the United States are going to be lost if these contracts cannot be let out for a lot of the projects in renewable energy across the country. There are a lot of people out there right now, whether they get their financing put together or not, who are looking to see if the Senate will extend the renewable energy tax credits.

This is an amendment Senator CANTWELL and I have worked on together. We are pushing this any way we can to get this thing done. I applaud her for her efforts. But it is absolutely critical that this body act at a time when we can create jobs, we can produce more green energy for the United States, and we can become less dependent on foreign sources of energy.

This is a small part of the energy package but an important part of the energy package that we need to put together. We are going to continue to work on this.

I see my colleague from the State of Washington, Senator CANTWELL, is on the floor. I will yield the floor so she can make some comments.

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

Ms. CANTWELL. Mr. President, I actually applaud the Senator from Nevada in trying to move this amendment onto this bill. I say that knowing some of my colleagues on this side of the aisle are frustrated, but the American people are frustrated with the high costs of energy. They want us to be doing all we can to try to help alleviate those energy bills that are going to be affecting them not just this summer but next winter as they see higher home heating bills.

The Senator from Nevada and I are trying to say to our colleagues, it is important not to have this energy legislation tied up in a larger bill that is not currently moving before we adjourn for the July recess.

We are already seeing jobs being canceled, projects being canceled, people laid off, and generation not being ready to be put onto the grid to help assist with high energy costs, particularly in the area of natural gas.

The underlying amendment Senator ENSIGN and I are talking about giving tax credits to individual homeowners so they can make improvements to their homes, and it can result in more than a 20-percent savings in their heating bills this winter. Those are improvements, I guarantee you, we need to be making because many people in the Northeast are not going to be able to afford the high energy costs they are going to be seeing.

In addition, it puts additional megawatts onto the grid, not just in 2008, 2009, but for many decades to come. We need to diversify off the high costs of natural gas. The point is that natural gas costs are continuing to rise with other pressures. We need to diversify off of natural gas and coal as the primary source for our electricity grid. The fact is this produces and saves about $20 billion in natural gas because of the production we would get onto the electricity grid. We need to be doing this now.

We already know the result of our delay, that we have cost jobs in America, projects have been canceled, people have been laid off. We already know it is costing us in lost time and investment to stimulate our economy, and now we know it is also going to cost us in higher energy rates to our consumers. So I am for any plan that will get this energy legislation untangled from other bills and actually approved by the House and the Senate. My colleague and I are willing to work across the aisle and across the Rotunda with people who have any ideas how to get this done—either paid for or not paid for.

But we simply cannot stand here today and say this is a vehicle that should move without trying to put this housing and energy package together, since it is the underlying bill, and we do think it is stimulative to the economy.

I say to my colleagues that the return on investment of this investment in energy is a far greater ROI than some of the other stimulative activities we have done. So if we want to be true to our consumers' anxiety about the high cost of energy they are seeing, not only in gasoline but what they think is coming ahead, then we need to move. We need to stop holding up good energy legislation while we are trying to use it to get other legislation.

I hope we can pass this bill out of the Senate before we leave for the July recess.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SANDERS. Mr. President, for a number of months now I have been trying, with the help of both Democrats and Republicans, to bring a LIHEAP bill onto the floor. The reason for that

is, with the energy crisis we are now facing and the cost of home heating fuel and electricity escalating, there is no doubt in my mind that both in warm-weather States this summer and cold-weather States next winter, there are going to be people struggling for their lives.

Without air-conditioning, people—old people, frail people, sick people—are going to have a hard time when the temperature gets above 100 degrees. What we are seeing all over this country are unprecedented numbers of homes being shut off from electricity because people cannot pay their bills.

We remember some years back, in Chicago, hundreds and hundreds of elderly people died from heat exhaustion because of the heat in their apartments. We must not allow that to happen again.

LIHEAP, of course, pays electric bills to help people keep their air-conditioning on when the temperature becomes very high. Clearly, in my State of Vermont and throughout the whole northern tier of this country, there is great fear right now—I should tell you that—not just about $4.10-a-gallon gas prices today—people worry about that, but they worry about what is going to happen next winter when the price of home heating fuel is soaring.

So I have tried, and will continue to try, working with people in a bipartisan manner to get a vote on the floor. The simple truth is, we have a lot of support from Republicans and Democrats, progressives and conservatives. People understand the significance of this issue. We are going to do our best to get a vote on the floor as soon as we possibly can.

In the last couple months, we have had large numbers of Republicans and Democrats coming together on bipartisan legislation. We are going to keep up that effort.

So I wished to mention to my friends this is an issue of great importance, I believe, to the American people all over this country. People are fearful about what happens when the weather goes down below zero, and people are worried about what happens when the temperature goes up over 100 degrees.

In this country, we do not want to see people dying of heat exhaustion and we do not want to see people freezing to death. With the cost of home heating fuel soaring, electricity soaring, we have a moral obligation to significantly expand LIHEAP funding. I will continue to do my best to make sure, finally, we get a vote on the floor of the Senate to do that.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I understand I have 6 minutes; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. I thank the Chair.

Mr. President, let me make a couple observations.

First of all, I see my colleague from Vermont in the Chamber. I, once again, commend him for his strong interest—a shared interest I have—in the Low-Income Home Energy Assistance Program, and our effort to, one way or another, get to this matter, given the importance of this issue to all of us.

Let me, if I can, review the bidding a little bit as to where we are. This morning, there are two new reports out that relate directly to the subject matter that is before the Senate: the housing crisis, which is at the heart of the economic crisis; the foreclosure issue is, of course, the heart of the housing issue.

As I pointed out over the last number of days, we now have a staggering number of foreclosure filings on a daily basis in the country. The latest report shows that 8,427, on average, filings for foreclosure are occurring on a daily basis—not on a weekly or monthly basis. But every single day in this country between 8,000 and 9,000 people are filing for foreclosure on their homes. This is obviously a statistic that is deeply troubling and an indication of broader problems in our economy.

In fact, this morning, one report has the consumer confidence levels at the lowest since they have been recorded in 1967—40 years. People's anticipation about the future, about the well-being of their children or their grandchildren, their ability to own a home, to raise a family, to be able to meet their obligations, to be able to retire with dignity, to be able to afford higher education—all these things working families in this country historically, for the most part, have been optimistic and confident about, today, are showing the lowest level in 40 years.

So the issue we are grappling with is not one that is necessarily going to guarantee we are going to right the problems overnight, but it is a reflection that this body—made up of Democrats, Republicans, and Independents—can, in fact, come together and do something constructive and positive at the epicenter of our economic problems.

That is the opportunity we are going to have in a few short moments, to decide whether to go forward and adopt legislation that would allow us to begin to put a tourniquet on the hemorrhaging of foreclosures in this country with the adoption of the HOPE for Homeowners Act, to be able to do something about the government-sponsored enterprises and to see to it we have a strong regulator, and to establish, for the first time ever, a permanent affordable housing program.

There is a lead story in the New York Times this morning that talks about families who have had their children going to four and five and eight different schools in a school year in some cases because they have had to move out of rental properties as the costs have moved up. So the affordable housing issue, while it is not directly related to the foreclosure crisis, does deal with the issue of affordable, decent shelter in this country. The fact that families are having to move as frequently as they do and their children are having to go to as many different schools in a year as they do because of the cost of housing is a problem we address with this legislation as well.

There is nothing that is as important as this bill for the country at this moment. That is not to say there are not other issues we ought to be grappling with. But there is a great danger we will miss the opportunity of doing something about housing in this country.

The Case-Shiller index now indicates—and I quote them this morning:

> The S&P/Case-Shiller home-price indexes, a closely watched gauge of U.S. home prices, show price declines continued to get steeper in April, with prices in every region surveyed now showing year-over-year drops.

Those predictions indicate we may have as much as a 30-percent decline in home values. That is evaporating the long built-up equity people have acquired as a result of purchasing their homes and holding on to them.

So that idea of selling your home one day after your children are grown to provide for your long-term security, to deal with the cost of higher education, to deal with an unpredictable health care crisis that could emerge—today we have almost 15 million homes in this country where debt exceeds equity, and those numbers are predicted to grow steeper and steeper, as the Case-Shiller report this morning indicates.

So the level of optimism, the declining value of homes, and the serious problems in rental housing—all this is contributing to the most serious economic crisis we have had in decades.

What Senator SHELBY and I and the other 19 members of our committee have tried to do is to put together, on a bipartisan basis, with a 19-to-2 vote out of our committee—not a highly divided committee, having held almost 50 different hearings over the last year as to what we ought to do to get our hands around this issue—our best recommendation to the Members of this body. Those of us on the committee, working together—all 21 of us on this committee—have tried to fashion and cobble together a proposal that deals with the heart of this issue.

So with the remaining minutes we have to debate this subject matter before the vote at around 11:15—in the next 5, 6 or 7 minutes—I urge my colleagues to join with us. We are not telling you what we have written is perfect. We are not telling you it is going to solve all the problems. If it does nothing more than to restore some

confidence the American people ought to have in their Congress, that in itself will be an achievement.

Beyond that confidence and optimism, we think we have recommended some specific ideas that can very well begin to treat the problem of growing foreclosures, declining values in our homes, and the spread and contagion effect this is having on student loans, municipal finance, corporate finance, and the rest, in our Nation and around the world as well. This issue is going beyond our own shores.

So we urge our colleagues to join with us, and over the remainder of today, as these various amendments are offered, to keep our eye on the ball. The idea is to get a bill done, to work out our differences with the other body, and then to give a bill to the President of the United States, I would hope, by the Fourth of July, by Independence Day. What better gift on independence could we give the American people than a sense that this, their Congress of the United States, can come together, despite political differences, and craft legislation to make a difference for our country.

I urge the adoption of the motion when the question is asked.

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

The ACTING PRESIDENT pro tempore. The Senator from Alabama controls the remaining time.

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

The ACTING PRESIDENT pro tempore. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I believe all time has been yielded back. We are prepared to move forward.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the amendment of the House, striking section 1 and all that follows through the end of title V, and inserting certain language, to the amendment of the Senate to H.R. 3221, the Foreclosure Prevention Act, with amendment No. 4983.

Harry Reid, Christopher J. Dodd, Daniel K. Inouye, Jeff Bingaman, Max Baucus, Patty Murray, Mark L. Pryor, Barbara Boxer, Benjamin L. Cardin, Sherrod Brown, Jon Tester, Bill Nelson, Bernard Sanders, Maria Cantwell, Tom Harkin, Frank R. Lautenberg, Charles E. Schumer.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call is waived. The question is, Is it the sense of the Senate that debate on the motion to concur in the House amendment striking section 1 and all that follows through the end of title V, and inserting certain language to the Senate amendment to H.R. 3221, the Foreclosure Prevention Act, with amendment No. 4983, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Colorado (Mr. ALLARD), the Senator from Kansas (Mr. BROWNBACK), the Senator from Oklahoma (Mr. COBURN), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 83, nays 9, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—83

Akaka	Feingold	Murray
Alexander	Feinstein	Nelson (FL)
Baucus	Graham	Nelson (NE)
Bayh	Grassley	Pryor
Bennett	Gregg	Reed
Biden	Hagel	Reid
Bingaman	Harkin	Roberts
Boxer	Hatch	Rockefeller
Brown	Hutchison	Salazar
Burr	Inouye	Sanders
Byrd	Isakson	Schumer
Cantwell	Johnson	Sessions
Cardin	Kerry	Shelby
Carper	Klobuchar	Smith
Casey	Kohl	Snowe
Chambliss	Landrieu	Specter
Cochran	Lautenberg	Stabenow
Coleman	Leahy	Stevens
Collins	Levin	Sununu
Conrad	Lieberman	Tester
Corker	Lincoln	Thune
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Dodd	McCaskill	Webb
Dole	McConnell	Whitehouse
Domenici	Menendez	Wicker
Dorgan	Mikulski	Wyden
Durbin	Murkowski	

NAYS—9

Barrasso	Crapo	Enzi
Bond	DeMint	Kyl
Bunning	Ensign	Vitter

NOT VOTING—8

Allard	Coburn	McCain
Brownback	Inhofe	Obama
Clinton	Kennedy	

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 83, the nays are 9. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, for the knowledge of all the Senators here, we are trying to wrap up a number of items today. Today is Tuesday. We have to get out of here by Friday or Saturday, we would hope, at least. We have a lot to do. We need to complete what we are working on now, the housing legislation. We have a number of issues we are trying to work out on judges. We also have to confirm the FEC nominees. We hope to do that later today. We have FISA that we have to work out. We have a supplemental appropriations bill. We have the doctors fix on Medicare. We have the tax extenders. We are working on all these things, so a lot of balls are in the air. I hope Members would be cooperative and try to work through this.

The Republican leader talked to me today, I have spoken to the manager on our side on the housing legislation, and he has spoken to the other manager, Senator SHELBY—I haven't had that opportunity—and what we are trying to work out on that is, apparently, there are a number of Senators who asked that consideration be given by the managers to having a finite number of housing-related matters, reviewed by the two managers. That is something we are trying to do to see if we can work out something to speed up the work we are doing on the housing bill. I hope we can do that. If we have the cooperation of Members, we can do that. If people dig in their heels and say we are not going to do that, we might be in a situation where we don't finish the housing legislation. That would be a shame, but that is certainly possible. There is the potential to still have a number of other cloture votes on the housing legislation. So we are trying to work that out. I hope we can do that. The two managers I talked about before have experience and understand what we are trying to do.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

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

OIL EXPLORATION

Mr. DOMENICI. Mr. President, fellow Senators, I have spoken extensively over the past several months about the growing threat of our dependence on foreign oil. Two weeks ago, we were reminded of the threat by new trade deficit numbers showing a $4.4 billion deficit increase in just 1 month as a result of growing oil prices and growing oil imports. Last week, the Wall Street

Journal reported that six Arab economies took in $400 billion in oil and gas revenues last year alone. The Journal also reported that petroleum-producing states are investing more of their oil wealth at home, triggering an investment and spending boom in the Middle East.

But as our reliance on foreign oil grows, 85 percent of our offshore acreage in the continental United States is still off limits for leasing, as are 62 percent of onshore oil reserves. Let no one tell you that we have plenty of American acreage leased for energy development because compared to the rest of the world, we are falling behind, and it is making us poor and poorer and poorer. Since the Senate last voted on my proposal to increase production, it was estimated that America likely sent about $50 billion overseas to import oil.

What is particularly troubling to me is that after rejecting a proposal I submitted on behalf of myself and 20 other Senators to open new areas for production, the majority has come up with excuse after excuse for not taking any action.

First, without any evidence to back them up, they claimed that price gouging was the reason for high prices. At the same time, they said high prices were not caused by supply-and-demand issues, they told America that we must stop filling the Strategic Petroleum Reserve because the 70,000 barrels a day that went into it were raising the price of gas. Suspending the SPR fill is something I have supported, but I also said we need to do much more. It alone is practically nothing. Unfortunately, advocates of this SPR suspension in the majority rejected a proposal to open areas of production that would bring online more than 2 million barrels of oil a day.

Now the other side has apparently settled on an argument that first originated with the Wilderness Society. They claim oil companies are sitting on their leases and that if those companies just developed in those areas, we would not need to open new areas. If only that were true, Mr. President. The other side is now saying the oil companies must use it or lose it when it comes to their leases. They propose adding a tax on companies to punish them for not producing fast enough.

This Wilderness Society argument demonstrates a fundamental lack of understanding of how we explore for oil and gas in this country, and the fact that this argument originates with a group that has led four major lawsuits in the last 4 years to prevent development in the very same area speaks to how disingenuous it really is. Part of the reason it takes so long for companies to produce is because groups such as the Wilderness Society keep throwing up roadblocks. They know it; we know it.

Today, I am going to tackle this idea that companies are choosing to sit on their leases, and I will debunk that once and for all.

First, let's consider the logic. Companies are paying a lot of money for the right to explore on a lease and are given a short period of time to produce oil. With the cost of oil now at $135 a barrel, why on Earth would a lessee intentionally sit on a lease and choose not to make money on it? Why would a company pay money essentially to rent a tract of land and then not use it?

I have heard the claim that 41 million acres are leased on the Outer Continental Shelf and of that acreage, 33 million acres are not being produced. The use of this statistic shows a fundamental lack of understanding of the long, risky procedure and process that begins even before bidding on a lease and hopefully ends with production. The other side is saying that unless oil is literally coming out of the ground on an acre, it doesn't count, even if that acre is being explored or is in the process of getting environmental permits or in any other part of a process that is very long and tedious. Additionally, the use of this argument by groups who consistently go to court to prevent developing on existing lease areas speaks volumes about the intent here.

Congress currently restricts access to 574.2 million acres of OCS. In actuality, it is clear by any measurable assessment that the majority in Congress is sitting on far more oil than the oil companies themselves. Let me repeat that. It is clear by any measurable assessment that the majority in Congress is sitting on far more oil than the oil companies themselves.

Let's focus on offshore Federal leases for a moment. Simply examining the number of acres leased and the number of acres producing during a snapshot of time is deceptive. There are many different steps for producing oil and gas. At any given moment, a lease may not be producing, but it is active and under development. In the 5, 8, or 10 years that a company holds a lease—and they are given a specific period of time—environmental assessments could be underway, lessees could be trying to secure permits, the leasing agency could be challenged in litigation, and the lessee could be reviewing seismic data. In fact, any number of preproduction processes could be underway. These take time. These require experts. These cost money.

I do not hear critics suggest that we speed this up or that we waive or shorten environmental requirements—and I am not suggesting that either. But critics do want to impose new costs on U.S. producers under the guise of ''speeding up leases.'' This tax and spend solution to a supply and demand problem makes no sense. And, once again, the other side proposes a solution that threatens our competitiveness with nationalized oil companies who are after the same commodity around the world. My friends on the other side of the aisle are fond of saying that we can't drill our way out of the problem—and they are right. But my message back to them is that we can't tax our way out of the problem either, and that is exactly what they keep proposing to do.

Second, there are many up-front costs that leaseholders take on to acquire an oil and gas lease. Bonus payments and pre-production rental payments often cost millions of dollars and these capital investments are only being made for the ultimate development and production of oil to return a profit on investment. Simply put, if oil is not produced from a lease, companies lose money on it.

Third, using these acreage numbers to claim that companies are ''sitting on'' $135 oil simply ignores the historical fact that simply because you lease lands does of necessarily mean that you are able technically or economically to produce on them—or even that there is oil under your lease. Hence the term: ''exploratory well.''

Ironically, some of the very same people who are arguing that these leases are not being developed also opposed an inventory of new areas that would clearly speed the development process when they are opened.

To suggest that companies are not diligently developing their leases on the American deep sea is to simply ignore the facts. Over the past decade, more than 100 new discoveries have been announced and since the passage of the Deepwater Royalty Relief Act 13 years ago, offshore oil production has increased by 535 percent. Over the past months, three major sales for OCS oil and gas leases have taken place and together raised more than $9 billion in federal revenues. Under the oppositions argument—that is a lot of money companies are paying to sit on leases.

I have had the opportunity to review the data provided by one company that holds leases—BP. BP has 124 leases that are actively producing. Those are the only ones that the majority is counting when they give you their statistics of producing leases. But BP also has 459 leases that are in the exploration phase, So 65 percent of BP's leases are under exploration so that BP can produce from them in the future, yet the majority would have you believe that BP is ''sitting on'' those leases instead of actively working toward producing on them. This is about as deceptive an argument as I have ever heard. It is either totally deceptive or it is absent knowledge and information—which is impossible. This information is readily available.

We have severely limited our access to the American deepwater, and the situation is only getting worse. In 1982, nearly 160 million acres of land were being leased for exploration. Today, its less than 40 million. Why? Because we are running out of available land and we are restricting access to our own resources in favor of foreign oil. According to the MMS, only 2.4 percent of the total offshore acreage is currently being leased and about 85 percent of our continental offshore is under moratorium. As we debate about the use of

43 million acres available for development, we must recognize that Congress has placed 574.2 million acres under moratorium—and the majority has supported continuing to do so. Only 6 percent of total lower—48 OCS is currently leased. This does not demonstrate a lack of progress in the deepwater, it demonstrates a lack of progress on energy policy in Congress.

The American people have had enough with excuses and they are looking for leadership. Two-third of Americans are asking us to produce American oil, but the majority in the Senate is blocking it. I urge my colleagues to look at the facts and take action.

There is no question in my mind that the excuse that is being used is that we cannot drill our way out of the crisis. I submit that is not the issue, whether we can drill our way out of the crisis. The issue is whether we can produce more American oil or oil alternatives so we spend less overseas and keep more of our money at home. We are spending ourselves broke. We are spending ourselves into economic oblivion by sending so much of our resources overseas every day, every month, every year, for the acquisition of crude oil from foreign countries.

I have an editorial from the Albuquerque Journal of Sunday past called ''It Takes Black Gold To Get to Green Future.'' It states:

With all due respect to Al Gore, there is an urgent, new ''inconvenient truth.'' Unless Congress acts quickly to expand domestic oil supplies, the nation could face economic destruction long before it sees the environmental fallout of global warming.

For decades it has been easy for most Americans to dodge the truth about our foreign oil dependence and to just keep driving—but $4-a-gallon gas has finally snapped the trance. Reality is sobering. The United States has put its economic survival in the hands of unstable foreign powers and volatile commodities markets. At any time, a major disruption in foreign supply could bring the enormous, transportation based U.S. economy to a standstill.

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

Mr. DOMENICI. I ask unanimous consent the editorial and a Washington Post editorial called ''Drill Deeper'' be printed in the RECORD.

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

[From the Albuquerque Journal, June 22, 2008]

IT TAKES BLACK GOLD TO GET TO GREEN FUTURE

With all due respect to Al Gore, there is an urgent new ''inconvenient truth.'' Unless Congress acts quickly to expand domestic oil supplies, the nation could face economic destruction long before it sees the environmental fallout of global warming.

For decades it has been easy for most Americans to dodge the truth about our foreign oil dependence and just keep driving—but $4-a-gallon gas has finally snapped the trance. Reality is sobering: The United States has put its economic survival in the hands of unstable foreign powers and volatile commodities markets. At any time, a major disruption in foreign supply could bring the enormous, transportation-based U.S. economy to a standstill.

The U.S. trade deficit jumped to its worst level in more than a year in April, driven primarily by oil imports. Not only does this empower anti-American regimes, it siphons off money consumers could be spending or saving or investing.

''I have never been more frightened for America's future than I am right now;'' Sen. Pete Domenici said last week, urging Congress to remove the ban on off-shore drilling and open the Arctic National Wildlife Refuge to oil companies.

President Bush—in a speech laced with counter-productive partisan rhetoric—called on Congress last week to open up several domestic oil fields that have been off-limits since the 1980s. ANWR could yield 27 billion barrels; the Atlantic and Pacific coasts contain 17 billion barrels, and the Gulf Coast could produce another 72 billion. There is strong evidence this can be done in an environmentally responsible way.

Democratic presidential candidate Barack Obama has so far ignored polls that show a majority of Americans rallying around calls for domestic drilling. He continues to argue that the answer to foreign oil dependence lies in wind, solar and nuclear technologies. The inconvenient truth, however, is that climate-friendly technologies will take decades to develop. We look forward to the day when we can all plug our green cars into an electrical grid powered by something other than coal.

Until then, we're going to have keep buying gas. Even if we achieve a dramatic 20 percent reduction in oil consumption, some experts estimate that oil will still cost $200 a barrel by 2012. So here's another inconvenient truth: New drilling isn't about returning to cheap gas. It's about economic survival.

The United States needs to organize a Manhattan Project for alternative energy, addressing the threats from both global warming and foreign dependence. We need to vigorously pursue those, along with a crash course in conservation.

These are monumental undertakings, and to succeed they must transcend party lines or individual egos. Sen. Jeff Bingaman was on-target Wednesday when he faulted President Bush for injecting ''election-year politics'' into the Rose Garden speech. As chairman of the Senate energy committee, Bingaman will be a key player on both fronts of the effort to chip away at America's-dangerous level of dependence on foreign oil.

The way ahead is not easy. Fuel costs are impacting food and retail prices. Truckers are parking their rigs. School bus operators and closing up shop. Airlines are laying off thousands and perhaps are heading for prices that will put air travel out of reach for the middle class. The idea of the family flying to Disneyland, for example, would be out of the question. Even a family vacation by car could look like a luxury.

Americans have never backed down from a challenge, however. Once we know the truth, no matter how inconvenient it may be, we like to get to work. In this case, the work involves a drilling rig, and the self-confidence to use it.

[From the Washington Post, June 22, 2008]

DRILL DEEPER

If there is a silver lining in the price of gasoline shooting past $4 a gallon, it's that it has sparked an intense debate in the United States about its energy security—or lack thereof. President Bush and Sen. John McCain (R–Ariz.) have given the impression that relief for drivers lies in off-shore drilling and the construction of nuclear power plants. In fact, those solutions wouldn't produce results for years. But if this level of passion and debate continues through the fall election and is followed up by action, the nation will be better off.

Mr. McCain, the presumptive Republican Party nominee for president, kicked things off last Tuesday when he reversed himself in a speech to a Houston audience and announced that the moratorium on drilling on the Outer Continental Shelf that has been in effect since 1981 should be lifted. He got a Rose Garden assist the next day from Mr. Bush, who called on Congress to allow states the option of drilling off their coasts to tap the estimated 18 billion barrels of oil underneath. On Wednesday, Mr. McCain said that if elected president he wanted 45 nuclear reactors built by 2030 ''with the ultimate goal of 100 new plants to power the homes and factories and cities of America.''

The mantra from the Democratic Party—from the presumptive presidential nominee, Sen. Barack Obama (Ill.), on down—has been a variation on ''We cannot drill our way out of this energy crisis.'' Considering that the U.S. is estimated to have 3 percent of the world's oil reserves, that's certainly true. But it if is acceptable to drill in the Caspian Sea and in developing countries such as Nigeria, where environmental concerns are equally important, it's hard to explain why the United States should rule out careful, environmentally sound drilling off its own coasts. Like Mr. McCain, we do not support drilling in the Arctic National Wildlife Refuge, which Mr. Bush advocated Wednesday. That pristine area, with its varied and sensitive ecosystems, should be preserved.

Washington has done a poor job of telling the public that energy security will be achieved not from one source overnight but from many over years and that there are no easy solutions and no cheap ways to break this nation's dependence on oil. There will be trade-offs and sacrifices that have yet to be considered. So far, the focus has been on biofuels, solar power and wind energy. But all this talk of drilling, squeezing oil out of shale, as Mr. Bush proposed, and pushing for more nuclear power is a welcome widening of a larger and necessary discussion.

I yield the floor.

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

Mr. ENZI. Mr. President, I will return the discussion to housing. I do thank the Senator from New Mexico for his comments on energy. I know from traveling around Wyoming last weekend, the biggest thing on everybody's mind is $4-plus gas. I got a lot of comments on ways it could be fixed. What we are working on right now, of course, is fixing housing.

I am going to discuss the Federal Housing Finance Regulatory Reform of 2008. That is what we just had the vote on. I do not support this legislation.

I opposed this legislation in the Senate Banking Committee and I continue to oppose it today. As the national housing market continues to suffer from falling home sales, housing starts, and skyrocketing foreclosure rates in some parts of the country, the Senate has an opportunity today to restore confidence in the principles of good government to our economy. These principles include limiting taxpayer liability, ensuring a sustainable housing market in the future, and preventing a Federal Government bailout of big

banks that made unaffordable loans or investors who made bad investments. Unfortunately, the bill ignores these principles and ignores irresponsible actions at the expense of responsible homeowners and hard-working taxpayers.

This bill contains a title called ''The HOPE for Homeowners Act.'' The program included in this title would create a $300 billion taxpayer loan guarantee program.

Let me repeat that. It would create a $300 billion taxpayer loan guarantee program—taxpayer guarantee program—doubling the size of the Federal Housing Administration. This expansion will be accomplished by taking the worst performing and the most risky loans made by banks, shifting 100 percent of the liability of foreclosure onto the American taxpayer. The loans I am talking about have made a lot of press in the past few months—adjustable rate, interest only, low documentation or no documentation; loans that in many cases the lender made with no regard for the borrower's ability to repay.

The Congressional Budget Office estimates that 35 percent of these loans will default, placing a huge liability on the FHA and ultimately the taxpayer for guaranteeing these loans. Even FHA Commissioner Brian Montgomery believes this is a dangerous proposition. On June 9 he stated:

> The FHA is not designed to become Federal lender of last resort, a mega-agency to subsidize bad loans.

But that is exactly what this bill does. In past years, banks continued to make record profits by pushing these unaffordable mortgages. Investors, homeowners, bankers, and realtors bet heavily on the tidal wave of ever increasing home prices. If a rate adjustment made monthly mortgage payments unaffordable, homeowners and mortgage investors could count on home equity to bail them out. In other words, the value of the price of the home would go up sufficiently to cover the costs homeowners could not. As the Senate's only accountant, I can tell you this practice does not make good financial sense. It is completely unsustainable. However, most of industry ignored the warning signs and continued to make record profits from unaffordable loans.

Now these same banks and investors are in trouble. They have discovered that unaffordable mortgages can be, shockingly, unaffordable. Complicating this matter is that the housing market cycle is now on a downswing and people can no longer rely on home equity loans to bail them out of a mortgage rate hike. Banks and speculators now expect Congress to reward this irresponsible behavior with a taxpayer bailout. They expect the Federal Government to turn its back on responsible lenders and borrowers and renters waiting to become first-time homeowners, and support those groups that have pushed our housing market into decline with bad loans and bad investments. This bill is a Federal Government bailout and that is why I oppose it.

I will also note there are separate provisions of the legislation I do support. A separate title of this bill would create a new regulator for the government-sponsored enterprises, Fannie Mae and Freddie Mac, and the Federal Home Loan Banks. This world-class regulator will have the authority necessary to ensure that these entities are adequately capitalized and are operating safely within the secondary mortgage market.

The GSEs, government-sponsored enterprises, are the most important factors in our mortgage market and play an increasingly influential role in our global credit markets.

The regulators created by this legislation must support the housing market by allowing Freddie and Fannie to buy and securitize mortgages, thereby increasing credit at lower rates and restoring investor confidence. While I continue to oppose the affordable housing trust fund included in the bill, I support a strong regulator that will allow the secondary mortgage market to operate more effectively, to the benefit of our economy.

I support the deliberate and safe conversion of the GSEs into the jurisdiction of the new agency included in this legislation. It is past due. As these massive entities are brought under new supervision, I trust the transition will be done in a way that ensures that no disruptions occur in our housing and our credit markets.

There are also several tax provisions that are important to Wyoming and the Nation. Currently, Wyoming receives approximately $2 million per year in low-income housing tax credits to encourage developers and contractors to develop affordable rental housing projects. This bill will provide a temporary 2-year increase of approximately $50,500, a 2.5-percent increase to the Wyoming Community Development Authority. It will also increase access to the Mortgage Revenue Bond Program, another helpful tool for Wyoming housing infrastructure development.

Unfortunately, the good provisions of this legislation are not enough to outweigh the bad ones. Pushing liability onto the Federal Government by bailing out irresponsible lenders and investors is not good government. I cannot support a bill that puts reckless investors and lenders ahead of hard-working Wyoming taxpayers.

I yield the floor.

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

Mr. DODD. Mr. President, I want to take a couple of minutes, if I can. We had a very strong vote again this morning on the housing proposal. I thank my colleagues. This morning I believe that vote was 83 to 9 to invoke cloture, to begin the 30 hours of debate on this aspect of the bill.

I would remind my colleagues, going back a little bit to the end of last year on the FHA modernization bill, the Senate voted 94 to 2, in December of 2007 on the Foreclosure Prevention Act in April, we voted 84 to 12; then the government-sponsored enterprises, HOPE for Homeowners vote out of committee, which included the affordable housing program, as well as the GSE reform and the HOPE for Homeowners, passed 19 to 2 in our committee, an overwhelming vote on a controversial bill involving substantial resources and ideas to deal with the housing problem.

Then late last week, we had amendments to strike the affordable housing program. That was defeated 77 to 11. An amendment basically to stop or cut out the HOPE for Homeowners Act was defeated 69 to 12.

The point I make with these votes is it is quite clear that this body, both Democrats and Republicans, believes it is important that we craft and move forward with a major housing bill. I cited earlier this morning in the discussion the two recent reports dealing with consumer confidence and the value of homes in America.

The value of homes in America reported by the Case-Shiller Index, which is the most respected index on home values in our country, has reported yet further decline in housing values. In fact, Professor Shiller has predicted we may have as much as a 30-percent decline in home values. That would be the most significant drop nationally since the Great Depression, to the point where now we have millions of homes where the equity in the homes is exceeded by the debt. Of course, for families, that home ownership has not only been a stable environment for them and their families, but it has also been a source of wealth creation; that is, building up the equity in that home to provide for the retirement years, where that home can be sold and the value, the increased equity, can be a source for financial support.

For many families that has been one source of additional income for middle-income families to provide that higher education they promised their children since the day they were born. If you work hard, do the right things, your family is going to stick with you. When that cost of education comes up, for college or community college or a technical school, we are going to be there to help you because the equity in our home is going to give us some additional cash to make that possible.

Let me tell you what it is like for that family today, those 15 million homes across our country where that debt exceeds equity. They turn to that child and say: We can no longer do it because our financial obligations exceed the value of our house because it has declined because of the foreclosure crisis, where more than 8,400 homes are filing for foreclosure every single day in the country.

So we have done what we can in our committee, and our colleagues have

supported these ideas. The HOPE for Homeowners Act, the GSE reform, the affordable housing ideas have been embraced by overwhelming majorities. So what we need to do today, if we can, is to come over. The amendments have been suggested. I want to work out as many amendments on housing as I can. There are some we can work out and accept. Some I will not be able to accept, obviously, working with Senator SHELBY and others who are involved. But we need to get this done.

If we go again into the middle of July—and just remember that if we take next week off, which we do, we will go back to our respective States. While we are back there walking in our parades and celebrating Independence Day, every day we are there, somewhere between 8,000 and 9,000 of our fellow citizens, on Independence Day, will be filing foreclosure on their homes. So we may leave here Friday or Saturday without having gotten this done, but as you are flying back home and visiting your States and celebrating Independence Day, remember if we did not get this done many more Americans are going to be paying an awful price.

So I urge my colleagues with amendments, give us a chance to work these out. For those who want to offer amendments that are not directly related to this but are terribly important, I do not minimize it. I beg your indulgence to spare us the opportunity of having to engage in that debate on this bill. That does not minimize the importance of your idea. But if you put it on this bill and it is not paid for, the House will reject it, and you will lose both ideas—both your idea and this idea that we are trying to move forward. So some discipline is needed, some understanding is needed. This is the issue of the hour. This is the problem that is causing so much depression in terms of people's aspects of their future.

That report this morning about consumer confidence is so alarming. That, more than anything else, is what I worry about: the optimism and confidence of our fellow citizens. It is at the lowest since data has been collected on consumer confidence. It is at a 40-year low; 40 years have transpired since the confidence and optimism of our fellow citizens have been as low as it is today.

We bear responsibility more than anything else to offer a future, some hope for our fellow citizens and people who count on us. I think this housing proposal gives us a chance to do that. It is not going to solve everyone's problems, but it can make a difference in saying to the American people: We hear what you are saying, and we are doing something about it.

I have often cited historically those first 100 days from March of 1933 to June of 1933, the beginning of the Franklin Roosevelt administration when the country was in a deep depression, millions had lost their jobs, homes were being foreclosed. In that 100 days, there were a lot of ideas that were posed to get us back on our feet again. Many of them never went anywhere; some did.

The most important thing, more than anything else that the Congress or the President achieved in those 100 days, was the American people saw a government that had rolled up its sleeves and gone to work on their behalf. That, more than anything else, was what was needed in those days to give people a sense of hope and optimism and confidence that their Government, their President, their Congress was going to work on their problems and give them a chance to have a better day. And that is as much as what is needed today.

We need to demonstrate to the people of this country who have lost an awful lot of faith in almost everything but certainly in ourselves here, that we can get something done, that we can put aside differences and make a difference in their lives. That is the opportunity that Senator SHELBY and I are offering to our colleagues in the remaining hours of this debate.

So we need your help to come over and bring people together so we can wrap this up and send a bill to the House which, hopefully, they can accept. I am confident they will. Not that they are going to agree with everything that we have done, but I believe BARNEY FRANK, the Congressman from Massachusetts, the chairman of the Financial Services Committee; NANCY PELOSI, the distinguished Speaker of the House—they get this, they understand this. They understand the difficulties we have over here procedurally to deal with things, to deal with matters that are different from the House of Representatives.

But they also understand we basically embrace three of the major concepts: HOPE for Homeowners, affordable housing, GSE reform. That is the centerpiece of what we are trying to achieve. The Presiding Officer, as a member of the Banking Committee, has been tremendously helpful, and I thank him for it, as well as other members of the committee, putting aside our own specific ideas of how we would do this to come up with a product that could be embraced by 19 of our 21 members of that committee to bring the bill forward as we have today, with the added provisions that have been included in this bill.

So we urge our colleagues to come over. Senator SHELBY and I are more than happy to entertain ideas. Where we can accommodate them, we will do so. If we cannot, we will be candid and tell them that we cannot. There is always another day, but we cannot deal with every bill and every idea that people have been waiting for on this bill. We urge our colleagues to do that.

I ask unanimous consent that the time while the Senate is in recess for the conference lunches count under the time postcloture.

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

Mr. DODD. With that, we have had a strong vote. I say this to my colleague from Alabama, through the chair, that 83-to-9 vote, not to mention 94 to 2 on modernization; 84 to 12, the various votes on other matters late last week—all indicate the strong willingness on the part of our colleagues, the overwhelming majority here, to get something done on this issue. That is the best news of all. Now we need to come to closure.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SHELBY. Mr. President, I want to pick up on a few things that the Senator from Connecticut has been talking about. We got a vote a few minutes ago, I believe 83 to 9, on cloture on this bill.

Last week we had three or four well-debated amendments offered by various Senators, and they were overwhelmingly rejected, huge votes.

Where are we now? We have worked on this a long time. We have GSE reform in here, which I have worked on for 5 years on the Banking Committee, as Senator DODD recalled, and the Presiding Officer, a member of the Banking Committee and very involved in the Banking Committee.

This is a very complicated piece of legislation in this title dealing with GSEs, which we have come a long way with. Everybody here knows, I believe on both sides of the aisle, that the GSEs provide a lot of the mortgage funds, most of them today. But they do need to be well regulated. They also need to be well capitalized, considering the risk and so forth, the implicit guarantee of the Federal Government.

I have been told recently that their debt, that Freddie Mac and Fannie Mae debt, exceeds the debt of the United Kingdom and France together. I do not know if that is exactly right. But if it is, that is over $5 trillion.

So we need to get this done. We need to make sure the GSEs survive. We want to make sure GSEs are properly regulated, and we can do it here. Another part of the title of this bill is dealing with housing, as the Presiding Officer knows. This is going to give a lot of people in America an opportunity to refinance some mortgages. It will not save everybody. It should not save everybody.

But there is no specific bailout for any specific mortgage company or banks, as somebody alluded to last week—none of that. The chairman of the committee, the Presiding Officer, as a member of the committee, and I, as a Senator, we would not have that. We would not vote our support for anything like this. But we will create conditions to let people refinance their mortgages, assuming they can work this out, assuming the lender would rather take a haircut—you know, less money than a foreclosure.

The last thing a lender as a rule wants is a foreclosure because the house is vacant in the neighborhood. Senator DODD was talking about that. We do not need four or five vacancies in the neighborhood and the house run down, weeds growing instead of the lawn trimmed.

Everybody knows what that does to the value of their neighbors' property.

Housing is important. What we are trying to do—and one can see the votes we have been getting—is fashion something that will give a lot of people a better opportunity to finance their home, as well as to regulate the GSEs in a meaningful way. Most of the Members of the Senate know that.

If somebody has an amendment, they ought to come down here. I know we can debate this for 30 hours under the rules—I believe that is right—after cloture.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. SHELBY. We are that close to passing a meaningful piece of legislation. We would like to pass it. We would like the House to pick it up quickly—either agree to it, amend it, or whatever, and get it to the President. The sooner, the better.

This is not a perfect piece of legislation, but overall it has a lot of good things in it. I certainly urge my colleagues to support it.

I yield the floor.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:30 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008—Continued

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the Senate is not in a quorum call, I expect.

The PRESIDING OFFICER. The Senate is not in a quorum call.

The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 10 minutes and that 10 minutes be applied to the 30 hours postcloture.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, reserving the right to object, and I will not object, I ask unanimous consent that following Senator VITTER—he is going to speak next for approximately 5 minutes—I then be recognized to speak for up to 20 minutes.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

The Senator from North Dakota is recognized.

(The remarks of Mr. DORGAN pertaining to the introduction of S. 3183 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise to speak on the housing bill before this body now and to speak about an important omission from the managers' amendment that is before the Senate. This is just one piece, one narrow issue, but it is an important one that will affect many folks in the housing market and throughout America. I am talking about the need to provide a transition period for the implementation of the new GSE regulatory structure in the bill.

A large part of this legislation on housing recovery is devoted to GSE regulatory reform. GSE means ''government-sponsored enterprises''—regulatory reform regarding those entities. This is a huge undertaking, with wide-reaching consequences for the mortgage and housing industries and our economy generally.

This GSE reform title would combine the regulatory authority and personnel of three distinct agencies—HUD, the FHLB, and the OFHEO—to create an entirely new GSE supervisor with broad, far-reaching powers over this $3 trillion part of our economy, the housing finance system. The effects of new regulatory powers would not be limited even to the housing industry, as big as it is. The vast global investment in GSE securities and the 8,000 member banks that obtain liquidity and other services from our Federal Home Loan Bank system would also be significantly affected.

Given the far-reaching and very significant impact of this part of the bill—this very significant consolidation of three separate agencies—I think simple common sense would dictate that implementing that sort of measured change should be done with great care and over some reasonable time period. That is why the House in its legislation recognized the need for an orderly transition. Their bill included a uniform effective date of 6 months after enactment to allow the President to begin the appointment process immediately but to give that 6-month transition to a very new regulatory structure.

Unfortunately, the bill before us in the Senate today does not include this transition period in this language.

Under the Senate substitute amendment, the powers of the new agency would be effective immediately, potentially destabilizing our housing market, causing real concerns among many in that important market.

I am very concerned about this. I think it is a significant omission, a significant problem, a significant issue. Making the powers of a new agency effective immediately, before the three existing agencies are combined and before expert personnel can be transferred and this new agency staffed is putting the cart before the horse. At a time of great instability in the mortgage and housing markets, we should use care to preserve consumer and market confidence by ensuring a smooth transition and regulatory stability.

That is why I am strongly urging the adoption of the House approach with regard to this specific issue. It would ensure a gradual transition of no less than 6 months, allowing for careful and efficient consolidation. In our push to make the housing and mortgage markets stronger and more responsive to the American people, let's also make certain we don't break what we didn't need to fix in the first place.

I urge my colleagues in the Senate to adopt this commonsense, reasonable, balanced House approach with regard to a 6-month transition.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, is it necessary that I ask to speak as in morning business? I am taking time off my postcloture time.

The PRESIDING OFFICER. The Senator may be recognized under cloture.

Mrs. BOXER. I thank the Chair.

DRILLING IN PRISTINE AREAS

Mr. President, I am going to discuss, in about a 20-minute timeframe, a couple issues that are swirling around this country and the Senate, and I wish to go on record on both of them. One has to do with President Bush and Senator MCCAIN's proposal to open pristine areas off America's coastline to offshore oil drilling as an answer, they say, to high gas prices. I am going to, hopefully, debunk that argument, and I hope I can do it convincingly.

The second area is going to be my feeling on the FISA bill, which is coming to us tomorrow—the Foreign Intelligence Surveillance Act bill.

I think I can start off where Senator DORGAN ended. He has been brilliant on the point that speculation in oil futures is what is responsible for a good deal of this horrific runup in the price of gas at the pump. We need to do something about these speculators. We have been blocked from doing that by the Republican leadership. I wish to quote Michael Greenberg, a former director of trading and markets for the Commodity Futures Trading Commission, who testified before the Senate Commerce Committee. He said:

> Going after the speculators will bring down the price of crude oil to get at least a 25 percent drop in the cost of oil and a corresponding drop in the cost of gasoline.

Testifying Monday before a House Energy and Commerce Committee subcommittee, Michael Masters, of Masters Capital, said:

> The price of crude oil would drop to a marginal cost of $65 to $75 a barrel, about half of the current $135.

Imagine, the experts are telling us speculation is responsible for about 25

to 50 percent of the cost runup of gasoline. We are trying desperately to close that Enron loophole, to ensure that the speculators are once again regulated. There is a Bill Nelson bill, S. 3134, which would say all energy future contracts will fall within the regulatory format they were at before. So we can do this.

Where are President Bush and Senator MCCAIN on going after the speculators? I don't hear them suggesting that. I don't see my Republican friends embracing this. They have already stopped us a couple times from doing it. If we want to do something about the price of gas, let's go after the speculators, and it will result in a very quick reduction in these outrageous price increases. We have the Strategic Petroleum Reserve which is 97 percent full. George Bush's father took some oil out of there after the first gulf war. President Clinton also took some out of there, and it had the impact of lowering the price. In other words, they are adding a supply from the Strategic Petroleum Reserve. Again, it is 97 percent full. This is the moment when we could tap it. It will make a difference, and it will get to the people, within a few short days. Thirteen days from a Presidential decision, we could have more oil on the market.

Our colleagues agreed with us to stop filling SPR, but we don't have their support for taking some out—and, of course, you would return it at another time.

Here is a big one, and I will show you this chart. Remember, the President and Senator MCCAIN said open all the coastal areas to drilling—these pristine areas. So you have to ask yourself: Well, have we run out of places to drill offshore? The answer is no. What about onshore? No. Oil companies hold leases to nearly 68 million acres of Federal lands that are not producing oil. This land could produce 4.8 million barrels of oil each day—six times the peak production from drilling in the Arctic—and it would double total U.S. oil production. Let me say that again—68 million acres of oil leases are being held today by the oil companies. I say they should use it or lose it. Here we have people saying: Oh, give them more. That is akin to saying to a kid, whom you are trying to get to do something, I will buy you an ice cream cone if you do XYZ; but they are holding two ice cream cones in their hands now.

Let me show you what 68 million acres looks like. First, I will show you the onshore, which is about half of that. Look at the red areas on the map. This is onshore, 34.5 million acres that are unused by the oil companies. They will not drill there, but now they want more leases in the most beautiful parts of America.

This is ridiculous. It is a phony idea. It is not going to bring down gas prices 1 cent, according to the Bush Energy Department. It will have no impact—maybe by 2030. I am looking at some of the Senate pages, and they will be moms and dads by then.

Let's look at the offshore leases. Look at this. These are the offshore leases that the oil companies hold. They are not using them. Yet, still, President Bush and Senator MCCAIN—and this is a flip-flop by Senator MCCAIN; he has always supported protecting the beautiful areas, but they are now saying it is necessary now to sell off the family jewels.

I have to tell you, coming from a State—and the Senator in the chair does as well—where an unspoiled coastline is our ticket to a tourist industry, a fishing industry, a recreation industry, an industry in America that provides, today, $70 billion in a coastal economy—$70 billion and millions of jobs. In my State, it is about $11 billion or $12 billion and a quarter of a million jobs.

So you have to ask this question to the President and Senator MCCAIN: We all want to help our middle class and our working poor pay for the price of gas. We want to bring down the price of gas, or we want to give them alternatives to having to fill their cars; we all want to do that. Let's give real answers. Let's not give an answer that could threaten a huge coastal economy. Our families are having a very hard time paying for gas. Imagine what happens when they lose their jobs because the coastal economy is now going to go. What good is that? Millions of jobs are at stake.

So rather than go after the speculators, rather than look at the Strategic Petroleum Reserve, rather than tell the oil companies, look, you can double production and you are not doing it, rather than ask the Federal Trade Commission to investigate supply manipulation—and I can give you story after story of supply manipulation. In my own State, we had a large company—Shell Oil—try to close down a refinery. They said it wasn't making money and there were no buyers. Untrue. We called our State attorney general. He got involved. We found out they were making money and that there were buyers. They just want to manipulate the supply. Because of our involvement, and especially the attorney general, that refinery was sold. That was 2 percent of our State's supply at the pump.

So these oil companies do not come to this with clean hands. We know it. This administration gives them a pass, saying let the speculation fly, and let the oil companies sit on these leases; forget about using the CFTC, forget about going to the World Trade Organization and lodging a complaint against OPEC because they are anticompetitive. They don't do that. They are not doing anything to extend the tax credit for the most fuel-efficient vehicles. That expired because they put a cap on it, on how many cars would have to be sold before you no longer get this tax credit. They don't do any of the things that would help us now. I don't see them saying: Let's make sure our transportation districts locally have enough funds to add more buses and to add more ferry boats. We could be doing these things now.

What is their answer? Drill, drill, drill, drill, drill. Where? The most pristine areas of our coasts—these areas that are a gift from God. Millions of dollars have gone into setting aside marine sanctuaries. We will put it all at risk because oil companies see it as an opportunity to get more leases, increase their portfolio, and increase the assets on their books.

I have to say I hope the American people will look at this proposal the same way they looked at the gas tax holiday. When that first came up, having a gas tax holiday, JOHN MCCAIN recommended it, saying this is going to mean good news at the pump. The truth is it threatens the highway trust fund because those are the funds that go into the highway trust funds so we can take care of our highways. There was nothing in the proposal that would have led to a lowering of the price of gasoline. Other costs could have been passed right on to the consumer.

So it is amazing to me that we now have another proposal that is basically the same kind of proposal: Drill, drill, drill, and put at risk a $70 billion coastal economy. First, the gas tax holiday put at risk the highway trust funds. This proposal puts at risk a $70 billion coastal economy and millions of jobs that go with it, and it doesn't even account for the fact that there are so many acres—68 million acres—leased to oil companies that they have not produced.

It seems to me the American people will understand that this so-called solution to high gas prices, which the President's own Energy Department says will not save a penny, is another phony solution. It is not real. When we look at the long term, what we know is we have to pass global warming legislation. When we do that, when the private sector puts a price on carbon, we are going to see technologies erupt from America that are going to make us competitive. We will export those technologies.

We know when we take care of our environment, in the long run, our economy gets stronger. We need to invest in transportation. We need to go after OPEC. We have to go after the speculators. We know we will see, with global warming legislation, investments in cellulosic ethanol, which is going to compete with fossil fuel, and we know it is going to work.

So there are short-term answers to these gas prices, and I laid them out, and there are long-term answers, and I laid those out. I am not the only person in the Senate who has these ideas. But to put out a phony solution to a real problem does not help us and it jeopardizes a lot of jobs and a coastal economy.

I look forward to working with my colleagues on going after the speculators and doing all I need to do.

I ask unanimous consent that I be given an additional 10 minutes on my time.

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

Mrs. BOXER. Mr. President, this debate over gas prices and the long-term and short-term solutions is going to go on for a while. I look forward to addressing them, both in my committees of jurisdiction and on the floor.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. President, we are about to get a Foreign Intelligence Surveillance Act bill that is going to come to the Senate probably tomorrow. I know that a lot of my colleagues worked very hard and very long to try to get a compromise on this bill. I have to say that there is a portion of this bill that I believe is egregious and will prevent me from voting for this bill. It is because I believe one of the most basic tenets of our freedom is justice. Looking at justice, we have to see what lies at the heart of justice. And what lies at the heart of justice is the search for the truth. If you block the truth from coming out, if you don't allow a search for the truth, you don't find justice. I worry very much about that.

Throughout our history, whenever the U.S. Government has violated the trust of the American people, we have worked to regain that trust by seeking the truth and allowing for a full examination of the abuses of Government power. We can see that in the history of America. Sometimes these egregious acts take many years to uncover. I am thinking of the Tuskegee experiments. Of course, we have to go back to the days of slavery. Go back to the Jim Crow laws. Go back to the era of the Vietnam war and the tenure of J. Edgar Hoover, who headed the FBI. We knew in that particular case that the CIA and the FBI, under J. Edgar Hoover—he headed the FBI—he engaged in spying on the political activities of American citizens. He was spying on famous, important people, such as Martin Luther King. He was spying on people at the highest levels of Government. He was also spying on the American people. Pictures were taken at rallies where people were trying to argue for an end to the Vietnam war.

In 1975, the Church Committee, which would later become the Senate Committee on Intelligence, looked into allegations of covert and illegal spying by the Federal Government on Americans. What did the committee find? The committee found that, indeed, there had been spying on Americans by the FBI and the CIA.

Here is what is interesting. What did the Congress do when they found out, in horror, that the Government was spying on the people? They passed the Foreign Intelligence Surveillance Act in 1978. It set up a new court with authority to approve electronic surveillance but only on a case-by-case basis. Since that time, we have updated FISA to reflect the changes in the threat we face in America and to reflect the new technologies.

Suddenly, in late 2005, we learned that the U.S. Government—our Government, the Bush administration—had violated the trust of the American people again when the New York Times published a story exposing a warrantless surveillance program authorized by President Bush shortly after 9/11. Since that time, Congress and the American people have been grappling with the disclosure and working, with no help from this administration, to find out what happened. We cannot find out exactly what happened, who was spied upon. Was I spied upon? Were you spied upon? How many people were spied upon? What information was gained?

In putting together the FISA bill, I do believe House and Senate members tried hard to find a balance and figure out a way to get to the truth, but I feel they have fallen short because what we will have before us when this bill comes before us is not only a bill that will deny the court the ability to make a judicial determination as to the legality of the spying program, but it will effectively guarantee immunity for the telecommunications companies that cooperated with the administration and violated the privacy of their customers.

You have to know that we had laws in place that specifically said to telephone companies: You cannot invade the privacy of your customers. What apparently happened was the Government went to them and said: We are asking you to disregard the law.

I understand the predicament of the companies, although there was one company that refused to cooperate. One company refused to cooperate. They said: No, we are not going to do it. But all the others cooperated. And now we have a situation where we know the telephone companies responded to the Government and said: OK, we will disregard that law on your say-so.

I would support granting the telecom companies indemnification—in other words, having the Government step in and be the party that has to pay the price—but this immunity provision that is in the bill blocks us from finding the truth. Remember what I said when I started: The essence of justice is to get to the truth, and we are not going to be able to get to the truth. We are not going to know exactly how this program ran. We don't know enough. The Bush administration, in my view, trampled on the Constitution, and we are not doing anything in this bill to provide accountability. Frankly, if we just left out this provision and passed the rest of the bill, we would let the courts do their job. Fine. But, no, no, we have to add this provision and essentially set up kind of a new law now to deal with this spying operation.

I don't think we can hold up the Constitution when it suits us and set it aside when it hinders us. That is not what the Constitution is.

The supporters of this compromise will say: Wait a minute, Senator BOXER, we have a provision in there that says the telecom companies have to prove they were asked by the Government to do this activity. We know they were asked by them. That is why I don't want to punish the telecom companies.

Mr. President, I tell you what I do want to do: find out the truth. That, the truth, I want to find out. I have to believe that if we don't change Title II of this bill, we are perpetuating a coverup. I use that word advisedly because I don't think we will ever get to the truth of what happened here.

I support giving our country every tool necessary to track down the terrorists. I voted to go to war against bin Laden, and I am disgusted that he is still out there taunting us, all these days, all these years, despite George Bush. Dead or alive, we will get him. Where is he? I want to go after al-Qaida. I want to go after bin Laden. I think we do have to provide all the tools that are necessary, but we also must uphold the Constitution and the rights of our citizens.

This granting of immunity will block the courts from moving forward and learning whose privacy was violated. I want to be able to look in the eyes of my constituents in California, 38 million people, and say: I know you were in that group of people, and I feel terrible, and we are going to make it right for you; or, I know you were not involved in being caught up in this net.

These are extraordinary and difficult times. Our sons and daughters were sent to Iraq to fight for our freedoms. We have to listen to what former Justice Marshall says:

> History teaches us that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure.

Our Constitution is not an extravagance. It is the centerpiece, the very essence of a democracy. It is what our sons and daughters are fighting for abroad. How could we say on the one hand to our soldiers: Go fight for our freedoms, go fight for the freedoms in our Constitution, while at home we are covering up the erosion of those freedoms?

The bill was improved upon, and I am glad Title I improved the way we go about protecting the rights of our citizens and balances it with the need to get this information. I am very pleased with that. But it seems to me, if you believe in the truth, then I don't see how you grant this type of immunity.

Again, I would substitute the Government, I would indemnify these companies. I am not interested in hurting them. But I want to get to the truth. We have a really good way to do that, which is to strip this part from the bill. We will have our rights protected then. We will have the tools we need to fight terrorism. We must do better than this.

So unless there is some miracle that happens overnight and we see some changes, I will be forced to oppose this bill. I am hoping we will have an opportunity to vote on a substitute that will

keep the rest of the bill intact but eliminate this egregious provision which really is very troubling. Anyone who lived through the days of J. Edgar Hoover and the kind of spying that went on, who understands FISA was passed to protect Americans has to be alarmed.

I yield the floor.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Missouri.

Mr. BOND. Mr. President, I came to the floor for another subject, but I do wish to tell my friend from California that we will have an opportunity to talk about the FISA bill that was passed. The bill we passed in the Senate with an overwhelming bipartisan majority protected civil liberties of American citizens much further than they have ever been protected even under existing criminal law, we provided more protection.

The Senate committee looked at the essence of the terrorist surveillance program for which we recommended that retroactive immune liability protection be provided for those who cooperated. They cooperated in good faith on the basis of the representation by the intelligence community that there was a Presidential directive authorized by the Attorney General. It was authorized under the clear constitutional authority of article II of the U.S. Constitution, supported by the MOFA that was passed by Congress. We determined that they were entitled to protection.

As a lawyer, I have read all of the documents. I am convinced that the bill we passed does not in any way give away any rights or protections.

Anybody who objects to the granting of this liability protection should know that we do not protect Government officials or the Government itself from lawsuits. If one wants to challenge it, file suit against the Government, file suit against Government officials, but don't ruin the business reputation of those who, in good faith, as good citizens, provided the intelligence that was needed to keep our country safe and to keep our soldiers and marines, such as my son, on the field safe from battlefield attacks. They provided that information, and we owe them better than to haul them before a court to have them exposed to the vengeance of terrorists or people who didn't like what they did. We owe our security in the United States better than to lay out in an open court proceeding all of the things our intelligence community can do to stop terrorist attacks—terrorist attacks which have not occurred in this country since September 11, 2001, which were certainly planned and underway before they were interrupted.

I can't go into any more on the floor. Any Member of the Senate is entitled to have that information in confidential SCIFs where we discuss classified information. I invite them to be briefed, and I will have much more to say about the FISA law when we get on the debate.

MISSOURI FLOODING

But I come to the floor today to share some observations with my colleagues, and anyone else who may happen to be watching, about the natural disaster that is going on right now in my State of Missouri.

If you turn on the television, you will probably see the flooding that is expanding over an area west of St. Louis County and St. Charles County. The Eagle Point levee breached last night, and that is only the latest example. Many other levees have also been breached.

This past weekend, I went to visit the people on the front lines. I met with State and local officials, who are prepared and are responding extremely well, given the prolonged damages, the challenges, and the extensive duration of the flood. This effort, I am proud to say, is a good testament to how bad disasters can be mitigated from becoming worse disasters when competent local and State leaders and volunteers proactively take steps at the immediate scene of the disaster.

At Winfield, MO, on Friday afternoon, right along the Mississippi River, I met with volunteers from the Salvation Army, the Red Cross, Missouri Civil Air Patrol, local law enforcement's emergency planning officials, the Missouri National Guard, and local and surrounding community volunteers. It was inspiring to see how people came together to help protect lives and property. Over 1,000 volunteers—some of my staff members joined with them—filled sandbags and built the levees. They were joining neighbors, church groups, civic groups, and other people coming in to help. By that afternoon, they said they were going to have to call and say: We don't have need for more volunteers now, so wait until there is a problem elsewhere.

As always, the National Guard acted valiantly. Their work has given businesses and families the critical time they need to get important assets out of harm's way where levees are in danger of failing. And so far—knock on wood—we have come through with minimal personal damage. People from all walks of life across Missouri and across the heartland—neighbors came in from Illinois—have pitched in to help. It has truly been an all-hands-on-deck effort, and I couldn't be more proud of them. I thanked them in person, and I come here on the floor to express my thanks to them.

Missourians and our midwestern neighbors have pulled together and, as it turns out, they may be doing too great a job of fighting the floods. Local communities have been burdened with the financial strain that comes with any disaster. Communities along the Mississippi have invested hundreds of thousands of dollars in pumps and sandbags, and untold tens of thousands of volunteer efforts in trying to protect property and lives. While these current investments made are small compared to cleanup costs, our small towns, our communities, still need Federal help.

I come here today to report, regrettably, that despite national news coverage day after day of the destruction in Missouri, FEMA has still not declared Missouri a Federal disaster area. Our families and communities along the Mississippi River are investing every resource they have to mitigate the disaster while FEMA figures out the extent of the disaster.

Not only has this flood destroyed homes, but it is currently saturating tens of thousands of acres of some of our State's most productive farmland. In addition to waiting for the waters to recede, farmers will have to remove the debris the Mississippi River leaves behind before they can plant their crops. I don't know if you have ever been to a flood scene, but it isn't just a whole bunch of land getting wet; it brings in everything you don't want to have on your land, and you can't plow it, you can't even mow it because of all the debris left.

Many have heard the saying ''knee high by Fourth of July.'' That used to be a reference to corn height in Missouri, if you wanted a good crop. Now, in a good year, if it isn't six feet tall, then you are way behind. But this year, regrettably, in talking about the height of corn, there is a lot of land where we are going to be talking about the height of water.

USDA, FEMA, and other Government agencies, I hope and I expect, will provide emergency funds to clean up the disaster. I am pleased I have been joined by my other colleagues from the Midwest to fund these programs in supplemental appropriations bills that will ensure disaster victims receive much needed aid. We have to continue to do our part in the Senate to make sure these flood victims will be able to get their feet back on the ground. I have joined with eight of my colleagues in cosponsoring Senator GRASSLEY's disaster tax package, which will also help.

But, I repeat, none of these actions will provide any relief until Missouri gets a disaster declaration. And with everyone in Missouri doing their part—his and her part—acting responsibly and responding locally, I urge FEMA to do its part and approve the predisaster declarations they asked our State officials to make. We know there is going to be more work in finding out the total extent, but anybody who looks at the pictures on the television and who doesn't believe this is a major disaster, is saying, I am not believing my own lying eyes, because it is right there for them to see. I wish FEMA would start the mechanism rolling.

We know we have a lot of work to do, we have a lot of disaster, but we are thankful in our hearts for minimal human damage and the tremendous human outreach. It is time for the Federal Government's emergency management agency to get off the dime and move.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, first, let me say to my friend from Missouri, we do see the videos of what is happening in his State with the devastating floods, and the people of Maryland agree with the Senator's statements. We want to make sure FEMA does the right thing.

Certainly the Senator is very concerned about the circumstances, and we want to do everything we can to help the people of Missouri and the other States that have been devastated by these floods. It has obviously had a dramatic impact on many lives, and this is when our Nation needs to come together to help those who have been devastated. So the Senator will have our support, and I wanted him to know that.

Mr. President, the bill we are considering now in postcloture is the bill the House sent over to us to deal with the housing crisis. I was very encouraged with the vote earlier today, and I hope we are on the verge of passing this much needed legislation so we can work out our differences between the House and the Senate. I know we still have some procedural hurdles we have to overcome, but I hope my colleagues will act quickly so we can complete our work on this very important housing bill.

The people of Maryland, the people around the Nation, are hurting today because of what is happening in the housing market. We know it was the housing market that triggered our current economic problems. We know throughout the country there has been a large number of these so-called subprime adjustable rate mortgages that were issued over the last several years, and as a result of the declining housing market and the adjustable rate mortgages and subprime mortgages, we have record numbers of foreclosures around the Nation, including my own State of Maryland.

We are not only seeing a record number of foreclosures, we are also seeing circumstances where homeowners' equity in their property is actually negative. That means the money they owe on their mortgage is exceeding the value of their property. And with declining markets, it is becoming more and more difficult for individuals to be able to sell their homes, so we anticipate there could be continued problems of more foreclosures. That means it is very important that this Congress act.

We also know it not only affects the individual whose home is at jeopardy, but it affects the entire neighborhood. When there is a foreclosure in a community, the value of all the homes in that community declines. Local governments are also seeing a dramatic reduction in property tax revenues as a result of the decline of property values. Just at the time we need local government being more active in helping people who are going through tough economic times, they are finding it more difficult to act.

I thank Senator DODD and Senator SHELBY for bringing forward a bipartisan bill, a bill that now stands an excellent chance of being enacted, and a bill that the people of this Nation desperately need. It would do something about the housing problems in this country, so I do thank them for their patience and their work.

I see Senator DODD is on the floor, and I personally thank him for the work he has done. We are now on the verge, I hope, of passing this very badly needed legislation, the key features of which are going to help the people of Maryland and around the Nation.

This bill deals with properties that are in danger of being foreclosed by trying to prevent foreclosure. I think that is one of the things we should be doing here. The HOPE for Homeowners Act will help up to 400,000 or 500,000 homeowners on a voluntary basis get their mortgages refinanced, at no cost to the Government, using FHA, in order to make it affordable and to prevent foreclosure. That, to me, is smart. It is good for the homeowner, it is good for our economy, and it is a great investment for taxpayers because it will save them money by having less foreclosures in their communities.

The legislation also helps communities in desperate need. The CDBG funds are increased to help the communities that have been hardest hit through the numbers of foreclosures, but then, moving forward, we do something about the housing crisis in this country. We provide affordable housing funds, which we desperately need in Maryland and throughout the Nation.

We also provide more money for counseling. I say to Senator DODD that I had a meeting in Baltimore with housing counselors who are overwhelmed. They cannot handle the number of people seeking their help, so the funds provided in this legislation will help them help people who want to get counseling, but the services are not available in so many communities around the country.

The new disclosure requirements will also help people who will be moving forward because they will know what they are doing and have less chance of ending up in trouble in the future.

I also want to comment on the provisions in this legislation that ease the credit crunch. Today, it is very difficult to find affordable mortgages. Obviously, lenders are being much more cautious and it is difficult today, if you live in a minority community or you live in a modest-income neighborhood, to be able to get a mortgage. Yet banks are willing to write mortgages. In the subprime mortgage industry, there were so many people, particularly from minority communities, who were steered into subprime loans. These individuals could have had traditional mortgages and they wouldn't have been in trouble today. Now there are many people who need help in finding an affordable mortgage.

In this legislation, with the GSEs, the government-sponsored entities—Fannie Mae, Freddie Mac, and the Federal Home Loan—and the reforms in the FHA—raising the loan limits and by changing some of the underwriting—they will provide more mortgages to modest-income families in America, so those who are in the market to buy homes and who want to be in the market to buy homes will have a much easier time finding an affordable mortgage in order to move forward. That will be good for home ownership, which is good for our neighbors, and it is going to be good for our economy.

I also thank Senator BAUCUS of the Senate Finance Committee for bringing forward some changes, some amendments to this legislation, which I think are very important. I had a meeting in Baltimore and met with the real estate community, and they told me several months ago we needed to do something to try to get first-time home buyers into the market. If the Federal Government could offer some incentives, it would help in freeing up the market, which is going to be good for our economy. At that time, I filed an amendment that would have provided a first-time homeowner's tax credit. I thank Senator BAUCUS for bringing out a similar proposal in the bill that is before us for first-time home buyers. The Federal Government will help participate in their buying a home and will offer them a credit of up to 10 percent of the cost of the home, up to $8,000, which will ultimately be an interest-free loan that the Federal Government will invest in an individual buying their first home, for modest-income families.

To me, that makes sense. We want to encourage young people who can afford to own homes to buy homes, but they are reluctant to get into the market today because they do not know what is going to happen with the property values. When the Federal Government helps them buy that home, they are going to be more confident this is the right time to come into the market and to buy that home.

I think this provision can make a huge difference, and I appreciate the Senate Finance Committee adding it to the good work of the Banking Committee.

As I said earlier, this is an important bill. Today's vote was an important vote. We are on the path to getting it enacted. I urge my colleagues, let's work out our last differences, and let's get the votes we need to get on the floor of the Senate. Let's move this bill forward. Let's reconcile the differences with the House. Let's get it to the President. Let's get it into law so we can help the housing situation around the Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, first, I commend Senator DODD and Senator SHELBY for working so hard to bring this bill to the floor—Senator CHRIS

DODD for his wonderful leadership on the House bill.

I ask unanimous consent to speak as in morning business for 10 minutes and the time be charged postcloture.

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

CREATING AMERICAN JOBS

Ms. STABENOW. Mr. President, I have to say that I was quite amazed and shocked yesterday to hear the proposal that certainly flies in the face of what I believe needs to be happening for Michigan and other States that have been the backbone of the manufacturing economy in our country, the backbone of the middle class. It was a proposal to turn our way of handling American jobs and the economy into a game show. We do not need a game show. We do not need prizes down at the end of some long line for doing what needs to be done in order to create innovation and be able to focus us on the next generation of advanced battery technology or any other technologies. What we need is something thoughtful and sustained, ongoing investments to create jobs in the United States.

The last 8 years we have not seen that. We have not seen a willingness to step up and aggressively invest in advanced battery technology research or any other areas where we would be able to get the kind of jobs and production we need in the United States. I remind the Chair that, as he knows so well, just since January we have lost 325,000 good-paying jobs in America. As the distinguished Presiding Officer and I have both come to the floor to speak about good-paying American jobs, middle-class jobs for middle-class families, we continue to lose jobs.

I am very proud to be a part of a majority that is tackling that, focusing on investments, on jobs rebuilding America, on investments in the future. We passed a budget resolution a little earlier this year that included a green-collar jobs initiatives, which I was proud to offer. It had strong support from our Presiding Officer. Among things that we listed and we put into the budget resolution was advanced battery funding. This is something I know our appropriators are taking seriously. I also know my colleague, Senator LEVIN, is focusing on this in the Department of Defense authorization. I know we are serious about investing in the future now, today—putting dollars in to partner with the private sector to get us to that next generation of vehicle that is so critical.

One of the things about which I am extremely concerned is that other countries have been investing for years, and we have not seen the same kind of investments proposed year after year in the President's budget or supported by our colleagues on the other side of the aisle.

When Toyota first made the Prius, we heard a lot about it. They made this with advanced batteries made in Japan. What is more concerning is when Ford Motor Company first made the Ford Escape Hybrid—and I am very proud they did—they looked around and couldn't find the advanced battery in America. They got it in Japan.

We cannot afford to be on a road to dependency on foreign technology as we are trying to get off of dependence on foreign oil. This needs more than proposals that feel like game show prizes down at the end of a road, a road we may not be able to get to if we are not serious as a country about what we need to do in making investments right now.

Germany has announced a great battery alliance which will invest over $650 million in advanced lithium-ion batteries. It is specifically aimed at helping German auto companies.

South Korea, by 2010, will have spent $700 million on advanced batteries and developing hybrid vehicles.

China has invested over $100 million in advanced battery research and development.

Over the next 5 years, Japan will spend $230 million on advanced battery research. It is spending $278 million a year on hydrogen research for zero emission fuel cell vehicles.

These countries understand they need to step up to compete in a global economy and partnering with their automobile industry. We need to do no less.

We have picked one segment of the economy, the automobile industry, in which we have placed a major new mandate—an $80 billion mandate on fuel efficiency. We need to do everything we can to help them achieve that. But they will not get there unless now—this year, next year, the year after—we are supporting and partnering on efforts for advanced battery technology research and development. Not the basic research, the basic research is being done. Now we are at a point where we need to have the technology developed to deal with issues around the size and the weight of the vehicle and the reliability of the batteries and all of the issues that bring it to the point for marketing and sales. We are very close. But our country needs to be taking this very seriously right now if we are going to have good-paying manufacturing jobs, high-tech manufacturing jobs in this country, particularly in the automobile industry.

I thank our majority leader and our chairman of the Budget Committee who placed dollars into the budget. I thank all of those who will be involved as we move forward to implement our efforts to invest in advanced battery technology research. I only wish the passion that was shown yesterday would be shown on the Senate floor, would be shown in votes for the budget resolution, would be shown in votes for appropriations, would be shown in votes and leadership speaking up as the President, year after year, has woefully underfunded his requests for advanced battery technology research.

We are past time to get this done. It should not be treated as something that is trite but as something that is very serious and very doable if we are willing to step up and partner and make the investments that need to be made, as every other country is doing.

Our companies today are not competing with other companies around the world. They are competing with other countries around the world, other countries that understand that whoever gets to advanced battery technology first will have the edge. Whoever is getting the hydrogen fuel cell technology first will have the edge. Whoever gets to that next technology will find themselves in the position to be the leaders in a global economy. We need to understand that and take that seriously. I am proud to be part of a majority that does, and we are working very hard.

We have moved the ball down the road and have more to do, but I am amazed to hear the kinds of discussions that have gone on in the last 24 hours as it relates to jobs and the economy and prizes. The prize for us is a good-paying job and a strong middle class and keeping advanced manufacturing in this country. We do that by being serious and sustained and thoughtful, by providing dollars on the front end, by making sure we understand the seriousness of the competition around the world, and having a sense of urgency about American jobs.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. 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. NELSON of Florida. Mr. President, we are on the bill having to do with homes and foreclosures. I want to speak on the bill, and then I would ask unanimous consent that I be allowed to speak thereafter as in morning business.

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

Mr. NELSON of Florida. I will be offering an amendment which I think will be adopted or embraced, approved, cleared by both sides. It is a bipartisan amendment with Senator COLEMAN. It is to give some commonsense relief to homeowners who are trying to stay in their home while their home is under foreclosure.

If a homeowner is there and doesn't have any cash, the homeowner has fewer options of what to do if the bank is foreclosing on the home. But suppose the homeowner has a retirement fund, a private retirement fund, a 401(k) retirement fund. We have allowed, under current law, for the ability of a homeowner to take money out of that retirement fund, without paying the 10 percent penalty, to take it out of the retirement fund before retirement for

the purpose of purchasing a home. But if it is a homeowner with a home that is under foreclosure and they need cash, under current law, if their only source of cash is that retirement fund, in order to pull it out, they have to pay a 10-percent penalty. It seems it is common sense and the kind of public policy that we would want to adopt to give the homeowner the means of avoiding foreclosure by being able to tap into some of their cash in their retirement fund in order to save their home.

That is what the amendment is all about. It is simple. It waives the 10-percent penalty for folks wishing to make an early withdrawal from their retirement fund in order to avoid foreclosure.

We put some parameters, some boundaries around it so it cannot be abused. We say homeowners have to show they are participating in a government- or industry-sponsored foreclosure prevention program, such as the ones we are setting up in this bill, the HOPE NOW or the HOPE for Homeowners programs. Both of those are established in the bill before us today. That is one parameter. Another parameter is, we make this thing limited for 2 years so it will not go on and on. The foreclosure crisis is right now. We want to help homeowners stay in their homes. We limit it for 2 years.

The third parameter, we put a limit of $25,000 on what they can take out of their retirement fund. We are going to give that homeowner, once they take the money out and they save their home, the ability to put that money back into their retirement fund within a 3-year period and not have to pay income tax on that money. A normal retirement fund, you take money out of the fund, you will have to pay income tax on it. If the purpose is to get a ready source of cash to help them stay in their home under foreclosure, we want to give them that opportunity to get it back in their retirement fund and not have to pay income tax. They have to do that—another one of those parameters—within 3 years.

The cost is fully offset. I want to give an example. We all, from our States, get horror stories. I got one from a retired Air Force sergeant who lives in Stuart, FL. He recently lost his job and, in order to stay in his home, pay his mortgage, he liquidated his 401(k) savings and paid the 10-percent penalty. The bill we are considering today gives, in another provision, a tax credit for first-time homeowners to buy their first home. But unless we do it with this provision, we are going to penalize folks such as Wayne who didn't have any source of cash except his 401(k) in order to try to do his best to save his own home using his own money.

It is true that for most people, a home is the greatest single source of wealth. It seems to me it is common sense that we would have this narrowly defined, limited exception to allow homeowners to use every tool available within their power to stay in that home and not have it foreclosed. That is the amendment I will be offering at an appropriate time. I believe we have received clearance from Senator GRASSLEY. I am trying to get clearance from Senator BAUCUS, then the two managers of the bill, and the Banking Committee, to get clearance from them.

OIL FUTURES

Why has oil hit, last week, $140 a barrel, and why is it, within the last couple days, somewhere in the high 130s? We have had testimony now from the president of Shell Oil Company. We have had testimony from an executive of ExxonMobil. The two respective testimonies say that under the normal marketplace for oil, a world marketplace of supply and demand, one of them testified oil ought to be at $55 a barrel, not $140, and the other one testified it ought to be somewhere between $35 and $65 a barrel, not $140. So why is it at $140?

It is true that little ''jitterations'' in the marketplace, any little minicrisis in any part of the world is going to send jitters into the financial marketplace. That is going to cause upward pressure. The fact is that China and India, of course, having so much consumption of oil, makes it tighter. But even so, with all that, they said it ought to be in the range of somewhere between $35 and $65 a barrel.

The reason it isn't is because 8 years ago, in the dead of night just before Christmas in the year 2000, the Senate, adjourning to go home, a provision was slipped into an unrelated bill that deregulated energy futures contracts. It was called the Enron loophole because it benefited Enron. We saw that a couple years thereafter in electricity contracts in California having been bid up and bid up and bid up, and that caused a great crisis that ultimately caused blackouts in California. Then, when Enron unraveled financially, we found out about that. But nothing was done to reregulate the agency, the Commodity Futures Trading Commission, the CFTC.

A lot of our colleagues here think we just reregulated them last Thursday night in the farm bill. But we only partially reregulated them when we passed the farm bill over the President's veto. What that was, was new power of the CFTC to go in on an ad hoc basis on an individual oil contract, with certain other limitations, to examine it and then determine if it wants to regulate it. I don't want to do that.

The bill I have filed—and I have Senator DORGAN, Senator OBAMA, and Senator BOXER as cosponsors—takes us back to the status quo before the Enron loophole was passed, which is the trading mechanisms attached to the United States have to be regulated if it is energy futures contracts. It is very simple. As a matter of fact, my bill is only two words. It inserts the words ''or energy'' in there to reregulate energy futures contracts.

What is regulating? That Commission would decide, for example, that they are going to require that if you are going to bid on these future contracts for oil, you are going to have to use that oil. It is people now who don't have any intention of using oil who go into these markets and speculate and bid up the price. It is believed that if we plugged this loophole, the price of gasoline will drop by half. That is pretty dramatic. Yesterday, the House of Representatives had testimony that the price of oil per barrel would drop by over half. That is pretty dramatic.

People are hurting. Every Senator knows that. Our people are hurting. This $4 gas is hurting our people financially. They are not able to make financial ends meet. So if we want to do something, we have to get to where we can do something about it.

Why did the price of oil futures jump $11 in 1 day? Do you know what the airline industry has told us? That 1-day jump of $11 a barrel cost the airline industry $4 billion extra. They can't survive like that. This is an entity we want to survive. They transport us about the country and the world. We can do something about it, if we have the political will.

This Senator is going to continue to pound on this issue to try to get the attention, and we are getting some heft, when DORGAN and OBAMA and BOXER all start signing up. It is a very elegant, very simple thing. You go back and plug the loophole that was unplugged back in December of 2000 and allow the Government to do what it ought to do by saying that the commodity exchanges have to regulate the trading of oil futures contracts.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative 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 (Mrs. MCCASKILL). Without objection, it is so ordered.

Mr. DODD. Madam President, to inform my colleagues and others interested, we are making progress on various amendments that people are proposing to the housing bill. As the majority leader has indicated, the only amendments we are going to consider are housing amendments. This is a housing debate. These are the issues on which people are anxious to see resolution so we can begin to make some serious movement on the foreclosure crisis in our country.

I have a long list of potential amendments, some 44 of them. I am not sure all are going to be offered. Some, because we are in a postcloture environment, might fall. But I strongly urge those who have amendments, Democrats and Republicans, to come to the floor to meet with staff to try to resolve their amendments if at all possible, to reach some compromise on

them so they can be agreed to or in some cases clarity as to how to proceed so we can begin to organize how these amendments can be handled.

It is my intention shortly on a couple of amendments—a Democratic amendment and a Republican amendment—where we have reached agreement and compromise, to propose those, as my colleague from Alabama will, and to agree to those amendments, and then at some point my hope is to try to propose a unanimous consent proposal to accommodate those who insist on floor votes, to accommodate those with time agreements so we can have some clarity as to how the rest of this bill will unfold.

There are complicated procedural hurdles we have to weave our way through, but I think, given the overwhelming vote of 83 to 9 on cloture, there is a strong bipartisan desire to complete this housing measure. We have the opportunity to do that. I need Members or staff, whomever they designate, to come over with their amendments to give Senator SHELBY and I an opportunity to try to resolve them, to declare whether they are going to qualify for working out some agreement. That would be a great help. There are some, I know, to which we can agree. There are other matters that Members want to bring up on this bill, but I know there is going to be strong resistance—and properly so—by the majority leader to entertain ideas that are not pertaining to housing. There will be other opportunities, and there have been other opportunities, for the consideration of such ideas, but they are not going to be a part of this bill, knowing that when we go to the other body with provisions that will not be accepted by the other body, they will kill those ideas, as well as this one, the housing bill.

So for reasons that are very practical, not political, we have to stay on the theme we are dealing with, housing, foreclosures, and what we can do to put our housing situation on a far better footing and give the institutions and the regulatory bodies the necessary reforms and tools that allow them to do their jobs. That is fundamentally what is at the heart of this legislation.

The other body has completed their proposals, and we are talking with them in productive meetings, with Congressman FRANK, chairman of the House Financial Services Committee, along with JACK REED, our colleague from Rhode Island, talking about how we might resolve some of these differences on these two bills.

There are a number of efforts ongoing. Even though we have not been engaged in a public debate in this Chamber over the last several hours, there is movement.

Those who have amendments, I strongly urge them to come to the floor, bring their ideas, and see if we can't resolve how we are going to handle them, either a vote up or down to agree to them or inform the authors that they will probably fail in a postcloture environment.

I am grateful to all of our colleagues for their support this morning on invoking cloture and getting us close to adoption of this complicated housing proposal. We had very strong votes beginning in December with the FHA modernization bill, in April with the foreclosure proposals, and most recently 19 to 2 out of our committee on this particular proposal, and, of course, the vote this morning on cloture, 83 to 9. So there is a strong indication that I take from our colleagues' actions that there is a desire to get this bill done. We have the opportunity to do that in the next few hours, a day or so, to complete this process before the Independence Day recess.

The ideas I just suggested, the proposals we are making, will help us come closer to that reality if people will take advantage of them.

Mr. BUNNING. Madam President, I want to speak directly to the folks at home right now. In the last few days, we have heard Senators say that we are in a historical crisis that requires action by the Federal Government. Supporters of this bill say it directs relief to homeowners who desperately need it, and deserve it. But they are trying to sell you on the cover of a book without letting you see what is inside. I like to know what kind of product I am buying before I open my wallet. As U.S. Senators, we have a responsibility to dig through any piece of legislation before we open up your pocketbook.

This bill is over 600 pages long. I have seen portions of it in the Banking Committee and the Finance Committee, but for the first time we are seeing the whole package here on the Senate floor. I am not buying it, and I do not think you, your children, and your grandchildren should have to either. Let me tell you why.

This bill puts you, the taxpayer, at risk. It creates a new, permanent tax on mortgage business done by Fannie Mae and Freddie Mac. That tax threatens the solvency of those institutions and permanently punishes the shareholders, many of which are institutional investors such as pension funds. The tax also reduces the amount of capital these GSEs can provide to the mortgage lending system in a moment of serious liquidity issues in the market.

Furthermore, the FHA is already projecting losses of over $4.6 billion from existing loans, which will wipe out 22 percent of its capital reserves. The Congressional Budget Office has estimated that participants in the FHA refinancing program will re-default at a rate of 35 percent. That is more than one out of every three loans refinanced through the program. We are putting more bad loans on an already broken program that can't handle the risks it currently has. Is that a good idea? Of course not.

The author of this bill says it does not put the taxpayer on the hook. That is just not true. First, the tax on Fannie Mae and Freddie Mac will be paid by ordinary Americans, either through higher costs for future mortgages or through lower share prices in their retirement accounts. Is that fair? No.

Second, taxpayers are on the hook for any losses beyond what is being taken from the GSEs. Supporters of this legislation say that will not happen, but even their own numbers show just how likely it is for this program to be bankrupt in a few years. The CBO score for losses only fits within the GSE tax set aside for the program because they assume less than a third of the refinancing authority is used. I think time will prove all those assumptions wrong. The real question in my mind is when will we have to bail out FHA and who is going to pay for it?

This bill not only creates a dangerous new tax, but also uses that revenue to fund housing initiatives off the books of the Federal Government. Under this bill, Fannie Mae and Freddie Mac will be assessed $500–800 million annually by the Federal Government. At least for the first year, that money will be used to cover the inevitable losses to the FHA from a bailout program for irresponsible and undeserving lenders and borrowers. The balance of that money will pay for a permanent slush fund for housing causes that will end up benefitting partisan groups, some of whom have recently had workers indicted for voter fraud. Additionally, there is an extra $150 million in counseling funds for these partisan groups, with even less accountability attached to those funds.

Another provision that has received little attention is $4 billion in emergency spending to buy foreclosed homes. That is nothing more than a gift to the banks, who by definition are the ones who have foreclosed homes to sell. These funds will have the perverse effect of increasing foreclosures because banks know there is going to be a willing buyer.

And if these tax and spend policies weren't enough, this bill vastly increases an already overreaching Federal bureaucracy. It nearly doubles the size of the FHA. It assigns important decisionmaking responsibilities with regard to this program to a board created of various agency heads, not Congress. It creates a new trust fund for ''affordable housing'' that is permanent and mandatory, outside the normal appropriations process. It requires loan originators to participate in a National Mortgage Licensing System and Registry. If you are a fan of big government, this bill definitely delivers.

But I am only skimming the surface. Unfortunately, it gets much worse. Make no mistake—this bill is a huge bailout for our Nation's lenders. The bill's author has said this bill is going to help the everyday man. Let's take a closer look and see what you think.

The FHA program created by this bill refinances borrowers who have defaulted on their mortgages into government-insured loans. Just how much of those loans does the government insure? One hundred percent. By creating this program, this bill limits how much lenders can possibly lose through mortgage transactions. When you invest in a business venture or in the stock market does the Federal Government cap your losses? No. But when it comes to big banks this bill willingly transfers downside risk of future losses right to the FHA and you, the American taxpayer.

As I said before, CBO estimates at least one in three mortgages refinanced under this bill will default again. Therefore, we have put in motion a scenario where taxpayers take the hit rather than the lenders who made that loan to a risky buyer who bought a house he could not afford, with a mortgage he could not afford. That is a bailout for the lender any way you slice it.

Probably the most glaring flaw is that the bill offers no way to keep out irresponsible and undeserving borrowers. In fact, borrowers are not required to show that they did not lie on their original mortgage application. To qualify for the bailout, borrowers get to sign a piece of paper saying they did not lie the last time they signed for a mortgage. This bill subjects the FHA to another wave of fraud that these no-documentation loans experienced in the primary market.

Borrowers who have not demonstrated an ability to pay can get a bailout because there is no requirement that borrowers have made any timely payments on their original mortgage. There is no income cap on eligibility for the program. As written, this bill would allow homeowners with houses valued at up to $550,000 to qualify for a bailout. In my county in Kentucky, which is one of the most expensive in the whole State, the median home price is $270,000. So this bill would give a bailout to people with homes valued at twice the median price. The American people are compassionate and often willing to help those in need. But I do not think giving a bailout to anyone who owns such an expensive home is fair to the average American. If you recall from the economic stimulus debate, my colleagues on the other side of the aisle vehemently opposed rebates for ''rich'' taxpayers. Now when it comes to bailing out banks that made risky loans, all income classes of borrowers can qualify.

The list of problems goes on and on. Mortgage professionals, people who by definition should have known better, can qualify for the bailout. People who defaulted on government loans before can come back to the trough. People who drained all the equity in their homes to buy flat screen TVs and new cars can qualify. This seems to me like a surefire way to set a program up for failure at a time when the FHA is reporting record losses.

The tax division of this bill also is flawed in several respects. In particular, it includes a $9.8 billion tax increase on small businesses that the Senate Finance Committee has never held hearings to review. This credit card reporting provision will result in a vast increase in paperwork for credit card companies and in millions of confusing and possibly misleading notices sent to the IRS and taxpayers.

Another provision that needs more work is the new limitation on the gain exclusion for the sale of a second home. This provision applies to any second property owned by the taxpayer, including an investment home. That means that taxpayers who lose their principal residence and move into a vacation home or investment property will also lose the benefit of gain exclusion. Is that the drafter's intent? This legislation has not been well thought out. That scenario should be excluded, and I have no doubt it would have been if this bill had followed the normal course through the Senate Finance Committee.

There are a few provisions in this bill which are worthwhile and needed. Most importantly, the bill creates a strong new regulator for Fannie Mae and Freddie Mac. Congress has been trying to pass such a bill for years, and it is sorely needed and worth passing on its own. But the proponents of the bailout are holding those needed reforms hostage to get their bailout.

I and many others hoped to offer amendments to try to mitigate the damage this bill could do. Unfortunately we have been blocked from doing so. On a bill of this magnitude that is irresponsible and unacceptable.

One of my amendments would have made refinancing more affordable for the vast majority of homeowners by allowing them to write off interest points paid on a home mortgage in the year paid. For no good reason, the Tax Code requires homeowners to treat points differently, depending on when they are incurred. If they are incurred in an original purchase financing, the points are deductible, just as they would be under my amendment. If they are incurred in a refinancing, the points can only be deducted ratably, over the life of the loan. The difference is so significant that it will affect the ability of millions of homeowners to afford refinancing.

The whole idea of bailing out people who took a gamble and lost is an irresponsible way to spend the taxpayers' money. I do not think the people back in Kentucky sent me to Washington to bailout speculators, Wall Street executives, and people who drained the equity in their homes to buy flat screen televisions and new cars.

This bill is simply the wrong kind of housing policy for Congress to be engaging in and is fatally flawed. Even the sponsor of the bill has admitted on the Senate floor that he is not even sure it is going to work, but he hopes it will. As the most deliberative body in the world, I think we can do better. In fact, we owe it to our grandchildren to do better. Who is going to bail them out when FHA is left with $300 billion in bad debt? On behalf of the people of Kentucky, this Senator is not buying this bailout bill.

Mr. BROWN. Madam President, I am pleased the Senate has turned to the Housing and Economic Recovery Act, which in large part was the responsibility of three of my colleagues, Senator DODD, Senator REED from Rhode Island, and Senator SHELBY, which will provide much needed relief to our country's homeowners and the communities they live in.

Ohio has been at the center of this storm for a number of years, and after years of neglect from the Federal Government, I am pleased that we are finally about to act. Congress needs to help and it needs to act quickly.

I understand we have an agreement that limited amendments today to those that are relevant. This agreement I hope remains in effect through the consideration of the legislation.

Ohio set a record for foreclosures last year, some 83,000 foreclosures. That is more than 1,000 a week. That is close to 200 a day. More precisely, every week about 1,500 families have lost their homes. The end is nowhere in sight. These families need our help now. They do not need political posturing on unrelated issues. We have seen too much of that. That can wait until we are done with this bill.

This fall, by some estimates, we will see the peak of the subprime mortgage resets. One research firm predicts half the subprime loans made in the fourth quarter of 2006 will fail. That is not lending; that is gambling with someone else's house.

The people who were sold these loans, and the neighborhoods they live in, must be among our highest priorities. The needs of communities are critical because this crisis has an impact far beyond the people who lose their homes. Whenever a home goes in foreclosure, the value of neighboring homes drops by about 1 percent. Crime goes up. Just when property tax revenues are plunging and the resources of a city or town are stretched to the limit, more resources are needed, and there is less ability to deliver to help people.

The Foreclosure Prevention Act which we passed in April has been incorporated in this legislation before us. It will provide close to $4 billion in aid to communities so they can rehabilitate or in some cases knock down abandoned homes in neighborhoods.

The bill will fund more counseling to help people rework unfair loans. Yesterday in Columbus I visited a neighborhood on East 21st Street where the Columbus Housing Partnership has been so helpful in counseling many people. More than 100 people, they say, have had their homes saved because of this counseling. Two of them were with me on East 21st Street yesterday.

This is no easy task. Once upon a time you took out a loan with your local bank to buy a home, you knew people at the bank, they knew you, and the bank had a stake, as much stake in your success as you did.

Today, especially for subprime loans, that is seldom the case. The voice on the phone and the owner of the loan could be anywhere in the world. Help in navigating the mortgage maze is essential. But the problem is too big for one-by-one approaches. No matter how hard counselors and servicers work—and they are doing yeoman work all over the country, Toledo, Cleveland, Dayton, and Springfield, all over my State and all over the country. No matter how hard they work, we need a more comprehensive approach to help homeowners who could afford to stay in their homes if they had a fair mortgage.

The bill before us establishes a temporary program within the Federal Housing Administration that, on a voluntary basis, would allow lenders and borrowers to refinance their mortgages into a more affordable and stable product.

The HOPE for Homeowners Act would help perhaps half a million families. But the impact is far wider, as their neighbors and communities will be helped as well if we can avoid foreclosure for these homes in the neighborhoods.

These provisions are not a bailout for borrowers or lenders. Borrowers get no subsidy from the Federal Government. They will have to pay a mortgage on their property like everybody else. The difference is they will now have a standard 30-year fixed rate loan based on the true value of the property, rather than an exploding adjustable rate mortgage based on an inflated appraisal. Lenders, meanwhile, will have to take a loss by writing down the mortgage below the actual value of the property if they choose to participate.

In many cases it will be in their interest to do so. With bank-owned homes selling at a fraction of the outstanding mortgages on them, many will want to accept a smaller loss. If the program works as we hope, it should provide liquidity to the mortgage market so that lenders will be able to again make prudent loans.

The legislation also creates an affordable housing fund. With our stock of affordable housing both aging and shrinking, this fund will be vital to the many families who are struggling to keep a roof over their children's heads.

Families who are ready to buy a home will be helped in several ways by this legislation. First, it includes a modernization of the FHA program. What we saw over the past several years was an incredible shrinking of the market share for FHA loans as borrowers opted for riskier loans instead. The legislation would update the FHA program, increasing limits for high-cost areas and streamlining its operation. Second, home buyers will be eligible for a credit of $8,000 in the form of a 15-year interest-free loan. This credit is phased out for higher income taxpayers, and it will last 1 year. But it should provide help not only to home buyers but help to stabilize markets around the country.

The bill includes several other noticeable tax provisions. It provides an additional $11 billion of mortgage revenue bonds, so that State housing agencies can respond to the housing crisis in a way that best suits their situation. It provides a measure of property tax relief to people who do not itemize on their taxes, an estimated 28 million taxpayers.

This legislation provides a needed overhaul to the regulation of Fannie Mae and Freddie Mac and the Federal Home Loan Banks. This is an issue that has been debated for years. We have now reached a point where we can move forward. The bill creates a new independent regulator with broad authority equivalent to that of other Federal financial regulators. The new regulator will be able to establish capital standards, management standards, and review and approve new products. It will have teeth too, as it will be able to enforce its orders through various means.

This new regulator will draw from various agencies already in place, and it will be required to undertake rulemaking in several areas. I hope my colleagues will give some attention to the transition from the current regulatory regime to the new one. It has taken us years to get to this point in the legislative process. It is unlikely that a new regulator can be created to do a competent job overnight.

Let me conclude by commending Chairman DODD and Ranking Member SHELBY for bringing us to this point today, and especially to the majority leader for his work in getting there. No one in the Senate wants to help people who engaged in fraud or speculation. But hundreds of thousands of people were sold mortgages designed to fail. These people can stay in their homes with a fair mortgage but will be on the street without our assistance. They deserve our help. They deserve it now.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that notwithstanding rule XXII, the Senate now proceed to executive session to consider Calendar No. 630, the nomination of Helene White to be a United States circuit judge for the Sixth Circuit; that there be 4 hours for debate with respect to the nominations covered under this agreement today, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of Calendar No. 630; that if the nominee is confirmed, the motion to reconsider be laid upon the table and that President Bush be immediately notified of the Senate's action; that upon confirmation of Calendar No. 630, the Senate then proceed to the consideration and vote on confirmation of the following nominations in the order listed, Calendar Nos. 631 and 632; that with respect to any vote sequence, there be 2 minutes of debate between votes and that any succeeding votes be limited to 10 minutes each; that upon confirmation, the motions to reconsider be laid upon the table, en bloc, the President be immediately notified of the Senate's action, provided that no further motions be in order, and the Senate then resume legislative session; further, that on Thursday June 26—this coming Thursday—notwithstanding rule XXII, if it is applicable at all, at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to executive session to consider Calendar Nos. 627 and 628; that they be debated concurrently for 1 hour, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nominations in the order listed, with 2 minutes of debate time equally divided and controlled in the usual form between the votes, and the second vote in the sequence be 10 minutes in duration; that upon confirmation, the motion to reconsider be laid upon the table, en bloc, the President be immediately notified of the Senate's action; further, that if Calendar No. 630 is not confirmed, then all aspects of this agreement are null and void, with no further intervening action or debate, and the Senate then resume legislative session; that any time consumed under this agreement count postcloture, if applicable, provided that no further motions be in order.

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

Mr. REID. Madam President, I ask unanimous consent that in the consent request I initiated, where I read the words "then all aspect of this agreement are null and void, with no further intervening action or debate," the words "no intervening action or debate," which I read into the RECORD, be deleted.

The PRESIDING OFFICER. "No further intervening action or debate" shall be deleted from the request.

Mr. REID. That is correct, Madam President.

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

EXECUTIVE SESSION

NOMINATION OF HELENE N. WHITE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

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

The assistant legislative clerk read the nomination of Helene N. White, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Mr. ISAKSON. Madam President, I ask unanimous consent that the time during the quorum be equally divided between the parties, and I suggest the absence of a quorum.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is presently in executive session.

Mr. LEAHY. Am I correct that we are now on a judicial nomination?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Is there a time agreement?

The PRESIDING OFFICER. There is 4 hours equally divided. But the Senate has used some of that time in the quorum call.

Mr. LEAHY. I yield myself such time as I may need in the time allotted to the Senator from Vermont.

Today, the Senate is turning to a package of three nominations for lifetime appointments to the Federal bench in Michigan, including President Bush's nominations of Judge Helene White and Raymond Kethledge to fill the final two vacancies of the Sixth Circuit Court of Appeals.

These nominations are the result of the hard work of Senators LEVIN and STABENOW, who consulted with President Bush to end a decade-long impasse in filling vacancies on the Sixth Circuit. During that time, Senate Republicans had blocked President Clinton's nominees to that circuit, leaving open four vacancies.

I am worried that some on the other side seem intent on preventing us from making this progress. Judge White's nomination should be a consensus nomination. Judge White was nominated by a Democratic President and by a Republican President. When the most partisan President in modern history, one responsible for sending us so many divisive nominations, renominates a Clinton judicial nominee, it actually should send a signal.

Nevertheless, her nomination drew criticism from the Republican leader and opposition from Republicans on our committee. After I expedited a hearing on the Michigan nominees, figuring that 10 years of waiting might have been enough, Republicans objected that we were moving too fast. They peppered her with more questions than any nominee of President Bush that I can recall. At our committee markup, Republicans made the wildly dumbfounding claims that she is not experienced. But after more than 25 years as a Michigan State court judge, including 15 as a State appellate court judge, she is a more experienced judicial nominee than many of those they previously supported.

It is interesting that Republicans did not raise this concern when they were supporting far less experienced nominees such as Jennifer Elrod and Catharina Haynes of Texas to fill circuit court vacancies. In fact, Judge White has been on the appellate bench longer than Mr. Kethledge, the other Sixth Circuit nominee, has been out of law school.

It is ironic that last week several Republican Senators held a press conference with representatives from right wing groups organized by a group calling itself Concerned Women for America. It is Republican opposition to a woman nominee that has been holding up the progress of filling judicial vacancies. Now this woman nominee they seemed concerned about is described on President Bush's White House Web site as ''an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor.'' She has been given the highest rating for the position by the ABA. Yet her extensive experience, which is far more than the experience of many supported by my friends on the other side of the aisle, does not seem to meet the sudden last-minute standards set by Republican members of the committee.

As a state judge, she has not been called upon to consider and apply certain Federal statutes. That would be the same with thousands of state judges all over the country. It is understandable. But if you characterize her because of that as unqualified, that would turn back the clock to before the confirmation of Justice Sandra Day O'Connor, who had been a State legislator and a State judge. Justice O'Connor was not experienced in deciding Federal law issues before confirmation as the first woman on the U.S. Supreme Court. I think we should all agree she nonetheless served the Nation well in that capacity. And I agreed with her chief sponsor in this body, my friend and former colleague, Barry Goldwater of Arizona, and I was proud to join with him in voting for Sandra Day O'Connor.

It is also ironic that week after week, as the Senate continues to make progress in filling judicial vacancies, we hear a steady stream of grumbling from Republicans whose main priorities now seem to be to prevent the Senate and the Judiciary Committee from addressing the priorities of ordinary Americans. You would almost think that gasoline has not skyrocketed as the dollar has collapsed in value worldwide because of the huge debt caused by the Iraq war. They do not seem to realize that some of the typical Americans in my State of Vermont and, I suspect, the Presiding Officer's State of New Jersey, are finding it very hard to buy gas to go to work or pick up their children after school or do their grocery shopping or visit an ailing parent. You would not think these were important matters when you hear of the priorities on the other side. You would not be aware there is a huge crisis in the housing industry, where people are losing houses all over this country, hard-working Americans who finally had the American dream of owning their own home and are now losing it. You would think that was not happening by what we hear from the other side.

Republicans are now regularly objecting to hearings before the Judiciary Committee. They seem disappointed when we conclude hearings within the first 2 hours of the Senate's day and they cannot disrupt them.

They objected to Senator FEINSTEIN completing an important hearing on interrogation techniques used against detainees. It is almost as if, if we can block that hearing from happening, these terrible things never would have happened because Republicans foreclosed the ability of Americans to hear what went on in those hearings.

They objected to a hearing highlighting the impact of Supreme Court decisions on the daily lives of all Americans even though that meant cutting short the testimony of two brave women victimized by such a decision, Pennsylvanians who came to Washington to tell how badly they had been hurt by these decisions. The Republicans effectively silenced them to make sure they could not speak and could not testify because they said we should not have these Judiciary Committee meetings. So these two Pennsylvanians had to go back home unable to finish telling their story.

And a few days ago, the Republican minority objected to a hearing that had been requested by Judiciary Committee Republicans to examine the need for additional Federal judgeships throughout the country. This now all too familiar pattern is childish and serves no good purpose.

We will see later this week whether they allow Senator BIDEN to proceed to chair a hearing before the Subcommittee on Crime and Drugs concerning fugitives from justice.

Regrettably, these obstructionist tactics from the other side of the aisle are likely to continue without regard to the real priorities of the struggling Americans I spoke about, the voters who have elected every Senator to serve. Their priorities are being pushed aside.

We read last week another story about the dissatisfaction of right wing

activists and their pressuring of the Republican leadership in the Senate. We witnessed their response this month as they forced a reading of a substitute amendment to critical climate change legislation. They did this for hours and hours, thereby shutting down the work of the Senate.

Two weeks ago, we saw a story in Roll Call that included the headline ''Divided GOP Settles on a Fight Over Judges.'' That headline reminded me of the famous Wolfowitz quote about why the Bush administration settled on supposed weapons of mass destruction as the justification for attacking Iraq even though they knew there were no weapons of mass destruction—it was the rationale they could agree on. They all knew they wanted to attack Iraq, they knew they did not have the facts to attack Iraq, so they found a cover story they could use. And thousands of lives and $1 trillion later they say: Oops, sorry, no weapons of mass destruction, but, boy, we all agreed on the rationale.

The report in Roll Call included discussion by Republican Senators of the politics that fuels their efforts to appeal to ''conservative activists'' and ''ignite base voters'' and find an issue that ''serves as a rare unifier for Senate Republicans'' and their Presidential nominee. That piece mirrored an earlier article in the Washington Times, reporting how this is all part of an effort to bolster Senator MCCAIN's standing among conservatives.

This political song-and-dance would not be so bad if it were not impacting the integrity and the independence of the Federal judiciary, something that in the past both Republicans and Democrats tried to protect.

I had suspected that much of this complaining was because Republican partisans were looking for an issue to energize their political base during an election year. The reports from the media outlets have confirmed my suspicions. I wonder if they realize that liberals, conservatives, Republicans, and Democrats are suffering from having to pay these outrageous gas prices. Wouldn't it be better if they worked on that?

Americans, Republicans and Democrats, in all parts of this country, are seeing their houses disappear and the value they had hoped for their retirement gone. Wouldn't addressing that be something better on which to unite America?

On this date in the 1996 session, another Presidential election year but one in which a Republican Senate majority was considering judicial nominees of a Democratic President, do you know how many judicial nominees had been confirmed? The answer is easy: None, not a single one. That was a session that ended without a single circuit court judge being confirmed.

By contrast, if Republicans will allow the confirmation of Judge White to the Sixth Circuit, we will have today completed the confirmations for 12 judges, including 4 circuit court judges, so far this Presidential election year, compared to 1996, when none had been confirmed at this point.

In addition to today's three nominees, two more judicial nominees already reported by the Senate Judiciary Committee are pending on the Senate's executive calendar. I have placed four more on the Judiciary Committee business agenda for later this week.

It is perhaps the ultimate irony that here, as the Democratic leadership of the Senate takes the extraordinary step of proceeding to two more of President Bush's circuit court nominees in June of a Presidential election year, I am being criticized by Republicans for, of all things, moving too quickly. I had hoped, in light of the discussion between the majority leader and the Republican leader earlier this spring, to have concluded Senate action on this package of Michigan nominees more quickly. I tried to have these votes in May before the Memorial Day recess, but we were thwarted in that effort by Republican concerns about expediting consideration of these Bush nominees. So what we might have done in May, we are now having to do in June.

It reminds me a little bit of the Republican antics and shenanigans earlier this year that cost us progress in February. Rather than making progress, Republicans refused to make a quorum in the Judiciary Committee that entire month so no judicial nominees would come out in March, and then in March, they could give speeches.

So let there be no mistake. If Judge White is confirmed, we will have broken a 10-year impasse on the Sixth Circuit. By contrast, the Republican Senate majority during the Clinton years refused to consider President Clinton's Sixth Circuit nominees for 3 years and left four vacancies on that court.

When, as chairman, I scheduled a hearing and vote for Judge Julia Smith Gibbons of Tennessee and Judge John Marshall Rogers of Kentucky, we were able to confirm the first new judges to the Sixth Circuit in 5 years. The others had been pocket-filibustered by Republicans. I said we would not do the same thing to them, and we did not. We moved quickly on President Bush's nominees to that circuit. The confirmations of Judge White and Mr. Kethledge of Michigan would complete the process by filling the two remaining vacancies on the Sixth Circuit.

Judge White was first nominated by President Clinton to a vacancy on the Sixth Circuit more than 11 years ago, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing before President Bush withdrew her nomination in March 2001. Hers was 1 of more than 60 qualified judicial nominees pocket-filibustered by Republicans. This year, President Bush reconsidered and renominated her, and I applaud President Bush for doing so. He deserves credit for trying to close the door on a sorry chapter. I commend the President for doing it and for what he has said on his White House Web site about Judge White's nomination. I hope the Senate will follow the example of President Bush and confirm Judge White to one of the last two vacancies on the Sixth Circuit.

The Michigan vacancies on the Sixth Circuit have proven a great challenge. I commend the senior Senator from Michigan, chairman of the Senate Armed Services Committee, Senator LEVIN, and his outstanding colleague, Senator STABENOW, for working to end years of impasse. I had urged the President to work with the Michigan Senators. After 7 years, he now has.

We have come a long way since I became chairman in 2001 when the Sixth Circuit was in turmoil because Republicans had blocked nominations for many years. Today we complete that progress by confirming Judge White and Raymond Kethledge.

I yield the floor and retain the remainder of my time. How much time remains to the Senator from Vermont?

The PRESIDING OFFICER. There is 1 hour 32 minutes.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we are moving forward today on the votes for confirmation of three Federal judges. Among the many very heavy responsibilities of the Senate, the confirmation process ranks very high. Under our system of government, we give to the judicial branch the responsibility of interpreting the Constitution and establishing the rule of law. That has broad implications. It means the courts render decisions where one citizen has a claim against another, which goes to court. It means a claim when the government and a citizen have a controversy which is to be settled by an impartial judicial arbitrator. It also involves some of the historic constitutional confrontations, one of which we will have later this week on the Foreign Intelligence Surveillance Act. Where does the Article II power of the President end as Commander in Chief, and where does the Article I power of the Congress of the United States establish itself under Article I?

It is a very, very high calling. When the framers adopted the Constitution, Article I was given to the Congress. Article II to the executive branch and Article III to the judicial branch. Later, Chief Justice Marshall, in effect, rewrote the order of priority. I think if the Constitution were to be rewritten today, the judicial branch would be No. 1, because the judicial branch has taken over the responsibility, for a variety of reasons, for deciding all of the cutting edge questions.

We have had a great deal of focus of attention on the confirmation process. This attention usually happens when Supreme Court nominations are involved. Then, in the major committee hearing rooms, Senators are all at

their desks. There are not too many Senators at their desks here today. In fact, I don't see anybody at their desk here today, except for the Presiding Officer, which is not exactly his desk. It is the vice president's desk. But, Senator LAUTENBERG from New Jersey looks comfortable in the position. We have had, during the confirmation process of Chief Justice Roberts and Associate Justice Alito, seen the Senate at its best—avoiding the controversy, avoiding the partisanship, and moving forward in dignified hearings.

As I have said before—and it is worth repeating—I compliment the distinguished chairman of the Judiciary Committee for his courageous stand in voting for Chief Justice Roberts. Chief Justice Roberts was confirmed by a vote of 78 to 22. Counting the Independent vote with the Democrats, a majority of the Democrats voted in favor of Chief Justice Roberts, and it was a good, unifying symbol. We moved through that process where there had been some doubt as to how the Senate would perform, a doubt which was occasioned by the very bitter infighting, which characterized the Senate in 2003, 2004, and 2005, when we had the controversy with the filibuster by one side and the threat to invoke a new rule of cloture with the so-called constitutional or nuclear option.

I have the pleasure of having my 14-year-old granddaughter with me this week. She just graduated from the eighth grade and is spending a week as an intern in the Senate. It may be a little early for the job. Her father spent 6 weeks with Senator Hugh Scott many years ago when he was 17. But, in going over the day's itinerary, I sought to explain to my granddaughter, Silvia Specter, what a confirmation is. She is watching, with more interest, the activities of the Senate today because she is onboard. It is my hope, with agreements which have been reached here today to move ahead with the confirmation of three Federal judges today and two more on Thursday, that perhaps we will see a return to at least some basic level of comity in the Senate. We have moved a considerable distance from the tradition of confirmation of Federal judges where, in times gone by, there was merely a review of academic standing, professional standing, and trial practice; now, we go into much more detail of the ideology and philosophy of the nominees. That change has led to some deep concerns over the so-called cultural wars which have, candidly, muddied the waters. However, it is my hope that in the time that remains in the 110th Congress, we will move ahead with the confirmation of judges on up-and-down votes.

The three nominees we are considering today have come to the floor as a result of an arrangement worked out by the leadership on both sides. Originally, there had been a commitment to have these confirmations occur before Memorial Day. When I say "commitment," let me modify that slightly to "best efforts." When the nominees were selected, there was concern on the part of the Republican side of the aisle that there was insufficient time to take up the nomination of appellate court Judge Helene White to be a judge of the Sixth Circuit.

I will ask unanimous consent that the full text of my statement on Judge White's nomination be printed in the RECORD at the conclusion of my remarks.

By including my statement, I can abbreviate my comments now. In my statement, I note that there were only 22 days between Judge White's nomination and hearing, and there was not an opportunity to get into the details of her record, which is a matter not just of procedure, not just of form, but of real substance in terms of the committee's ability to evaluate Judge White. I shall talk about that specifically, in terms of her qualifications and in terms of specific cases which she has decided. The context of the mere 22 days to evaluate her nomination is further illuminated by the fact that there were so many other nominees who had been on the agenda for much longer. A very distinguished lawyer, Peter Keisler, a man who has been praised on the editorial pages, had been waiting for 726 days for a committee vote on his nomination to Circuit Court for the District of Columbia. It is not too often that judicial nominees are praised on the editorial pages, but Peter Keisler has been. A judge in North Carolina, District Court Judge Robert Conrad, who is up for a seat on the Fourth Circuit, has been waiting for a hearing for 343 days. A man named Steve Matthews, also for a seat on the Fourth Circuit, has been waiting for a hearing for 292 days.

It seemed to my Republican colleagues and me that where you had a commitment for confirmations by Memorial Day, and you had people who had been waiting around for this length of time and we were in a position to evaluate them, that they should have been the ones to be considered. But, the majority leader chose otherwise, and now we have before us the nomination of Judge White for a position on the Sixth Circuit.

The status of a circuit judge is extremely important in our judicial hierarchy because the circuit court—for those who are not familiar with the details of Federal procedure—is the appellate court right above the U.S. District Court, which is the federal trial court. When appeals are taken, or, more specifically, a petition for a writ of certiorari is applied for to the Supreme Court of the United States, it is a discretionary matter whether the Supreme Court takes the case. Most of those applications are not heard—the U.S. Supreme Court takes very few cases from the court of appeals. So, when a three-judge panel sits in a circuit court, that is it. Now, sometimes there will be a decision by the circuit court en banc, when the full circuit court will decide, but customarily the decision is only rendered by the three-judge panel, and many decisions are two to one.

One case which illustrates the importance of the circuit court, and especially the Court of Appeals for the Sixth Circuit, was the decision on the constitutionality of the Terrorist Surveillance Program, the program put into effect by the President on warrantless wiretaps. These wiretaps went on for a long time before they were disclosed—a violation of the National Security Act of 1947, which requires the President to inform the Intelligence Committees of such proceedings, and a violation of the Foreign Intelligence Surveillance Act of 1978.

The President has responded to the law that Article II powers are not affected by statute, but that is a matter for judicial decision. A Federal court in Detroit declared the Terrorist Surveillance Program unconstitutional. The case was appealed to the Sixth Circuit, and on a two-to-one decision, the Sixth Circuit decided the plaintiffs did not have standing. That is a complicated legal procedure, which I will not take time to discuss today, but, in short, they do not have a right to challenge it because they are not sufficiently affected by it.

There was a dissent in that Sixth Circuit decision. Then, the Supreme Court of the United States denied certiorari—a decision which I thought was unfortunate. When you have a major constitutional confrontation between the Congress and the President—the most dominant confrontation of this era—it seems to me the Supreme Court of the United States ought to decide the issue and, candidly, not look for a way to duck it.

The doctrine of standing has sufficient flexibility, as illustrated by the dissent in the Sixth Circuit, that the Court could have taken the case. There is a lot of flexibility when the court deals with issues such as standing. Coming back to the point, one judge of the Sixth Circuit made the difference. So, when you have a nominee to the Sixth Circuit Court of Appeals, or any court of appeals, it is an important decision.

Going back to the topic at hand, we had the hearing on Judge Helene White, and we had it in a very hurried fashion. We did not have the rating of the American Bar Association, and, regrettably, we did not have all the materials that should have been available to the committee. When judges write opinions, a good many of them are what are called unpublished. For those who do not know the legal procedures, there are published opinions, which are bound in volumes that are used for precedents. But, the courts make a distinction on what is published and what is unpublished, and a good many of Judge White's opinions were unpublished and reversed, and we never were able to get them.

I asked Judge White at the hearing about a number of her cases because my own sense is to get involved in the specifics. In evaluating judges and evaluating lawyers on their legal skills, it is very revealing to see what they have decided. Perhaps even more revealing than what they have decided is the way they have reasoned through the decision. My questions about her cases were not designed to be so-called ''gotcha'' questions. All the cases I used for questioning were specifically listed on Judge White's Senate questionnaire that she provided to the committee on April 25, just 12 days prior to her hearing. I thought she would at least be familiar with these cases.

One of the cases I questioned Judge White on was captioned People v. Santiago. In that case, Judge White dissented from her colleagues' opinion, where her colleagues—two other judges—upheld a jury conviction of a defendant for first-degree felony murder and armed robbery. Judge White would have reversed the sentence.

In this case, the defendant had driven the other two defendants to the house where the robbery and murder were committed, knowing that the defendants intended to rob and likely kill the victim—a classic example of aiding and abetting. It is a basic, fundamental rule of criminal law that an accomplice in a getaway car is a part of the conspiracy to rob and is responsible for the consequences of a felony murder which follows—very basic fundamental law.

I asked Judge White why she did not agree with her colleagues that the defendant was guilty of aiding and abetting. She could not explain why her decision deviated from the legal standards. I asked her specifically if it was ''standard, clear-cut law that when somebody drives a codefendant to a place where there is a robbery and a murder, that kind of assistance constitutes guilt on the part of the coconspirator, accessory before the fact?'' She commented, unresponsively, that she ''went to law school in Pennsylvania,'' but then continued that ''in Michigan, to be responsible for the principal offense, one has to either share the intent to commit the principal offense or provide aid and support with knowledge that the principal offense was going to be committed.''

Given that acknowledgment, I again asked her why she came to a contrary conclusion. I asked her if she stood by her decision, even though her two colleagues who participated in the case with her on the Michigan Court of Appeals disagreed and the Supreme Court had denied appeal, and she responded that she stood by her original judgment, without providing any legal reasoning to justify that conclusion.

I asked Judge White about another case, captioned People v. Ryan. She participated in the decision affirming the dismissal of a drug dealer's conviction. The conviction had been reversed. The circumstances were that the defendant was arrested by Federal agents but was charged and convicted in a state court. The defendant argued that the decision to pursue a state prosecution rather than a federal prosecution was vindictive. The panel on which Judge White sat found that the trial court's determination that there was vindictive conduct was not clearly erroneous. The Supreme Court reversed stating:

> The mere threat to refer the case for State prosecution does not amount to objective evidence of hostile motive.

The Supreme Court reversed the decision to which Judge White had been a party.

I am sorry for the interruption. Anyone watching this debate on C–SPAN just saw a congenial exchange between the distinguished chairman and the ranking member of the Judiciary Committee. As a matter of fact, we have quite a few such exchanges. The evening is getting late and a lot of colleagues have a lot of commitments, and there has been a request by the majority that I abbreviate my comments. I think I can do that sensibly and will be delighted to do so.

Mr. LEAHY. Mr. President, if the Senator will yield without losing the floor?

Mr. SPECTER. No, Mr. President, I already have yielded.

Mr. LEAHY. Mr. President, I appreciate what the Senator said. I hope people understand who are listening. I know the two Senators from Michigan are going to speak very briefly. But if we wrapped up the comments in, say, the next 15, 20 minutes, we could then go to a rollcall vote on Helene White. I would agree, then, to a voice vote on the other two judges, provided the ranking member had no objection to that, which would probably bring about a huge sigh of relief from Senators on both sides of the aisle that we would not be stuck here with three votes.

Mr. SPECTER. Mr. President, I thank the distinguished chairman for his suggestion. It is almost 6 o'clock—a few minutes before—and I know people have a lot of engagements. I think the course he outlines is a solid one. I think we can handle the Senate's business in that way. As I said earlier, I will expedite my presentation and rely more on what I have in my statement for the RECORD. I do not think I am going to change a whole lot of votes in what I say, but I do think it is important for the Senate to understand that voting against Judge Helene White is not a matter that is done lightly or without cause. There ought to be a statement as to why.

Well, back to the case of People v. Ryan. Quite frequently there is a Federal investigation and a State prosecution. It happens all the time. It was very commonplace when I was district attorney of Philadelphia. That scenario is certainly not the basis for saying it is vindictive or out of order. For one reason or another, it is better suited to pursue the State court. If a State law is violated, you can do it that way. Judge White was wrong, as determined by the appellate court.

There is one other case on which I wish to comment. There is a case called People v. Thomas, which is in the RECORD and which I will incorporate by reference to save some time; however, I do want to specify the case of People v. Hansford, which was an opinion reversed on appeal by the Michigan Supreme Court and was a third case she had summarized in her questionnaire prior to her hearing.

After reading to Judge White in the hearing the defendant's extensive criminal record, which included several counts of larceny and attempted larceny, receiving and concealing stolen property, fleeing and alluding, and violations of probation, I noted that habitual offender statutes are designed to take habitual offenders off the streets. I asked what her reasoning was for determining that a man with an extensive criminal record such as the defendant did not deserve to be off the streets for life.

Once again, her response to my question was that she was not familiar with the case. She further stated that she ''accept[ed] the Supreme Court's decision . . . and accept[ed] that the sentence was appropriate . . . because the Supreme Court has said it is appropriate.''

I again asked her whether she thought her decision was correct in light of the Michigan Supreme Court's reversal, and she said:

> I have to have been wrong . . . The Supreme Court reversed. I was wrong. The Supreme Court reversed.

Well, that is, in my legal opinion, totally insufficient for a nominee to respond in that way to a very important question such as that. You have habitual offender statutes which are designed to take career criminals off the streets. When you have three or more convictions for violent offenses, it has been determined that the criminals ought to have life sentences. Based on the experience I had as district attorney dealing with these cases, I authored the Armed Career Criminal bill, which created a federal life sentence for serious repeat offenders convicted of three or more major felonies. The fundamental part of the criminal law is to protect society. Recidivists commit 70 percent of the crimes so if there is a habitual offender who commits repeat crimes, they ought to be taken off the streets. Here there was one, and the Supreme Court of Michigan said the treatment should have been for a habitual offender. Judge White didn't treat it that way, and she didn't have any justification for why she didn't treat it that way, and she didn't explain the logic of her reasoning.

As delineated in the very extensive floor statement, which I have already had printed in the RECORD, we were not given a great many of Judge White's opinions. It was very difficult—really impossible—to calculate her reversal rate when we didn't have those opinions. Based on the opinions we have,

her reversal rate was in excess of 6 percent, much higher than Judge Robert Conrad's reversal rate—2 cases out of 175, or about 1 percent. The national average is at 8.6 percent; however, Judge Boyle from North Carolina, who was rejected by the Democrats based on his high reversal rate, had a reversal rate which was lower than Judge White's. And I repeat, we still don't know what her reversal rate is. We don't know what her reversal rate is because we had a great many unpublished opinions that were reversed on appeal that we did not have an opportunity to examine because they were not provided to us.

Just a couple of comments in conclusion. It is my hope that we will yet return to some basic comity and have a respectable number of confirmations of Federal judges this year. The statistics show that President Clinton had a significantly larger number of circuit judges and district court judges confirmed than President Bush has had in the last 2 years. Further, President Clinton's overall confirmation numbers are higher than President Bush's. President Clinton had 65 circuit judges and 305 district court judges confirmed, while President Bush has had only 59 circuit judges and 244 district judges confirmed. We have heard several discussions about the so-called ''Thurmond rule''—that is a rule which has been commented upon which, when analyzed, has no real substance. During President Clinton's Administration, Chairman LEAHY commented that the so-called ''Thurmond rule'' was a ''myth,'' and then he proceeded to specify a great many judges who had been confirmed late in past Presidents' terms.

Upon examination, we find that the facts are that in the last 2 years of Presidents' terms, there have been many judicial confirmations. In 1988, President Reagan's last year in office, the Senate confirmed 7 circuit nominees and 33 district court nominees. In 1992, President George H.W. Bush's last year, the Senate confirmed 11 circuit nominees and 53 district court nominees. In 2000, President Clinton's last year in office, the Senate confirmed 8 circuit nominees and 31 district court nominees.

The Thurmond rule allegedly arose when the issue about the confirmation of judicial nominees came up near the end of President Carter's term in office. But, an examination of the facts shows that nominations were not being blocked. In fact, by today's standards, the end of President Carter's term was a rather remarkable situation. President Carter nominated Steven Breyer to be a court of appeals judge for the First Circuit on November 13, 1980, after President Carter had lost the election to President Reagan. We talk about the fights over circuit judges now. The election was gone. We had a new President. But, the Senate confirmed Steven Breyer to the First Circuit, and history shows that he later became a U.S. Supreme Court Justice.

We have had some very troubled times on this Senate floor, and that kind of infighting and partisanship is something which does not add to the luster of the Senate as the world's greatest deliberative body. We have seen very bitter disputes on this Senate floor. The Republican majority, in my opinion, did not act properly on President Clinton's nominees when the Republicans controlled the Senate and the President was a Democrat. I said so on the floor at that time and voted for President Clinton's qualified nominees.

When we had the battle over filibuster versus the so-called nuclear constitutional option, the tradition of this body was strained to the utmost, and we dodged that bullet or cannon or nuclear bomb. So, it is my hope that Senator LEAHY and I can take the lead, as we have in the past. He is the chairman; I am the ranking member. The roles have been reversed. We have a lot of role reversals around here. When PAT LEAHY and ARLEN SPECTER passed the gavel, it was a seamless passing of the gavel. We are not going to filibuster Judge White. I am going to vote against her for the reasons I have given here, and more detailed in my statement. I have not campaigned against her. I think the matter is up for every individual Senator to judge. My expectation is that she will be confirmed. I think there may well be a fair number of votes against her, but I haven't counted the votes. But, I think the important thing is that we have an up-and-down vote, and that we not have a filibuster. We have waiting in the wings the judge from North Carolina, Judge Conrad, and the man from South Carolina, also nominated to the Fourth Circuit. I hope we move on these nominees.

I also have written to my colleagues who are not returning blue slips on nominees from New Jersey and from Maryland and from Rhode Island. I have talked to them and urged them to return their blue slips, urging that we not maintain vacancies in anticipation of the election results. But, essentially, it is my hope that we can move ahead in a way that is in the tradition of the Senate and to discharge our constitutional responsibilities with up-or-down votes.

Mr. President, I now ask unanimous consent that my full statement be printed in the RECORD.

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

SENATOR ARLEN SPECTER, FLOOR STATEMENT, NOMINATION OF JUDGE HELENE WHITE TO THE SIXTH CIRCUIT COURT OF APPEALS

I have sought recognition to discuss the nomination of Judge Helene White to the United States Court of Appeals for the Sixth Circuit, but before I discuss the merits of her nomination, I'd like to remind the members of this Committee of the history behind this nomination.

On April 15, 2008, Majority Leader Reid and Chairman Leahy committed to confirming at least three more circuit court nominees by the Memorial Day recess. Senator Reid said: ''Senator Leahy and I are going to do everything we can to approve three circuit court judges by Memorial Day. . . . Who knows, we may even get lucky and get more than that. We have a number of people from whom to choose.''

The same day as the Majority's commitment, the White House reached an agreement with the Senators from Michigan on nominations to the Sixth Circuit, which broke a decade-long impasse. The impasse began in 1997, when President Clinton first nominated Judge Helene White to a seat on the Sixth Circuit. The Senate did not act on Judge White's nomination prior the end of the Clinton Administration, and as a result, there has been an ongoing feud between the Michigan Senators and the White House, which led to numerous filibusters of Sixth Circuit nominees in 2003 and 2004, and left the Sixth Circuit with an understaffed court for over ten years. The April 15th agreement between the White House and the Michigan Senators specified that the White House would withdraw the nomination of Mr. Stephen Murphy to the Sixth Circuit and would instead nominate Judge White to that seat. In return, the Michigan Senators would return their blue slips on Mr. Raymond Kethledge, another Sixth Circuit nominee who has been blocked for over 700 days, and Judge White. Mr. Murphy was nominated to a Michigan district court seat instead, and the Michigan Senators agreed to return blue slips on his nomination.

On April 29th, when it became clear that the Majority intended to include the recent nomination of Judge White in the promised ''three circuit court nominees confirmed by Memorial Day deal,'' Senator McConnell and I sent a letter to Senators Reid and Leahy advising them of the logistical impossibility of confirming Judge White by Memorial Day. In the letter, we noted the numerous ''time-consuming steps in the judicial confirmation process'' and expressed our concern that ''[g]iven these standard prerequisites and Judge Helene White's recent nomination date of April 15, 2008, we do not believe regular order and process will allow for her confirmation prior to May 23, 2008.'' We further observed the ABA rating for Judge White was not likely to be completed in time, given the ABA's standard timeframe for completing ratings, and noted that the ''Democratic Majority has placed particular importance [on the ABA rating] over the years.'' In fact, the Judiciary Committee has never held a hearing for a circuit court nominee prior to receiving his or her ABA rating.

On May 7th, a mere 22 days after her nomination, the Committee held a hearing on Judge White. Twenty-two days is a very short period of time to evaluate any circuit court nominee's record, but this expedited confirmation process was even more troubling in the case of Judge White. Judge White has been a state court judge her entire career and has participated in over 4500 cases on the Michigan Court of Appeals alone. It has been eight years since her last nomination was pending, and in that time period, she likely participated in over 2000 cases in addition to the 2500 she participated in before 1997. That is quite a record to go through in just 22 days.

As is standard Committee procedure, questions were submitted to both Judge White and Mr. Kethledge after their hearing. Republicans were criticized for submitting these initial questions even though they submitted a total of only 73 questions to Judge White, which is no more than other circuit court nominees have received from Democrats. In fact, several recent Bush appellate nominees and a Department of Justice nominee have received more questions from Democrats than Judge White received from

Republicans. Democrats submitted 108 questions for Judge Jennifer Elrod, a 5th Circuit nominee, 80 questions for Judge Leslie Southwick, another 5th Circuit nominee, and 250 questions for Grace Becker, a nominee to the Civil Rights Division of the Department of Justice. In addition, the Committee had more time to evaluate these other nominees' records prior to their hearings. Contrasted with the mere 22 days the Committee had to evaluate Judge White's record, the Committee had 112 days to evaluate Judge Elrod's record between her nomination and her hearing, 121 days for Judge Southwick, and 117 days for Ms. Becker. I believe these questions for Judge White were particularly warranted given the expedited hearing schedule for her nomination. Both nominees' returned their answers by Wednesday, May 21st, three days before the end of the session, negating the proposition that Republicans' questions slowed these nominations.

As Senator McConnell and I predicted, the ABA did not issue its rating for Judge White prior to the Memorial Day recess, and the Committee was unable to complete its work on her nomination prior to the recess.

The Majority did not fulfill its commitment to confirm three more circuit court nominees by Memorial Day because they chose to expedite the confirmation of a recently submitted circuit court nominee rather than acting on any of the other outstanding circuit court nominees currently pending in Committee whose paperwork has been complete for months or even years longer than Judge White's.

The failed Memorial Day commitment is not the first time the Majority has not fulfilled expectations. At the beginning of this Congress in February 2007, Senator Reid stated: ''[W]e are going to do our very best to make sure this is not our last circuit court judge [confirmation] but the first of a significant number who can at least meet the standards of Congresses similarly situated as ours.'' During the last 20 years, on average, the Senate has confirmed 17 circuit court nominees in the final two years of a president's term, and in President Clinton's final two years in office, the Senate confirmed 15 circuit court nominees. Since Senator Reid made that statement in February of last year, this Senate has confirmed only 8 circuit court nominees, less than half of the historical average, and the Majority has intimated that they may not process any more circuit court nominees this year. Hence, Senator Reid's February statement was the first of many unfulfilled commitments.

Second, in his announcement of the deal, Senator Reid acknowledged the fundamental unfairness of discriminating against circuit court nominees from states with two Republican Senators in favor of nominees from states with Democratic delegations or mixed delegations. He stated: ''[W]e have a number of places from which the Judiciary Committee can move matters to the floor. We have North Carolina, South Carolina, Rhode Island, Maryland . . . Pennsylvania. . . . Virginia. . . . Maryland. We have a wide range to choose from. . . . [N]o, it should not be because you have two from the same party from one State and they are not our party; that should not cause them not to have their nominee approved. . . . I think if you have two Senators from the same party, they should not be discriminated against. I mentioned their names. Their names are Matthews and Conrad.'' Notwithstanding this acknowledgment, the Majority insisted on proceeding with Judge White and Mr. Kethledge rather than moving to other exceptional circuit court nominees from states with Republican Senators such as Steve Matthews of South Carolina and Robert Conrad of North Carolina who had been ready and waiting for Senate action for months longer than Judge White. Once again Senator Reid disregarded his prior commitment not to discriminate against states with Republican delegations, breaking yet another commitment.

Now, I'd like to turn to Judge White's qualifications. Providing advice and consent on judicial nominees is one of the most important duties of a United States Senator. I take my role in the confirmation process very seriously, and I have serious concerns about Judge White's qualifications to be a judge on the Sixth Circuit Court of Appeals. Except for the two years she spent clerking for a Michigan State Supreme Court judge, Judge White has been a state court judge her entire career. She has never litigated a case, she has never handled clients, and she has had extremely limited experience with federal law as a state court judge.

While this lack of certain legal experience by a circuit court nominee certainly would not immediately disqualify the candidate from holding a federal appellate position, given the short time frame the Senate has had to consider Judge White's record, these factors are significant in her case. She had a very limited opportunity to demonstrate her ability to handle her docket and the complicated legal issues that face a federal appellate court judge.

Given her lack of experience with federal law, Judge White was questioned about the types of federal issues that she has handled and was asked to articulate her understanding of some common federal legal principles. She repeatedly responded that she had not dealt with these issues and was unable even to discuss some common federal legal issues and the cases addressing them.

At her hearing, I also asked Judge White several questions about decisions that she had participated in on the Michigan Court of Appeals that were reversed by the Michigan Supreme Court. She repeatedly stated that she was unfamiliar with the cases and did not recall the factual scenarios or her legal reasoning. Even after I had given her the relevant facts of the cases, she was unable even to articulate her legal analysis or reasoning process. My questions about her cases were not designed to be ''gotcha'' questions; the cases I mentioned were all specifically listed in Judge White's Senate questionnaire that she provided the Committee on April 25, just 12 days prior to her hearing. Further, for three of the cases, she had provided the Committee with short summaries of the facts and holdings in her questionnaire. At the very least, I thought she would be familiar with the cases she apparently had reviewed recently in order to provide the Committee with those summaries.

In one case upon which I questioned Judge White, People v. Santiago, she dissented from her colleagues' opinion upholding a jury conviction of a defendant for first degree felony murder and armed robbery. In this case, the defendant had driven the two other defendants to the house where the robbery and murder were committed, knowing that the defendants intended to rob and likely kill the victim—a classic example of aiding and abetting. When I asked her about her dissent which held that the defendant was not guilty of aiding and abetting, she could not explain why her decision deviated from the legal standards for aiding and abetting, as enunciated by the majority opinion and as affirmed by the Michigan Supreme Court when they denied appeal. I specifically asked her if it was ''standard, clear-cut law that when somebody drives a co-defendant to a place where there is a robbery and a murder, that kind of assistance constitutes guilt on the part of the co-conspirator, accessory before the fact?'' She responded first that she ''went to law school in Pennsylvania,'' but then continued that ''in Michigan, to be responsible for the principle offense, one has to either share the intent to commit the principal offense or provide aid and support with knowledge that the principal offense was going to be committed.'' Given that acknowledgement, I again asked her why she came to the conclusion that the defendant was not guilty of aiding and abetting. Again, she could not explain her legal reasoning in the case. I asked her if she stood by her decision even though her two colleagues who participated in the case and heard the same set of facts disagreed with her and the Supreme Court had denied appeal, and she responded that she did.

In another case, People v. Ryan, Judge White participated in a decision affirming the dismissal of a drug dealer's conviction, and the Supreme Court reversed that decision and reinstated the conviction. In this case, the defendant was arrested by federal agents, but was charged and convicted in State court. The defendant argued that the decision to pursue a State prosecution rather than a federal prosecution was vindictive. The panel on which Judge White sat found that the trial court's determination that there was vindictive conduct was not clearly erroneous. The Supreme Court reversed stating: ''The mere threat to refer the case for State prosecution does not amount to objective evidence of hostile motive.'' After reciting these facts to her, I asked Judge White if she stood by her opinion given that the only evidence of vindictiveness was that Federal DEA authorities turned the matter over to State prosecutors, which is a very common practice. In response Judge White cited her unfamiliarity with the case and deferred to the Supreme Court's holding rather than answering my question. She stated that ''because the Supreme Court reversed, it meant that I among others, got it wrong. . . . I stand by the Supreme Court.'' I was concerned by her stated unfamiliarity with the case because this was a case Judge White had cited in her questionnaire for which she had provided a summary. I was equally concerned that she deflected my question about whether she stood by her opinion.

I next turned to another case Judge White had summarized in her questionnaire captioned People v. Thomas. I detailed the facts of the case to Judge White, which included the conviction of a drug dealer who was charged with second-degree murder and was found guilty by a jury of voluntary manslaughter, carrying a concealed weapon, and felony firearm. I asked her whether she stood by her decision to reverse the conviction of this gang member when the Michigan Supreme Court had subsequently overturned her panel's opinion. Once again she deferred to the opinion of the Supreme Court and stated ''I stand by the judgment of the Supreme Court.'' I told her I knew the Supreme Court had the final word, but I wanted to know whether she thought the Supreme Court's decision was right. She again stated that she ''accept[ed] the conclusion of the Supreme Court.'' She did not answer my question. I wanted to evaluate her judgment, but she would not answer whether she thought her opinion was right or wrong.

I also asked her about a Court of Appeals' opinion in which she participated that reversed a sentence for a defendant who was a habitual criminal offender, People v. Hansford. Again, this was an opinion that was reversed on appeal by the Michigan Supreme Court and was a third case she had summarized in her questionnaire. After reading her the defendant's extensive criminal record, which included several counts of larceny and attempted larceny, receiving and concealing stolen property, fleeing and alluding, and violations of probation, I noted

that habitual offender statutes are designed to take habitual offenders off the streets, and I asked her what her reasoning was for determining that a man with an extensive criminal record such as the defendant did not deserve to be off the streets for life. Once again, she claimed not to be familiar with the case. She further stated that she ''accept[ed] the Supreme Court's decision . . .'' and ''accept[ed] that the sentence was appropriate . . . because the Supreme Court has said it is appropriate.'' I again asked her whether or not she thought her decision was correct in light of the Michigan Supreme Court's reversal, and she said ''I have to have been wrong . . . The Supreme Court reversed. I was wrong. The Supreme Court reversed.''

In her answer to my question about the habitual offender, Judge White also noted that the vast majority of her court's opinions are unpublished. At her hearing, I expressed concern about how many of her opinions were unpublished. I am also concerned that copies of a number of her opinions that were reversed on appeal were not provided to the Committee prior to her hearing as required. Question 15(d) of the Committee Questionnaire specifically asks for ''a list of and copies of any of [the nominee's] unpublished opinions that were reversed on appeal or where [the nominee's] judgment was affirmed with significant criticism of [the] substantive or procedural rulings;'' however, Judge White only provided the Committee with copies of 23 cases that were unpublished and reversed on appeal. Three of the cases about which I questioned her were listed elsewhere in her questionnaire, but were not included in those 23 cases that she provided to the Committee and clearly fit into the category of cases she should have provided. The Committee and the full Senate cannot properly evaluate a nominee's record if it does not have key elements of that record. I would have liked to have had access to all of Judge White's opinions that were reversed prior to her hearing so that they could have been analyzed and used as the basis for questioning.

In follow up questions after her hearing, I asked Judge White to provide those missing cases and to explain why she did not provide them initially. She responded to my question by saying it was an ''oversight'' that she did not include them initially and further stated that she can only provide the Committee with a ''partial list of cases in which [she] participated . . . which were reversed'' because the method the Michigan Court of Appeals employs to catalogue cases makes it difficult to locate those cases. She only provided the Committee with an additional 11 cases that were reversed on appeal. I find this response deeply troubling for a number of reasons. First, appellate judges should be held to the highest standards of competence. ''Oversights'' by a judge can lead to defendants being wrongly convicted, criminals being set free, or wronged litigants not receiving justice. Attention to detail and thoroughness are critical qualities in an appellate judge. Second, nominees to the federal courts who have served as judges should provide all of the opinions they participated in that were reversed on appeal or, at least, demonstrate a reasonably robust effort to do so. Democrats have required prior appellate court nominees to provide substantial numbers of their unpublished opinions in addition to the ones that were reversed on appeal. I recall one judge being asked to go to a depository in another state to retrieve copies of unpublished opinions. Judges should make every reasonable effort to provide all of their opinions that were reversed on appeal, not merely the ones that are easily accessible. I am also troubled by Judge White's relatively high reversal rate. A review of Judge White's opinions that are available publicly reveals that 6.7% of her cases have been reversed by the Michigan Supreme Court. That is a pretty high percentage of cases. Further, Judge White's reversal rate may be much higher, but we cannot determine her actual reversal rate because Judge White still has not provided the Committee with all of her unpublished opinions that were reversed on appeal. As comparison, Democrats objected to the nomination of Judge Terrence Boyle to the Fourth Circuit when his reversal rate was 6.2%.

I am troubled by some of Judge White's decisions that were reversed on appeal, but I am more concerned about her inability to articulate her legal analysis and reasoning process in these cases and her lack of experience with complex federal issues. I am also concerned that Judge White has not provided the Committee with a complete record of her judicial opinions upon which we could evaluate her qualifications for this prestigious position.

Given the brief period of time I had to review Judge White's opinions, her apparent unfamiliarity with her own opinions, her inability to articulate her legal reasoning and analysis in those opinions, and her failure to provide the Committee with important elements of her judicial record prior to her hearing, I plan to vote against her confirmation to the Sixth Circuit.

NEEDLESS RUSH TO JUDGMENT ON JUDGE WHITE

A Republican Senate confirmed 15 circuit court judges and 57 district court judges in President Clinton's final two years. Thus far in this Congress, the Senate has confirmed only 8 of President Bush's circuit court nominees and 38 district court nominees.

President Bush is also far behind President Clinton in total confirmations when contrasting their entire terms. President Clinton had 65 circuit court and 305 district court judges confirmed, while President Bush has so far had only 59 circuit and 241 district court judges confirmed.

There are a total of 32 judicial nominees currently pending in the Judiciary Committee: 11 Circuit Court vacancies with 10 nominees; 36 District Court vacancies with 22 nominees.

Judge Helene White was nominated on April 15. Her Judiciary Committee questionnaire was received on April 25, and the Minority did not receive her FBI report until April 29. Her hearing was held on May 7. Responses to Judge White's questions for the record following her hearing were received yesterday.

The mere 22 days that elapsed between nomination date and hearing is a far shorter period of time than is typical for the Committee to perform its standard review of a circuit court nominee's record. The average for Bush's circuit court nominees has been 162 days between nomination and hearing.

The American Bar Association has still not completed its rating of Judge White. The Committee has never held a hearing for a circuit court nominee prior to receiving their ABA rating.

Democrats have accused Republicans of stalling the two sixth circuit nominees. Senator Reid: ''Senators on the Republican side on the Judiciary Committee have delayed consideration of Judge White. . . . following the hearing, [they] asked a total of 73 separate written questions''

In fact, Judge White did not receive more questions than other recent circuit court nominees: Republicans submitted 73 questions for Judge Helene White, 6th Circuit; Democrats submitted 108 questions for Judge Jennifer Elrod, 5th Circuit; and Democrats submitted 80 questions for Judge Leslie Southwick, 5th Circuit.

And, the Committee had more time to evaluate these other nominees' records prior to their hearings. Days from nomination to hearing: White: 22 days; Elrod: 112 days; and Southwick: 121 days.

Judge White has already submitted her answers to the Committee, proving that no delay by Republicans occurred. The delay is due to the importance Democrats' have placed on the ABA rating. In 2001, Senator Leahy stated: ''Here is the bottom line. There will be an ABA background check before there is a vote.'' Senator Leahy reiterated this pledge at Judge White's hearing.

Judge White's nomination has only been pending for 37 days. Meanwhile, Mr. Peter Keisler, D.C. Circuit, has waited 693 days for a Committee vote, Judge Robert Conrad, 4th Circuit, has waited 310 days for a hearing, and Mr. Steve Matthews, 4th Circuit, has waited 259 days for a hearing.

Mr. SPECTER. My final comment, if I may make it while the chairman is on the floor, is that we do have some other Senators who wish to speak. Well, I have just been advised that we don't have Senators who wish to speak. Apparently, Senator LEAHY, your comments about an early conclusion were much more persuasive than mine.

Mr. LEAHY. Mr. President, if the Senator will yield for a moment, when the Senator from Pennsylvania is finished, I know Senator LEVIN and Senator STABENOW wished to speak very briefly. If that was the case, I hope that maybe within the next 10 minutes or so, or that by 6:30, or at 6:30, that perhaps what we can do is this: Let's say at 6:30, if the Senator from Pennsylvania would agree that we might vote at 6:30, then under the previous unanimous consent, if Judge White is confirmed, assuming she is, but if she is under the unanimous consent, then the regular order would be to go to the other two nominees from Michigan. It would be my intent—unless somebody objected—it would be my intent to do those by voice vote. That, of course, is contingent upon her being confirmed under the unanimous consent agreement that I have been shown. Would that be acceptable?

Mr. SPECTER. Mr. President, that is acceptable to this side of the aisle. I think it is an illustration of how the Senate can conduct its business in an expeditious way. We started on a 4-hour time agreement at 5:15. We are 54 minutes into the 4 hours, and we will conclude with a 2-hour-and-45-minute savings. Let this be an example for the balance of the confirmation process and other Senate work.

I yield the floor.

Mr. HATCH. Mr. President, I will vote for all of the Judicial nominees before us today. I want to offer a few comments about one of them and also about the current state of the judicial confirmation process.

The Constitution gives authority to nominate and appoint judges to the President, not to the Senate.

The Senate's role is to check the President's power, to ensure that his nominees are not crooks, cronies, or corrupt.

Too often in relent years, however, Senators have tried to push our role beyond merely checking the President's power to actually highjacking the President's power.

That goes too far and undermines the separation of powers which is so critical to limit government power and to keep our system of government in balance.

For this reason, my perspective on the judicial confirmation process begins with substantial deference to the President, no matter which party occupies the While House or has the Senate majority.

For this reason, I have voted against and worked to eliminate filibusters used to defeat majority-supported judicial nominees.

And for this reason, I have voted against very few nominees during my 32 years in this body and on the Judiciary Committee.

From that perspective of deference, I then look at a nominee's judicial philosophy and qualifications.

Applying these criteria, my decision to support two of the nominees before us today, Raymond Kethledge to the Sixth Circuit and Stephen Murphy to the Eastern District of Michigan, was easy.

My decision to support Judge Helene White's nomination to the Sixth Circuit, however, was a much closer call.

Frankly, I have always believed that a President has the right to appoint judges who reflect his or her judicial philosophy.

I asked Judge White detailed questions designed to explore her judicial philosophy, her understanding of the proper role of Federal appellate judges in our system of government.

I want to share a few of her responses with my colleagues.

I asked Judge White to comment on the notion that judges must make decisions based on the law as enacted by the people and their elected representatives, even if they personally disagree with it.

Judge White agreed with this wholeheartedly, staying that judges ''should be prepared to have no constituency except the law.''

I realize this is straight out of civics 101, but there are many today who believe judges may twist and shape the Constitution and statutes into any form they please in order to achieve results they desire.

In fact, some ray colleagues on the other side of the aisle have said judges must take sides, that they must favor certain ideological interests and serve certain political constituencies.

I also asked Judge White whether judges may decide cases based on their personal views, sense of justice, empathy, or experience.

It would be difficult to come up with a more misguided and even dangerous role for unelected judges in our system of government, but some of my friends on the other side of the aisle have endorsed that approach.

To her credit, Judge White flatly rejected that activist view of a judge's role.

I wanted to share these thoughts with my colleagues because some have questioned whether Judge White is the kind of judge President Bush has said he would appoint.

She was, after all, first nominated to the Sixth Circuit by President Clinton whose nominees generally embraced a more activist judicial philosophy.

President Bush is the first, at least during my Senate tenure, to resubmit an appeals court nominee first offered by a President of the other party.

President Clinton certainly did not do that.

But the Constitution gives each President the authority to make that judgment and I have always believed that there is a high bar for the Senate to withhold its consent on the basis of judicial philosophy.

That perspective of deference and her answers to questions like the ones I described satisfy me on this point.

Let me turn to the question of qualifications.

The American Bar Associations rating of judicial nominees is more important for some than for others.

My friends on the other side have consistently said the ABA rating is the gold standard for evaluating judicial nominees.

I take that back.

They have called the ABA rating the gold standard until they want to obstruct nominees who have received even the highest rating.

Judge White's ABA rating in 2008 is higher than it is in 1997, when she was first nominated to the Sixth Circuit.

At that time, some members of the ABA evaluation committee thought she was not qualified at all.

This time, a majority of the evaluation committee found her well qualified and no one thought her unqualified.

It is a little surprising, however, that after 26 years as a State court judge, 15 of them on the appellate bench, Judge White still has not garnered a unanimous well qualified rating from the ABA.

In fact, Raymond Kethledge, the other Sixth Circuit nominee before us today, received a *higher* ABA rating than Judge White and he has no judicial experience at all.

Judge White has never litigated a case. She has never handled clients. She has virtually no experience with Federal law issues of any kind.

There have been serious concerns about her ability to manage her current docket, let alone the far busier and more complex docket she would face on the Federal bench.

Perhaps these dare some of the issues that kept the ABA evaluators from giving her the highest rating.

Unfortunately, Judge White did not distinguish herself in her hearing and offered the committee little to offset these and other concerns about her qualifications. The distinguished ranking member, Senator SPECTER, and others are detailing some of those concerns on the floor today.

Some of my friends on the other side have responded that this nomination has really been pending for 11 years and that we should somehow already know enough to fill in the blanks and resolve the doubts.

That is ridiculous.

I have served in this body and on the Judiciary Committee for 32 years. I know of no Senator who keeps tabs on the careers, accomplishments, and record of unconfirmed nominees from previous administrations on the off chance that they might some day be renominated.

We must evaluate each nominee on the current record developed through the current process.

And on the question of qualifications, that record satisfies but certainly does not excite me.

I respect the judgment of colleagues, especially on this side of the aisle, who look at these and other issues and conclude that they cannot support Judge White. Voting against a nominee of your own party is a significant step.

There are Senators on the other side who have served here even longer than I have who have never voted against a nominee of their party.

Each of us might make that judgment for ourselves and, though it is indeed a closer call than I would like, I will vote to confirm Judge White.

Before I conclude, I want to make a few observations about the judicial confirmation profess with regard to Judge White's nomination in particular and judicial nominations in general.

When I chaired the Judiciary Committee during the previous administration, Judge White's nomination did not receive a hearing because she lacked support from her home State Senator who served on the Judiciary Committee at the time.

Similarly, Sixth Circuit nominees of the current President, including Mr. Kethledge who is before us today, did not receive a hearing because they too lacked home State Senator support.

I am certainly glad that this issue has been resolve with our distinguished colleagues from Michigan so that these nominees can move forward.

But I remain baffled why my following that longstanding policy is today attacked as a so-called pocket filibuster while the current chairman following that policy is praised for an exercise in senatorial courtesy.

That is one of number of baffling and frustrating futures of the current judicial confirmation process.

There have been seven previous Congresses during my service here that included a presidential election year.

During an average of 313 days in session, 25 appeals court nominees received a hearing and 20 appeals court nominees were confirmed.

Using that as our benchmark, in the current 110th Congress, we are nearly

90 percent finished with our days in session but so far less than one-third as many appeals court nominees have received a hearing and only half as any have been confirmed.

It does not have to be this way, it has not been this way in the past.

I hope that when the nominees before us today ire confirmed, we will turn our attention to the others who are pending some for many months and even for years, and continue doing what the American people sent us here to do.

I yield the floor.

Mr. LEAHY. Mr. President, I yield 5 minutes to the senior Senator from Michigan.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, we are nearing the end, I hope, of what is surely one of the longest judicial nomination sagas in U.S. history. Judge White was previously nominated by President Clinton for a vacancy on the Sixth Circuit of the Court of Appeals starting in 1997. Her nomination was returned to the President without a hearing. Another nominee of President Clinton was also returned without a hearing. That was the nomination of Kathleen McCree Lewis in 1999.

Judge White has been serving as a judge on the Court of Appeals of Michigan since 1993, and I believe she has participated in more than 4,000 decisions. Before that, she served as a judge on the Wayne County Circuit Court from 1983 to 1993, and that is Michigan's top trial court. Judge White, as have our other nominees, has been given a ''well-qualified'' rating by the American Bar Association's standing committee, and President Bush has called Judge White ''an experienced and highly qualified judge who is known for her intellect, work ethic, and demeanor.''

The second nominee for the Sixth Circuit is Raymond Kethledge, currently a partner at the Bush, Seyferth firm in Detroit, MI. Before joining that firm, Mr. Kethledge was a law clerk to Justice Anthony Kennedy on the U.S. Supreme Court and earlier clerked for a judge well known to those of us in Michigan, beloved Judge Ralph Guy of the U.S. Court of Appeals for the Sixth Circuit. Mr. Kethledge also served as judiciary counsel for Senator Spencer Abraham from 1995 to 1997, and he graduated magna cum laude from the University of Michigan Law School in 1993.

Steven Murphy, who is the nominee for the Eastern District position, currently serves as U.S. attorney for the Eastern District of Michigan. Prior to his service as U.S. attorney, Mr. MURPHY was an attorney with the General Motors legal staff in Detroit. He worked for the U.S. Department of Justice for more than 12 years.

I wish to take this opportunity to recognize the life and the work of Kathleen McCree Lewis who, as I mentioned, was nominated by President Clinton in 1999 for a seat on the Sixth Circuit Court of Appeals. Kathy McCree Lewis passed away last year. She never had her hearing and opportunity to be voted on by the Senate. She was dedicated to her profession and to her family. While she is no longer with us, we remember her today.

The seat that Judge White is being nominated for on the Sixth Circuit is the same seat that was held by a wonderful woman, Judge Susan Bieke Neilson. She held that seat for a tragically short period of 2 months. This vote is also a vote to Judge Neilson. Her husband, Jeffrey Neilson, wrote Chairman LEAHY back in April that he believed that Helene White ''will reflect the best qualities of both Susan and Kathleen in the performance of her duties, so that although death has precluded their presence on the Sixth Circuit, they will be there in spirit.

Finally, I thank Chairman LEAHY and our Democratic leader, HARRY REID, for all they have done to make it possible that we can finally, hopefully, resolve this Michigan issue that has been stymied in the Sixth Circuit and Eastern District for far too long, with a bipartisan resolution the President has sent us on these three nominees with his full support in the Senate.

I hope the Senate will give an overwhelming vote to Judge White but also then adopt a voice vote for the other two nominees.

Mr. LEAHY. Mr. President, I had hoped that before the Senate we not would hear unfair criticism leveled at Judge White. Last month, Senator BROWNBACK publicly apologized for his actions at her confirmation hearing, and I commended him for doing so. After Judge White answered the scores of time-consuming questions Republicans sent to her and the committee had received the updated ABA ratings emphasized so much by Republicans in connection with these nominations, I hoped we could move forward with this in a consensus fashion. It is disappointing that some still seem bent on grasping at straws to criticize Judge White, applying a different standard from that which they used to evaluate other Bush judicial nominees.

Judge Helene White has served on the Michigan Court of Appeals for the past 15 years, having been elected by the people of Michigan in 1992. Before that she served for a dozen years on the Wayne County Circuit Court, the Common Pleas Court for the city of Detroit, and the 36th District Court of Michigan. She is described on the Bush White House Web site as ''an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor.''

Judge White has been now been nominated by Presidents from both parties, by a Democratic President and by a Republic President. She has served as a Michigan State court judge for more than 25 years. In addition, she has been active as a member of the legal community and of community organizations including COTS, Coalition on Temporary Shelter; JVS, Jewish Vocational Services; and the Metropolitan Detroit Young Women's Christian Association. She should be a consensus confirmation.

Oddly, Republican attacks on Judge White have focused on what they term a lack of experience. Somehow, someone who has been a respected appellate judge for 15 years, who has served as a judge for well over 25 years, and who the ABA rates as well qualified for the Federal circuit court , is in their view not ''experienced'' enough to be a Federal appellate court judge.

Some Senators suggested that her lack of experience with specific Federal issues that never come before even the most experienced State judge was a problem. They ignore the fact that judges always have to learn new areas of the law as new cases come before them, and no one is better prepared to do that than an experienced jurist like Judge White.

Indeed, Mr. Kethledge, President Bush's youthful nominee to the other vacancy on the Sixth Circuit, was gracious enough to concede at the hearing that he, too, lacked experience in the same specific areas of Federal law. Yet his qualifications have not been in called into question by Republican Senators. Judge White has served as a Michigan State appellate court judge longer than Mr. Kethledge has been out of law school, but some are questioning her experience while embracing his relatively lack of experience.

With these criticisms, Republicans risk turning back the clock to before the confirmation of Justice Sandra Day O'Connor, who herself had been a State legislator and State judge. Justice O'Connor was not experienced in deciding Federal law issues before her confirmation as the first female justice of the U.S. Supreme Court. I think we can agree that she nonetheless served the Nation well in that capacity.

Should we conclude from the Republic attacks that no State court judge can be confirmed to sit on a Federal court? Certainly Jennifer Elrod, a State court judge with far less experience than Judge White, who the Senate confirmed to the Fifth Circuit late last year, was not held to that standard by the Republicans. Indeed, recall what Senator CORNYN said about her nomination: ''I would point out that when it comes to experience, most of us, when we apply for a new job, or a nominee, have rarely done that job before. So the question is not whether you have actually done that job before, it's whether you are likely to do a good job, if confirmed.''

Others have pointed to a handful cases in which Judge White was on a panel decision that was reversed. This handful of cases comes from 4,300 cases she heard on the bench. These were cases in which Judge White joined a unanimous panel of her court or in one

instance where she agreed with the rest of the court on the law and differed only on the facts. More to the point, they were cases of such limited precedential value that the decisions were not even published. When asked about each case, Judge White testified that she accepted the Michigan Supreme Court's decision as correct. I hope that in a long career spanning thousands of decisions, she will not be judged by a few unremarkable cases. Republicans have certainly asked us not to focus on a small handful of cases decided by other Bush nominees, even when the cases in question were far more noteworthy.

Republicans have simply not been able to point to anything in Judge White's long and distinguished career that should disqualify her or even justify a negative vote. It is unfortunate that some Republicans seem to be trying so hard to find reasons not to support this particular nominee.

I hope that Republican and Democratic Senators will join together to support her nomination and the entire package of Michigan nominations that President Bush has sent to us after consultation with Senators LEVIN and STABENOW.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I rise today to join my friend and distinguished colleague in supporting the nominations of Judge Helene White, Mr. Raymond Kethledge to the Sixth Circuit Court of Appeals, and Mr. Stephen Murphy III to the District Court for the Eastern District of Michigan. I also want to remember those whom Senator LEVIN spoke of as well.

I thank, particularly, Chairman LEAHY for working with us in a very diligent manner, for his patience, and for his commitment and his willingness to work with us to move the President's nominations forward. It has been a very long process—one that started more than 11 years ago for Judge Helene White. In fact, I have been here for 8 years, and she has been waiting more than 11 years for this vote—4½ years, originally, to have the hearing. I find that because of the length of time she has been waiting, it is difficult to say that somehow this was a short-circuited process or a process that happened too quickly. It has, in fact, been more than 11 years. I hope this serves as an example of how we can come together when both sides, with the administration, are willing to work together in a bipartisan manner. I am very pleased we have been able to come to this agreement together. That is what we have done here.

Senator LEVIN and I have worked with the Bush administration, and as a result, we have the three nominees for the Federal bench who are in front of us. In fact, all three of them were rated ''well-qualified'' by the American Bar Association. I urge my colleagues to support them.

First, let me say a few words about Judge Helene White, who brings 30 years of legal experience to the Sixth Circuit Court of Appeals. She is a graduate of the University of Pennsylvania Law School and the Barnard College at Columbia University. Judge White has been a State judge since 1981. She has served on both the 36th District Court for the city of Detroit and the Wayne County Circuit Court. Since 1992, she has served, with distinguished service, on the Michigan Court of Appeals. She has participated in more than 4,400 cases in her time as a judge on the Michigan Court of Appeals. All told, Judge White will bring more than 25 years of bench experience to the Sixth Circuit. While I support all of our nominees, Judge White is the only person who brings that judicial experience, having served on the bench with distinguished service, someone who is respected by all sides for her intellect, her fairness, and her balance. I am so very pleased that we are finally at this point to be able to vote on this important nomination.

Secondly, Mr. Raymond Kethledge, who is also nominated for the Sixth Circuit Court of Appeals, graduated magna cum laude from the University of Michigan and the University of Michigan Law School. I told him that even though I went to a rival school—Michigan State University—I will support his nomination. In fact, my son is a graduate of U of M. I was pleased to see another Wolverine being nominated for this distinguished position. Following law school, he served as Senator Spence Abraham's judiciary counsel. He then went on to clerk for both Judge Ralph Guy, on the Sixth Circuit Court of Appeals, and Justice Kennedy, on the Supreme Court, before eventually becoming a partner at Bush Seyferth Kethledge & Paige in Troy, MI. I am certainly pleased to support his nomination to this position.

Finally, Mr. Stephen Murphy has been nominated for a seat on the District Court for the Eastern District of Michigan. He will bring both academic and Federal law experience to the bench. He has taught at the University of Detroit Mercy School of Law and the Ave Maria School of Law in Ann Arbor. He has practiced as both a Federal prosecutor and a defense counsel. He also practiced business litigation as an attorney for General Motors. Since 2005, he has served as the U.S. attorney for the Eastern District of Michigan.

I urge my colleagues on both sides of the aisle to support the President's nominees. We have worked hard in a bipartisan manner. It has taken a long time to get to this point, but I am very pleased we are here together supporting these nominees for the Sixth Circuit Court of Appeals and the Eastern District of Michigan. I am hopeful that, very shortly, we will confirm each of these nominees.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I listened to Senator SPECTER talk about one of our most important responsibilities; that is, the confirmation process on the President's nominations for our courts, which are lifetime appointments. It is a major responsibility each of us has in the Senate.

I think the way this confirmation process has proceeded with the three judges before us is an example as to how we should be working on the confirmation of judges. First, I think the process under which the Senators worked with the White House on the appointments is a model that should be used, I hope, in more circuits, where there is a real working relationship between the Senators and the White House to come up with the best qualified individuals to serve on the Federal bench. I congratulate Senators LEVIN and STABENOW for the manner in which these nominations were brought forward.

Second is the confirmation process before the Judiciary Committee. I spent a lot of time reading the backgrounds on each of our nominees, as well as the hearing itself. I must tell you that as a result of reading the background material, as a result of the confirmation hearings, I am a strong supporter of Judge White for her confirmation to the court of appeals. I also support Mr. Kethledge for the court of appeals. I must tell you, in reading his background, I was a little concerned because he didn't have any real experience in writing opinions, didn't have experience in trying cases, as far as a judge is concerned, and there wasn't much to judge his ability to reason on the court of appeals by his background. But I must tell you, after listening to the confirmation hearings, I was convinced that he is well qualified to serve on the court of appeals. I am supporting his nomination. That is what the confirmation process should be about.

I listened to Senator SPECTER have concerns about Judge White because of some of her opinions. I must tell you, I am pleased we have before us a nominee who has the experience to go onto the court of appeals or appellate courts. Judge White has served 15 years on the State appellate court. She has written numerous opinions, has participated in over 4,000 cases, served 12 years on the circuit court in Michigan. So she has trial court experience as a judge, and she has appellate court experience as a judge.

Quite frankly, I have been disappointed by a lot of the nominees who have been brought forward by the White House because they have brought forward individuals who do not have experience to go on our second highest court. I think experience is important. I raised those concerns during Judge Elrod's confirmation hearing and Judge Haynes's hearing. I would like to have people with more experience so that we can judge their qualifications.

In Judge White's case, we have that record, and it is a great one. Has she been reversed in her 4,000 decisions? Yes. That is why we have appellate courts. But she has never been challenged as far as her reasoning and her fairness and her demeanor. In fact, she has been rated by the American Bar Association as ''well-qualified.''

One more thing, Mr. President, as to why I strongly support Judge White's confirmation, and that is the manner in which she handled the confirmation hearings. They were not easy hearings. There were tough questions that were asked. She exercised the type of demeanor I want to see in our Federal judges. She exercised the type of response that I think represents the types of qualifications I want to see on our Federal bench. So I am very much supporting her confirmation. I hope she will receive a strong vote on the floor.

I urge my colleagues to support all three of the Michigan judges who are before us for confirmation.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I appreciate the comments of my colleagues. First, I commend the two Senators from Michigan, who spent years working out this conclusion for these three nominees to be here. I commend Senator LEVIN and Senator STABENOW for working so hard. Senator CARDIN spent so much time at the hearing with me. I appreciate the amount of time he spent there. His words of calm reasoning, but with questions that cut right to the importance of the hearing, were extremely valuable.

If nobody else is seeking recognition, I am going to suggest the absence of a quorum in a moment. So that Senators will understand, at 6:30 I will call off the quorum, and the time will be yielded back on both sides. Then we will go to a rollcall vote on Helene White.

If Judge White is confirmed, as I fully expect she will be, then we will go to the next two judges, but only if she is confirmed. Again, Senator SPECTER and I have both said we expect she will be. We will go to the next two judges, and I don't know of anyone who will require a rollcall vote on those two judges.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Is all time yielded back?

Mr. LEAHY. I am authorized to yield back all time on both sides. I yield back all time on both sides.

The PRESIDING OFFICER. All time is yielded back. The question is, Will the Senate advise and consent to the nomination of Helene N. White, of Michigan, to be United States Circuit Judge for the Sixth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 63, nays 32, as follows:

[Rollcall Vote No. 156 Ex.]

YEAS—63

Akaka	Hagel	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Hatch	Pryor
Biden	Inouye	Reed
Bingaman	Isakson	Reid
Boxer	Johnson	Rockefeller
Brown	Kerry	Salazar
Cantwell	Klobuchar	Sanders
Cardin	Kohl	Schumer
Carper	Landrieu	Sessions
Casey	Lautenberg	Shelby
Clinton	Leahy	Smith
Coleman	Levin	Snowe
Collins	Lieberman	Stabenow
Conrad	Lincoln	Stevens
Crapo	Lugar	Tester
Dodd	McCaskill	Voinovich
Dorgan	Menendez	Warner
Durbin	Mikulski	Webb
Feingold	Murkowski	Whitehouse
Feinstein	Murray	Wyden

NAYS—32

Alexander	Cornyn	Inhofe
Allard	Craig	Kyl
Barrasso	DeMint	Martinez
Bennett	Dole	McConnell
Brownback	Domenici	Roberts
Bunning	Ensign	Specter
Burr	Enzi	Sununu
Chambliss	Graham	Thune
Coburn	Grassley	Vitter
Cochran	Gregg	Wicker
Corker	Hutchison	

NOT VOTING—5

Bond	Kennedy	Obama
Byrd	McCain	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid on the table, and the President shall be immediately notified of the Senate's action.

NOMINATION OF RAYMOND M. KETHLEDGE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 631.

The assistant legislative clerk read the nomination of Raymond M. Kethledge, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I am satisfied with a voice vote on this nominee.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Raymond M. Kethledge, of Michigan, to be United States Circuit Judge for the Sixth Circuit?

The nomination was confirmed.

NOMINATION OF STEPHEN JOSEPH MURPHY III TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 632.

The assistant legislative clerk read the nomination of Stephen Joseph Murphy III, of Michigan, to be United States District Judge for the Eastern District of Michigan.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, because of the lateness of the hour, I am willing to forgo a rollcall on this nominee and a voice vote will be sufficient.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Stephen Joseph Murphy III, of Michigan, to be United States District Judge for the Eastern District of Michigan?

The nomination was confirmed.

Mr. LEAHY. Mr. President, I thank my colleagues, I thank the Chair, and I thank the distinguished leader for helping us to get here.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made en bloc, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

The majority leader.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008—Continued

Mr. REID. Mr. President, there will be no more votes this evening. If I could, though, have the attention of Senators who are here.

Mr. President, first of all, let me say on this package of judges, we have been working on these for 5 or 6 years. That is how long it has taken. So this is really a step forward. Everyone has cooperated. I appreciate very much the help of the entire Republican caucus. Senator KYL was especially helpful to work through what we have done. We are going to approve two more judges the day after tomorrow, and then we will see where we go from there on judges.

What I wanted to tell everyone here is we wanted to finish the housing bill tonight. Senator DODD and Senator SHELBY have worked very hard to craft a bill that doesn't go back to the House, but when the House signs off on——

The PRESIDING OFFICER. The majority leader will suspend. The Senate will come to order.

Mr. REID. I apologize, it was hard to concentrate on what I wanted to say.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Senators DODD and SHELBY are crafting a bill that can go directly to the President. That is what we are trying to do, craft something on which there has been general agreement with the counterparts of SHELBY and DODD in the House, and it would go immediately to the President. As you know, they can do things very quickly in the House that we cannot do here. That is the goal with housing.

We are going to get there eventually. The problem is the way this is sent to us from the House, the format in which it was sent to us, we are now under cloture. That cloture will run out at approximately 5:45 tomorrow evening. At that time there are two germane amendments that we know of. There are a couple more that are arguably germane. We will see what is the will of the body.

It is my understanding that on those two that are arguably germane, the managers of the bill have worked something out. If there would be no objection, they would accept those. The problem is on the amendments they have worked on up to this time, there has been an objection and we cannot proceed on any of those amendments that DODD and SHELBY have worked out.

Automatically, after the 30 hours is up, we would vote on the germane amendments. No one can stop us from adopting or rejecting those amendments. If we cannot get permission from everyone here as of now—I know of only one holdup on our being able to complete the housing legislation. If we can't get that Senator to sign off on this, then we only have one alternative; that is, we will file cloture on another arm of this housing legislation. We will have cloture on that 2 legislative days later, and then we still have one more to do. That would mean we would have to be here over the weekend. It was not anticipated that we would do that.

In the meantime, having done that, it will hold up our being able to do FISA. We wanted to do a consent agreement on that tonight. I was told that would not be possible.

On that, there are people who do not like the FISA legislation. I recognize that the majority of the Senate does, but some people do not like it. But, in spite of that, I have found the two people who speak out mostly against that—but there are others—are Senator FEINGOLD and Senator DODD who have been very diligent in their opposition to the legislation. But, of course, they understand the Senate very well.

So what we would like to do is have a cloture vote on the motion to proceed to that, but we cannot do that unless it is by consent. Therefore, we are going to have to do cloture on the motion to proceed to FISA at some later time, and then that only allows us to proceed to the bill. Then we still have to do cloture on the bill.

FISA is a product of the administration. It has passed the House, and that is fine. But we are not going to stop people from going home for the Fourth of July recess over FISA. If people do not want to do it, then we are not going to do it. It is not because we are holding it up over here, is what I am saying. It is being held up by the minority.

We are going to proceed, and we are going to stay here and finish this housing bill. The Case-Shiller Home Price Index registered the largest decline in home prices in that index's history. That is more than 40 years. Consumer confidence is at an all-time low.

So we are going to finish the housing bill. It may knock a few people out of parades on July 4, or whatever—however long it takes us to do this.

The other product we have that we want to finish before we go home is the supplemental appropriations bill. Again, there has been a delicately crafted piece of legislation that has come from the House. They worked very hard to get the House leadership to approve that, Democratic and Republican. The President of the United States has signed off on it. Is it everything that I want? Is it everything we want over here? The answer is no. But I think it is something that will pass with a very large margin over here. But we cannot get to it unless people allow us to get to it. So that, too, would have to wait until we get back after the July 4 recess.

I think that would be a shame. We have been told that the Pentagon can pay the bills until about the middle of February. Then they are out of money.

I want the President and all of his people to hear what I am saying. We are not holding up the supplemental. We, the Democrats, are not holding it up. We, the Democrats, are not holding up FISA.

We also have a matter that we need to complete, and that is the Medicare fix. It is the doctors fix. That is what we call it. But, again, today the House passed that by a 350-some-odd margin to whatever makes up 435—passed that overwhelmingly, again, with the sponsorship and leadership of the House leadership, Democrats and Republicans. We are going to take that up before we go. We have to. Not only that, if we do not pass that legislation before we go, we do not have the doctors fix taken care of, but that has a snowballing effect.

What it does is all insurance companies base their reimbursement on what the Medicare Program is. There are two things we have to do before we go home for July 4: Housing and Medicare. We do not have to do it if the Republicans don't want to do it—we don't have to do FISA, and we don't have to do the supplemental. We can do it the week we get back after July 4.

There are other things we would like to do—the FAA extension for 6 months. I tried to move to that yesterday. It was objected to. We want the President and others who have worked so hard on this global AIDS bill—we would like to get that passed. I was told by Senator BIDEN today that should be worked out tomorrow. But we can't do any of this as long as people are holding us up on this housing bill.

One Senator I talked to tonight who I thought was holding up the housing bill—which is true—did not object to our going to FISA. But others have.

I do not know how much more direct I can be. I want to pass the supplemental. I want to pass FISA. I want to pass the Medicare fix. I want to pass housing.

I do not particularly like FISA, and I am going to vote against FISA. But I have an obligation as the majority leader to move legislation that the majority of the body wants to go forward. The majority of Republicans and a significant number of Democrats want FISA to pass. But I am not going to ask people to stay here next week because there is someone over here holding up the President's bill. I am pointing to the Republicans.

I am willing to be as reasonable as I can. I think we showed that on the housing bill when I brought up a piece of legislation that Senator DEMINT and others wanted to move forward on—and Senator BUNNING. We did that to show good faith in reporting this housing bill. But with home prices continuing to fall, foreclosures continuing to rise, 8,800 foreclosures a day—a day—the time to act is now.

I have said on this floor many times, the housing bill is bipartisan. DODD and SHELBY have done a remarkably good job. I hope those people who are trying—I don't know what their message is. To show the power of a Senator? I acknowledge, one Senator has a lot of power. But I think they should recognize they are holding up a lot of stuff.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, let me say on this occasion I almost entirely agree with the majority leader about what needs to be accomplished this week. We do indeed need to do the housing bill. We do indeed need to do the supplemental for the wars in Iraq and Afghanistan. The FISA bill, the Medicare fix—it is a complicated legislative tangle which my good friend, the majority leader, has described, and with which he is trying to deal as we move through the week. But my goal is really the same as his, and we are going to continue talking to each other, continue to sort of run the traps

and hopefully clear the traps in such a way that we can have a highly successful week before the recess.

That is my goal. It is the same as his goal. I will be working with him to see if we can get all of those things done in the next few days.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I would say one final thing. There is a time when we need to work together. The Republican leader recognizes that; I recognize that. This is the time. We need to figure out a way to get from here to there. We are going to do our very best.

I think our messages—we don't need to worry about those next week. We can come back and do that after the break. We really need to try to get this done for the American people. It would be good for the American people if we could do something on one of the major crises we have faced in our country, and that is this housing debacle. It is very difficult.

Everyone knows that I do not throw a lot of bouquets to the administration, but I throw them a bouquet on their willingness to work with us on the supplemental because they were willing to bend a little bit here and there. I repeat, was it everything that I wanted, that we wanted? No, but a tremendous step forward. I compliment and I applaud the President and the people who worked with us to get to the point where we are. I would be ashamed to have to wait until after the Fourth of July to do this bill; that is, the supplemental appropriations bill, because even though what we are going to be voting on only deals with the GI bill of rights and the unemployment compensation and those other things, if we do not act, the war funding doesn't go forward. We do not have to vote on war funding. We have already done that.

As I said, I appreciate the work we have been able to accomplish with the administration on this supplemental appropriations bill. Even though, as I have indicated, I am not going to vote for the FISA bill, there are people who have worked on this FISA matter for 3 months or more. Again, the administration worked with them. Did they, on the FISA bill, move enough to make me vote for the bill? The answer is no. But they moved enough to get a lot of people to vote for this bill, and I appreciate that also.

But we could wind up with all this good work being put off. It will be very anticlimactic, the accomplishments that we have made.

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

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

Mr. BROWN. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Ohio is recognized.

64TH ANNIVERSARY OF THE GI BILL OF RIGHTS

Mr. BROWN. Mr. President, on Sunday, June 22, we marked an anniversary. On June 22, 1944, President Roosevelt signed the Servicemen's Readjustment Act into law. I come to the floor today to commemorate the 64th anniversary of the passage of this profoundly important bill, better known as the GI bill of rights.

World War II was the largest, most deadly, most terrible war in world history. Before it was over, Americans fought on the continents of Europe, Asia, and Africa, and in the Atlantic and Pacific Oceans. Over 16 million American men and women, including my father, answered the call to serve. Since joining this body, I have held about 100 roundtables across my home State of Ohio, and through these discussions I have had the opportunity and privilege to meet with a number of Ohio veterans from World War II. Getting to know those remarkable men and women has reaffirmed my profound respect for their decision to serve our country. Their service and their sacrifice produced both a stronger nation and a safer world. The ''greatest generation'' earned this Nation's enduring gratitude.

They earned the benefits the GI bill provided and used them to propel this country into a time of unprecedented prosperity. The GI bill was more than a payment to the veterans for their service to our country; it was also a very smart, very pragmatic investment in the social fabric and economic potential of our Nation. The GI bill was designed to help smooth the transition from military service into civilian life. And it did that for millions of men and women who served. It paid for veterans' tuition, books, fees, a monthly stipend, and other training costs. It also provided veterans low-interest mortgages and unemployment insurance.

The GI bill provided veterans in Ohio and the rest of the country the opportunity to realize the American dream. The number of degrees awarded by colleges and universities more than doubled between 1940, the last full year before the war, and 1950.

Veterans were responsible for buying 20 percent of all new homes after the war. The investment in the middle class drove the development and economic expansion of an entire generation.

I yield to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield my hour post cloture to Senator DODD.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I too yield my postcloture hour to Senator DODD.

The PRESIDING OFFICER. Senators have that right. The time is yielded to Senator DODD.

The Senator from Ohio.

Mr. BROWN. When you think about what happened to the GI bill, it was not only providing opportunity individually to millions of men and women who served, and in that sense a payment they earned; it also created a huge, unprecedented, and unsurpassed sense of prosperity for the country. When all of these men and women came home and were given the opportunity to go to college, regardless of their income or their family status or their wealth or their positions, they were given that opportunity which they earned from World War II.

In recognition of that important anniversary honoring the service men and women, giving them the opportunity and creating the prosperity of millions of newly educated men and women in our country, I call on Congress to renew its commitment to our veterans to recognize this anniversary.

It is our responsibility, our privilege, to uphold the promises our Nation has made to veterans. It is our responsibility and our privilege to advance our Nation's economic goals. Passing the updated GI bill into law is the right way to fulfill both responsibilities. I urge every Member of this body to support that.

The PRESIDING OFFICER. The majority leader.

FEC NOMINATIONS

Mr. REID. Mr. President, I am very pleased that I am finally able to say we are going to restore the Federal Election Commission to a fully functioning six-member body.

The FEC lost a functioning quorum last January when three recess appointments to the Commission expired, leaving only two FEC commissioners. It takes four to conduct official business, so there was no way to conduct business. When the FEC went dark in January, it meant our Nation's campaign finance watchdog was off the beat. It also meant that important provisions of the Democrats' Honest Leadership and Open Government Act would not be implemented.

Most notably, the building of this Federal Election Commission is so very important. I would be remiss to not say that the Honest Leadership and Open Government Act passed on a bipartisan basis. For example, the bundling rules we worked so hard to enact into law were put into limbo. But now with the FEC within a few minutes going to be reestablished, that will not be the case.

Since even before the Commission lost its quorum, I began offering my Republican colleagues votes on the pending FEC nominees, but those efforts were rejected.

Democrats have been united in their desire to have the FEC restored to full power. I am pleased we can finally come together with our Republican colleagues tonight on the nominations.

I would be remiss if I did not speak very briefly about my two Democratic nominees, Steven Walther and Cynthia Bauerly, both outstanding lawyers. I

can tell you even more than that. They are outstanding people and public servants. Steven Walther is from Nevada. He is one of those people who is in public service because he wants to do something to help his country. He has been very active for many years in State bar activities, very involved in the ABA activities, and he gave up a lucrative law practice to come here. He was a senior partner in a major law firm in Nevada. He did this for the right reason.

Both Cynthia and Steven are patient individuals. Steve Walther was first recommended to the President by me for this position on July 6, 2005. That is almost 3 years ago.

He waited almost 3 years for the full Senate to confirm him.

I recommended Ms. Bauerly to the President in July 2007. She has waited for confirmation over 11 months.

I cannot say enough nice things about Steven Walther. I want everyone within the sound of my voice to understand what a man of integrity he is. He is not even a Democrat. He is an Independent. But I have such confidence in his fairness that it did not matter what his party affiliation is. He is a fine individual, has a wonderful family, a son Wyatt who is getting used to the big city of Washington, DC.

I so appreciate Steve waiting since January with basically no job. He has had no paycheck. There has been no FEC. Some people dropped off because they couldn't afford to not have a job. But fortunately, for the FEC and our country, Steven Walther could afford to be unemployed for 6 months.

Again, I want the record spread with my appreciation for Steven Walther's public service and his friendship to me. These two individuals, Bauerly and Walther, have shown exceptional patience which will be an asset to them in their work as Commissioners. I wish them and the FEC very well.

EXECUTIVE SESSION

NOMINATIONS OF STEVEN T. WALTHER, CYNTHIA L. BAUERLY, CAROLINE C. HUNTER, DONALD F. McGAHN, AND MATTHEW S. PETERSEN TO BE MEMBERS OF THE FEDERAL ELECTION COMMISSION

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session to consider the following nominations: Calendar Nos. 306, 624, 625, and 626; that the Rules Committee be discharged from further consideration of PN 1765, the nomination of Matthew Petersen; that the Senate proceed en bloc to consideration of the nominations; that the Senate then proceed to vote on confirmation of the nominations in the order listed; that upon confirmation of the nominations, the motions to reconsider be laid on the table en bloc, the President be immediately notified of the Senate's action, with no further motions in order, and the Senate then resume legislative session, with no intervening action or debate.

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

The clerk will report the first nomination.

The legislative clerk read the nomination of Steven T. Walther, of Nevada, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Steven T. Walther, of Nevada, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Cynthia L. Bauerly, of Minnesota, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Cynthia L. Bauerly, of Minnesota, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Caroline C. Hunter, of Florida, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Caroline C. Hunter, of Florida, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Donald F. McGahn, of the District of Columbia, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Donald F. McGahn, of the District of Columbia, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the last nomination.

The legislative clerk read the nomination of Matthew S. Petersen, of Utah, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Matthew S. Petersen, of Utah, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The majority leader.

MEASURES READ THE FIRST TIME—S. 3186 AND H.R. 6331

Mr. REID. Mr. President, it is my understanding there are two bills at the desk. I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title.

The assistant legislative clerk read as follows.

A bill (S. 3186) to provide funding for the Low-Income Home Energy Assistance Program.

A bill (H.R. 6331) to amend titles XVIII and XIX of the Social Security Act to extend expiring provisions under the Medicare Program, to improve beneficiary access to preventive and mental health services, to enhance low-income benefit programs, and to maintain access to care in rural areas, including pharmacy access, and for other purposes.

Mr. REID. Mr. President, I am going to object to my own request en bloc, but prior to the Chair accepting my objection, I want everyone to know that S. 3186 is the Warm in Winter and Cool in Summer Act, which is LIHEAP. That is an important piece of legislation. We are going to work very hard to figure out a way to do that within the next 30 days. I would also say that H.R. 6331, the Medicare Improvements for Patients and Providers Act, is a bill that overwhelmingly passed the House of Representatives to take care of the so-called doctors' fix.

I now ask for their second reading en bloc, and I object to my own request en bloc.

The PRESIDING OFFICER. Objection is heard.

The bills will be read for the second time on the next legislative day.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

MORNING BUSINESS

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

FISA AMENDMENTS ACT OF 2008

Mr. KYL. Mr. President, I rise today to speak in favor of the passage of the FISA Amendments Act of 2008. This is a law that our Nation needs. The most important change made by the pending

bill is to allow immediate and real-time surveillance of overseas targets as soon as they become apparent in the course of a foreign-intelligence investigation. FISA had never been intended to block surveillance of such targets, but a 2007 FISA court decision interpreted FISA to apply to even foreign-to-foreign communications that are routed through the United States. Because of changes in technology and U.S. dominance in the telecommunications industry, even phone calls from Afghanistan to Pakistan could be routed through the United States. As a result, a FISA order could be required before communications between two suspected al-Qaida members outside the United States could be monitored.

This system made overseas surveillance a practical impossibility in many cases and caused valuable intelligence to be lost. Our best tool against al-Qaida and other terrorists is intelligence; it is absolutely critical that we gather whatever intelligence is available.

In the summer of 2007, Congress enacted a 6-month restoration of U.S. agents' surveillance capabilities with the Protect America Act. Today—over 4 months after the PAA expired—Congress finally acts to extend this surveillance authority for another 4½ years. I am heartened to note that the Attorney General and the Director of National Intelligence both strongly support this bill and believe that it provides them with the tools they need to gather intelligence about America's foreign enemies.

Critically, this bill allows immediate and real-time surveillance of foreign targets located overseas whenever the Justice Department and the intelligence community find that, without immediate surveillance, ''intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance'' of a court order prior to such surveillance. This provision, in a new section 702(c)(2) of FISA, addresses the exact problem that intelligence agencies faced in 2007. Congress expects our intelligence agents to use every tool that is technologically available to monitor al-Qaida and those associated with it. With this reform, we make such surveillance possible.

I also think that it is important that, in new section 702(i), the FISA Amendments Act allows pending surveillance certifications to be immediately amended to allow surveillance of new targets related to or growing out of previous surveillance. This should help to reduce the paperwork burden of FISA, allowing our agents to focus more time on monitoring the enemy and less on filling out forms. Also, the judicial review authorized by this section is appropriately limited and recognizes the intelligence community's primary role in deciding what foreign targets to monitor. The court's role is limited to reviewing whether certifications are procedurally proper and are accompanied by reasonable procedures to limit potential impact on U.S. persons. Thus, courts could block any obviously bad faith or improper use of foreign surveillance that might affect U.S. persons, but courts will not be second-guessing intelligence judgments, and should not be imposing procedures or making demands that will consume intelligence resources and divert agents from their primary mission. This limited role should also allow the FISA Court to decide these cases very quickly, minimizing the burden on both the intelligence community and on those judges who are assigned to the FISA Court.

I should also note that this bill contains important provisions that will allow all of the lawsuits against telecommunications companies to be dismissed upon certification by the Attorney General. Foreign intelligence surveillance is a matter that our Constitution entrusts to the executive in consultation with Congress, not to private litigants and the judiciary. These lawsuits all should have been dismissed immediately; this bill will finally produce that result. Title II is a critical part of this bill that should have been enacted long ago. Frankly, I find it odd that much of the early criticism of this bill has been directed at this of all provisions. Those who are opposed to the President's efforts to monitor al-Qaida's communications after 9/11 should take their argument to the President, not to the private companies that patriotically complied with government requests to help this country. Monitoring of al-Qaida's electronic communications cannot be conducted without the cooperation of private companies. The general rule that private citizens acting in good faith to assist law enforcement are immune from suit has deep roots and serves important public policies. As Justice Cardozo noted in the 1928 case of Babbington v. Yellow Taxi Corporation, the rule ensures that ''the citizenry may be called upon to enforce the justice of the State, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand.''

Finally, I should note that this bill's so-called ''exclusive means'' provision, like the similar provision in the 1978 FISA, is hortatory verbiage that obviously yields the Constitutional authority of the President. The FISA Court of Review, in its 2002 decision in In re Sealed Cases, made the point:

> The [Fourth Circuit in the Truong case], as did all the other courts to have decided the issue, held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information. . . . We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power.

Indeed, every administration since FISA was enacted—including the Carter administration—has concluded that Congress cannot take away the President's power to monitor foreign enemies of the United States without a warrant, and that to the extent that FISA purports to do so, it is unconstitutional. The Constitution's framers vested the executive with primary responsibility and authority to protect the United States from foreign attack. Section 102 repeats FISA's ''exclusive-means'' claims, yet provides in the same section of the bill, at subsection (c), an amendment to the immunity provisions for electronic communications service providers in 18 U.S.C. 2511(2) to require that certifications conferring immunity identify the ''specific statutory provision'' that allows the surveillance, but only if the certification ''for assistance to obtain foreign intelligence information is based on statutory authority.'' This provision, in the same section making claims of exclusive means, acknowledges that not all surveillance is based on statutory authority, but may, instead, be based on the executive's constitutional authority. If this nation again finds itself under attack as it did on September 11, those in charge of our security should not conclude from the exclusive-means language in section 102 that they may not act in any constitutionally appropriate way to protect this country.

Finally, the ''sunset'' provision in section 403, which will repeal the authorities in the bill at the end of 2012, is problematic. As the Attorney General and the Director of National Intelligence have said: ''[t]he Intelligence Community operates more effectively when the rules governing our intelligence professionals' ability to track our enemies are firmly established.'' The need to modernize FISA has been extensively debated since 2006, including numerous hearings, briefings, and floor debates that ''involved the discussion in open settings of extraordinary information dealing with sensitive intelligence operations.'' As the Attorney General and the Director of National Intelligence have pointed out, ''[e]very time we repeat this process it risks exposing our intelligence sources and methods to our adversaries.''

Despite these flaws, the bill before us is needed. It is very similar to the bill that the Senate passed earlier this Congress and on which the House refused to act. It has passed the House by a 3-to-1 margin, and I expect that we will see a similar margin in the Senate, as the bill already appears to have gained the support of some Senators who opposed last year's bill. I look forward to the passage of this bill.

WORLD REFUGEE DAY

Mr. LEVIN. Mr. President, I would like to take a moment to talk about World Refugee Day, which we recently recognized, and offer some observations on the millions of refugees around the world and our efforts to aid them.

Refugees find themselves in the immensely difficult position of being unable to return to their homeland, yet stuck without any place else to turn. They are often the targets of persecution due to their race, religion, political associations, or other traits that should be worthy of respect rather than a threat on one's life. The theme of this year's World Refugee Day is ''protection,'' with a particular focus on shining a bright light on the plight of refugees around the world, so that the world community takes action to ensure their safety.

While refugees deserving of our attention exist in many places around the world, one area of significant concern is the refugee situation in Iraq. The U.N. estimates that over 4 million Iraqis have been displaced by violence, with 1.5 million living in Syria and over 1 million in Jordan, Iran, Egypt, Lebanon, Yemen and Turkey. It is a staggering humanitarian crisis. As part of the National Defense Authorization Act for Fiscal Year 2008, Congress adopted the Iraqi Refugee Crisis Act, which I sponsored along with a number of my colleagues. This legislation creates a process for Iraqis who have offered assistance to our forces in Iraq to apply directly to the United States for refugee status. It is clear that the United States has a special obligation to help this population. The largest community of Iraqi Christians in the world outside of Iraq is in Michigan, which makes this issue particularly significant for me and my constituents.

The stark reality is that Iraq is just one small part of the tragic refugee situation around the world. Thon Chol, who was one of the ''Lost Boys of Sudan,'' is currently serving as an intern in my Washington, DC, office. He recently graduated with a master's degree in social work from Western Michigan University. His success is hard earned, but his story underscores the point that refugees deserve our attention as well as our aid and protection.

Thon was forced to flee his hometown at age 6. While attempting to reach Ethiopia he was one of thousands who faced dehydration, famine, and attacks from wild animals and Government soldiers alike. He lost most of his family, witnessing many deaths himself. He reached a refugee camp in 1987, was forced back to Sudan due to the civil war in Ethiopia in 1991, and then eventually traveled to live in a refugee camp in Kenya for 8 years before being one of less than 4,000 Lost Boys permitted to settle in the United States and moving to Grand Rapids, MI.

Many are now American citizens. Thon's remarkable educational achievements are in line with others who were in his situation; many have sought degrees beyond high school, ranging from community college to one student who is pursuing a master's degree at Yale University. Thon and others have committed themselves to returning to Sudan to teach democratic values and religious freedom.

There are many challenges even for those very few refugees who have been granted asylum or citizenship in welcoming countries, including cultural adjustments, difficulties in uniting separated families, obtaining work skills, and adapting to an unfamiliar climate. In Michigan, numerous volunteers, community organizations, churches, and businesses have come together to assist refugees who come to our state. On this World Refugee Day, I offer my praise and appreciation for the organizations and individuals—both those local to Michigan and those international in scope—who are committed to helping refugees find some stability and normalcy, and I urge my colleagues to consider what we can do to help the millions who are suffering right now. Individuals who wish to help can begin by visiting the U.N. Refugee Agency website at http://www.unhcr.org.

GASPEE DAY

Mr. WHITEHOUSE. Mr. President, every student of American history knows the story of the Boston Tea Party, the men who crept onto British ships moored in Boston Harbor on December 16, 1773, to destroy shipments of tea that the English sought to tax. They were patriots who yearned for liberty, for ''no taxation without representation,'' and who stepped into history.

Only a few miles south and more than a year earlier, however, another group of men had engaged in another act of patriotism—yet these men are largely forgotten outside my home State of Rhode Island. Every year, in their memory, Rhode Islanders celebrate Gaspee Day. This is their story.

During the buildup to the Revolutionary War, as tensions between England and its American colonies grew increasingly strained, King George III stationed the HMS *Gaspee*, under the command of LT William Dudingston, in the waters off Rhode Island. Its mission was to search incoming ships for smuggled goods and enforce the payment of taxes.

On June 9, 1772—16 months before the tea party in Boston—the sailing vessel *Hannah* was traveling from Newport to Providence when it was intercepted by the *Gaspee* and ordered to stop to allow a search. On board the *Hannah*, Captain Benjamin Lindsey refused and continued on his course, despite warning shots fired by the *Gaspee*. The smaller and more maneuverable *Hannah* then raced up Narragansett Bay and into the safety of Pawtuxet Cove. The hulking *Gaspee* tried to chase the *Hannah* but ran aground in the shallow waters of Namquid Point. The *Gaspee* was stuck, awaiting the higher tides of the following day.

Meanwhile, Captain Lindsey proceeded on his course, and upon arriving in Providence he met with John Brown, a community leader who later founded Brown University. The two men arranged for a meeting of local patriots at Sabin's Tavern, in what is now Providence's East Side, later that day. At the meeting, the assembled group of Rhode Islanders decided that action must be taken. *Gaspee* was a symbol of their oppression, and she was helplessly stranded in Pawtuxet Cove. In short, the opportunity was too good to pass up.

As night fell on June 9, 1772, there was no moonlight on the waters of Pawtuxet Cove. The *Gaspee* lay silent on the sand bar at Namquid Point. But just a few miles away in Providence, a team of about 60 men led by John Brown and Abraham Whipple was preparing for an assault that would soon break that silence. They armed themselves, boarded longboats, and set course for the *Gaspee*.

After paddling the longboats 6 miles down the dark waters of Narragansett Bay, the men reached the *Gaspee* and surrounded it. Brown called out and demanded that Lieutenant Dudingston surrender his vessel. Dudingston refused and instead ordered his men to fire upon anyone who attempted to board the *Gaspee*.

True to form, these brave Rhode Islanders seized the challenge. They forced their way aboard the *Gaspee*, and a struggle ensued. In the melee Lieutenant Dudingston was shot in the arm by a musket ball: Rhode Islanders had drawn the first blood of the American Revolution, right there in Pawtuxet Cove.

Brown and Whipple's men took control of the ship from the British crew and transported the captive Englishmen safely to shore. They then returned to the abandoned *Gaspee* for one final act of defiance to the crown. The men set fire to the *Gaspee* and watched as its powder magazine exploded, leaving the whole ship burning down to the water line. The place was eventually renamed Gaspee Point.

If that is not an act that defines the American struggle for independence, then I don't know what does.

Since that night in June when the *Gaspee* burned, Rhode Islanders have marked the event with celebration. This year, as I do every year, I had the good fortune to march in the annual Gaspee Days parade in Warwick, RI.

And every year, I think about what it must have felt like to be among the 60 men hauling on those longboat oars, as they paddled toward destiny.

While it is doubtful that many of those patriots could fully grasp the place they were about to take in history, there must have been a feeling of deep satisfaction known only to those who, in the face of tyranny, have stood up for home, for family, and for country. It is the same feeling that must have accompanied the soldiers of General Washington as they crossed the Delaware, the delegates of the Continental Congress as they signed the Declaration of Independence, and indeed those men in Boston who emptied a shipment of tea into the ocean. I

hope that the brave Rhode Islanders that gave us Gaspee Day will be remembered with those other giants of the Revolution, and given their due place in our Nation's history.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, earlier this week, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering over 1,000, are heartbreaking and touching. To respect their efforts, I am submitting every e-mail sent to me through energy_prices@crapo.senate.gov to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

TO WHOM IT MAY CONCERN: The rising cost of fuel and food are a big concern for us that live in Northern Idaho. We live in a lightly populated area and the trips to ''town'' are right at 100 miles round trip. We are on Social Security and Social Security doesn't allow a lot of flexibility in what a person can spend. Basic items like home heating and food prices have made huge changes in the way we live.

Recently we had a death in the family in another state (Arizona). After figuring the cost of both driving and flying we determined it would be too much of an expense for us to go. We sent our love and regards—but that doesn't take the place of a hug. The cost of heating our home with heating oil has gone from under a dollar a gallon to 3.97 at the last tank fill up. That is a huge increase for a basic need. Many are worse off then we are and have to choose between being warm and eating. *Something must be done.*

Every day we see our government reaching out with aid to *other* countries. . . .what about those right here in America? I expect the stimulus payment most people received went to catch up on a couple of bills—no one could afford the luxury of just frivolously spending it. We need everyday, down-to-earth practical help so basic needs can be met.

Please stop this ever-increasing price on fuel and food.

Thank you. . . .sincerely,

MR. AND MRS. RAY, *Priest River*.

I normally drive our 1999 Chevy Suburban. It gets 14 MPG on average. With gas prices over $4.00 a gallon I just use this simple rule of thumb to calculate how much a trip on the interstate costs me. It's simple. At normal interstate speed of 65 MPH, it costs me $20.00 an hour to drive. 65 divided by 14 = 4.65 x $4.10 a gallon = $19.00 not including wear and tear. So $20.00 an hour is my rule of thumb.

Now if I lived 1 hour from work and I made $12.50 an hour, I would have to work 3.2 hours more to get my 8 hours pay.

Do the math yourself. This has to be fixed.

A few things that bother me the most:

Hearing that the gas companies have made ''record profits'' again while I'm paying for it; the price of a barrel of oil goes up in the morning then by noon the same day the price of gas goes up even though that gas has been in the underground tank for days; the price of a barrel of oil goes down in the morning but the gas prices stay the same until they can go up again later; relying on foreign oil. That is relying on a foreign people who are not necessarily our friends or care about us; we have oil under our own ground but can't get it? Why?

Here's a question. Since when is not having oil not a national security issue?

AARON, *Caldwell*.

SENATOR: Nightly, I listen to a number of pundits and politicos debate the ''solutions'' to our energy problems. One of the more ridiculous ones is mandating people switch to higher fuel efficiency automobiles (i.e., buy a new car). As a small business owner, our health insurance premiums have just gone up (again), the minimum wage has risen, grocery costs are rising and our 401k is diminishing. The very thought of anyone in Congress telling me I have to replace my ''paid for'' cars, and take out a loan to buy a new (more energy efficient) car is ludicrous!! Gasoline would have to be over $10 a gallon to make economic sense to my family, in lieu of absorbing a car payment.

I support drilling offshore and in ANWAR, as well as shale oil extraction. I think it's time that the world's most technologically-advanced nation illustrate to the world the most technologically advanced means of extracting energy. I'm deeply offended that the United States government, who can't profitably manage Amtrak, the US Postal Service, or even its own Senate cafeteria, has the audacity to pretend to convince me that they know more about ''safe & sound'' energy extraction than the companies that are professionals in this endeavor. I hear people crying about how drilling in the US might ''spoil natural resources''! I'd be willing to wager that if we weren't dependent upon Middle Eastern oil, we could have, most likely, saved about 4,000 US Servicemen and women's lives. *That* cost of natural resource is infinitely greater than a handful of caribou!

Respectfully,

DANIEL, *Boise*.

My mother-in-law (80 years old) had emergency surgery in Grand Junction, Colorado. With increased fuel prices, the air fare to fly my wife to Grand Junction ONE WAY was almost $900. I drove separately to Grand Junction so our car would be available for our use. The total mileage over a week's time was in excess of 1,500 miles and, at over $4.00/gal, our fuel bill (23 miles/gal) exceeded $260.00. I'd like to buy a more fuel-efficient car, but my down payment was significantly reduced!

In eastern Idaho, the cost to go camping, fishing, or hunting will average from 50 miles to 150 miles or more round trip. A weekend outing has increased in cost from $5.00 to $16.00 for someone with a small SUV to $7.50–$22.50 when using the standard pick-up and pulling a boat or trailer. This is based on $4.00/gal fuel compared to $2.50/gal a year ago. Summertime costs can easily be $100 per month more for fuel in this area just for simple recreation (long distances and not much else to do). Add a few trips to the store for supplies and the costs can be 50% higher. We can't afford these extra costs.

Some think the answer is E–85 Ethanol from corn, but that does NOT save significant petroleum products and creates additional water pollution in corn-growing states. Additionally, my cost for food for my family has gone up significantly because of the increase in the price of corn. So why, oh why, do you in the government PAY the Midwest ethanol producers $0.51/gal to pollute the water and drive up the cost of food throughout the country, while still using as much oil for tractors in the fields, fuel trucks to transport the ethanol (it can't go in pipelines), fertilizer, fuel the ethanol plants, and other energy costs for something that only has about 68% of the energy content of gasoline? You in the government should get out of the way of the energy industry. They were doing fine before government got involved. Please let the energy sector drill for oil, develop coal and oil shale gasification technologies, mine the off-shore methane deposits, and set as a goal that nuclear power plants will be licensed as fast as they can be built. Government reviews should be minimal and should help instead of hinder our progress. Wind power should be developed in areas which have minimal impact (look at the INL site—huge area where the Idaho wind blows all the time). Small solar installations could easily be developed as the solar energy industry grows. The very best thing that government could do is to GET OUT OF THE WAY!! Maybe a few insects and frogs will die as a result, but it is better than running out of energy and then trying to figure out what to do in the dark

DARYL.

SENATOR CRAPO: I wanted to briefly share some of the impacts the high fuel prices are having on my family. I drive 32 miles one way to work. My car gets about 25 miles per gallon. So it is costing me almost $10 a day just to go to work. My husband is a farmer. We normally purchase 500 gallons of fuel at a time for the farm. We have not been financially able to buy it this spring/summer. He has cut back on the water of the crop because the power bills are so high, which will most likely affect the yield. Fertilizer is skyrocketing. Diesel is ridiculous. Our entire food supply is going to be affected as other farmers face these same problems. We are not buying any extras anymore. Groceries have increased, so non-essentials like chips, candy, boxed cereals, etc. are out. We are not eating out like we used to either. We normally ate out once or twice a week. For the past 18 years, I have planted beautiful potted flowers for the entrance of our home, usually spending around $300. I will not be planting flowers like that this year. We are not buying any new clothes for summer. We'll have to make do.

We live in an area where several years ago BP Petroleum came through and indicated that studies show fuel resources are available, however, nothing that we know of is being done to proceed with any exploration or development.

You would think that a country as great as ours with as many resources as we have would not allow themselves to be held hostage to foreign fuel resources!!!! We would appreciate any help you can send our way.

Sincerely,

MARIE.

PROPOSITION FUEL REFUND AND REFORM

Item 1: There shall be a $4.0 billion one-time charge imposed against each Refinery listed in Item 1 that shall be refunded to all California drivers with a valid California drivers license and age 18 and over. This Charge shall be apply to Exxon Mobil, BP (includes ARCO), Texaco, Chevron, Conoco Phillips, Shell, and Citgo. Each Refinery Charged the refund shall pay their amount to the California State Treasury for disbursement within 60 days of the passage of

this Proposition. The state shall disburse this money within 150 days of the passage of this Proposition. There shall be a daily fine of $10 million a day charged to any Refinery that has not paid its share of the refund in the allotted time payable to the State of California general fund.

Item 2: All Refineries shall sell off all fuel retail establishments within one year of the passage of this proposition. No Refinery or fuel wholesaler shall be allowed to own or control any fuel retail outlets with the passage of this proposition. The price of these establishments must fall within the current market value within its area. Violation of this item will result in a daily fine of 10 million dollars per day payable to the State of California general fund.

Item 3: Any present and future contracts between fuel retail outlets shall be hereby banned and null and void. Any fuel retail establishment shall be able to purchase fuel from any Refinery or fuel wholesaler he or she chooses without restriction. Also any retail outlet shall be able to sell multiple brands of fuel without restriction. Violation of this item by any Refinery or fuel wholesaler will result in a daily fine of ten million dollars per day payable to the State of California general fund until corrected.

Item 4: Each Refinery selling fuel in California shall maintain a stored reserve of fuel within the borders of California equal to 1.5 times the monthly volume of fuel it sells within the State of California. This requirement shall be enforced beginning 1 year from the passage of this proposition by the State of California. Violation of this item by any Refinery or fuel wholesaler will result in a daily fine of 10 million dollars per day payable to the State of California general fund until corrected.

Item 5: Beginning 10 days after the passage of this Proposition and for a period of 5 years, wholesale prices of gasoline and diesel per gallon sold to retail establishments in the State of California shall not exceed 1.2 percent of the average price of oil per barrel on the world market. Violation of this item will result in a daily fine of 10 million dollars per day payable to the State of California general fund.

Item 6: Beginning 10 days after the passage of this Proposition and for a period of 5 years retail prices of gasoline and diesel per gallon sold in the State of California shall not exceed 2.0 percent of the average price of oil per barrel on the world market. Violation of this item will result in a daily fine of 10 thousand dollars per day payable to the State of California general fund.

Item 7: The people of California have determined by the passing of this proposition that the Refineries listed in item one meet the definition of a monoply because of the way fuel prices have risen everywhere in the state of California in unison in the past 4 years, because these refineries dominate the market, and by the documented huge increased, sustained and increasing profits made by these oil refineries. The people of California request the United States department of Justice apply antitrust legal action against the refineries listed in item 1.

Item 8: If any Items listed in this proposition are nullified by court action then all other Items shall remain in effect.

UNSIGNED.

SENATOR CRAPO: Thank you for asking for my opinion. As I interact with my employees as a business executive, with my fellow church members as a church leader, and as a husband and father, I think the real bottom line is this: The great majority of people have no viable alternative to spending additional money on fuel and many other goods and services that also rise with fuel price increases. Most people are just paying more because there is no alternative. This means that bankruptcy, unemployment, and other severe financial strains will be staved off until they cannot be held off anymore, and then it will collapse. The danger signs of energy dependence are so dire, yet congress does not make any moves. I think the future is bleak for individuals on the edge, and a large ''correction'' is due. I also would not be surprised to see your constituents come after congress with pitchforks and torches, but I have doubts that congress will act.

AARON, *Coeur d'Alene.*

DEAR SENATOR CRAPO: Today, we had to make the difficult choice of putting fuel in the car or grocery shopping. You see, we needed milk, bread, and some other staples and we needed a tank of gas. Each purchase was going to amount to around $80, and we had to choose one or the other. So we gassed up the car and decided to try to make it until payday with the food that we had at home.

I have never felt so sick or downtrodden at the one or the other kind of option we faced today. I went home and also deduced through some back bills that our housing heating and cooling has doubled since 2002. In only six years our gas has gone from $67 a month to $112 and our electric from $87 to $167, despite my keeping our heating at 65 day and 60 night in the winter and our cooling at 75 in the summer. We are hard pressed to pay those bills in addition to gas. This spiral has got to stop or I do not know how we are going to manage.

Sincerely,

D., *Boise.*

DEAR SENATOR CRAPO: I commute 52 miles round trip daily to Rexburg from Idaho Falls. Since January I have been car pooling with a co-worker in my department and we are encouraging our employer to let us telecommute at least one day a week. My family has declared two days a week as ''no drive days'' where we don't even turn the key in either of our cars. We save our errands and schedule appointments for other days of the week. This basic routine is helping, but not enough.

We recently had a daughter in the hospital in Idaho Falls for seven and a half weeks, and for another four and a half weeks at the University of Utah Medical Center. Those expenses were of course offset by health insurance, although out of pocket expenses still amounted to thousands of dollars. However during those 12 weeks we had no choice but to drive to the hospital daily while fuel prices were skyrocketing. This created a sudden and unexpected burden on our family budget. With the added cost of fuel forecasted to stay high into the future, our financial recovery is nowhere in sight.

Thanks for listening.

BOB AND BEVERLY, *Idaho Falls.*

SENATOR CRAPO: I own a small retail shop in Salmon, Idaho. Retailers in this area depend on the local economy and on Tourism to make ends. Tourists provide 60% of our sales revenue and the gas prices have dramatically diminished travelers. Whitewater rafting companies are struggling and my retail store is in danger. I am unable to meet my monthly expenses, let alone purchase merchandise to replenish my normal inventory. Consumers cannot afford anything beyond gas and food. Prices have doubled on groceries, shipping and all are related to rising fuel costs. Most of the people I know have no extra from their paychecks and it is killing small businesses all over the Country! Here in the Rocky Mountains we can't drive hybrid cars. The snow, rain and rural homes make cars impossible. We have to have 4 wheel drives and chains just to get out of our driveways and to the grocery store! There is no mass transit and carpooling wouldn't be feasible.

Congress seems to be at a loss as to what to do and if something doesn't happen soon we will be facing a major depression! The Speculators are driving prices even higher and the oil producing nations are unwilling to cut their profits. Most of us feel that Congress and the Senate are in bed with the oil companies.

Something has to be done to open oil and gas production in this Country. We have Anwar, the Bakkan oil in the North Central States and off shore oil pockets. It is time that our government look out for the American People and stop bucking under to the Environmentalists.

Something has to be done quickly. Long-term renewable energy sources will take decades, by that time all the small businesses like mine will be forced to either close or file bankruptcy. Currently my shop is in jeopardy. I am behind on all my bills and my credit has been ruined so I can't even get a loan to get me through the crisis. If our governmental body can't find a solution now, then expect to see small and medium businesses go under. We are the backbone of this land and we need some backbone leadership!!!!

Sincerely

DONNA, *Salmon.*

DEAR SENATOR CRAPO: I would be more than happy to share our story of high energy prices and the toll it is taking on our family and our finances. My husband and I find it outrageous that environmental groups can have SO much pull in this country to put bans on the construction of oil refineries, liquid coal plants and drilling for our own domestic petroleum. At this point, we are dependant on this abundant and efficient fuel. There is no other alternative right now to take the place of petroleum—at least nothing that is practical, efficient and most importantly—affordable!!! To ignore our vast reserves of coal and oil in this country to leave us dependent on Middle East Fuel is ludicrous. There is wonderful technology out there that can turn coal into liquid fuel that burns cleaner than gasoline! But because your average environmentalist does not understand how this technology works—they are against it because traditionally burnt coal is filthy. They would rather grow food crops to fill their tanks up while people and animals starve.

We live in Salmon, Idaho. My husband is a Real Estate Appraiser who frequently travels almost 600 miles in a week simply to reach the properties to do his work. The cost of living necessitates at this point that he take EVERY SINGLE job that crosses his desk—so frequently driving round-trip to Arco and back in a day or over to Missoula, Montana and back in a day is a normal thing. BUT—the drawback is that right now we have an outstanding balance on our Chevron card that is over $1,400 and over limit—so we can't even use the card. We make large payments every month, but with the interest rate we still have not been able to bring the balance low enough to even use the card. So we pay the Chevron bill AND pay for gas out of our regular checking account. The Chevron card went well over limit way back when gas hit $3.50 a gallon, and we have not been able to catch up and bring the balance down. We have a propane bill that is over $1,100 right now that I pay $125 a month on—but this is a balance from an $1,800 fill up of our tank back in November of 2007. I am going to call the gas company this week to see if they will fill the tank now while prices are ''lower''.

So we will probably have a bill that is over $3,000 for heating our home basically 6 months out of the year. If gas goes any higher—we are going to have to figure out how to get even deeper in debt to find a cheaper way to heat our home in the winter. As you know—Idaho gets cold. We HAVE to heat our home!!! Living in Salmon, we HAVE to drive over 300 miles in a round trip either to Idaho Falls or Missoula Montana for doctors, Costco, clothes shopping etc.—as due to there being a lack of logging or mining anymore there is really no local options for shopping, etc. The very lives of people living here depend on big rig trucks bringing our food etc. For MANY years now, we have been hearing of the Idaho Cobalt Project—but because the environmentalists have such a stranglehold on ALL industries in this country—we are still awaiting word of WHEN or IF this project will start. If it does get clearance, Salmon, Idaho will once again have jobs that pay a living wage for a family. We have a house that we moved out of in downtown Salmon in 2005—it has been sitting empty awaiting a buyer since then. It is in a commercial zone—and commercial is dead in Salmon. We filed paperwork with our mortgage company way back in February to give the house back in a Deed in Lieu—and we are still awaiting word!!! Apparently, the mortgage companies are backlogged about 6 months? We can't afford to visit family in California because we can't afford the gas. My husband's mother and father in California got extremely ill this last year, but he was never able to visit because of the debt load we are carrying and how expensive driving or flying is!! We are working to make payments and catch up on our gas bills that are maxed out right now. We stopped making payments on a house that would not sell for 3 years now—that has left us behind in everything. With fuel costs continuing to rise because we have a Democratic Liberal, Anti-American Congress that continues to ban any sort of domestic drilling for our own petroleum deposits—we don't even have a chance to catch up right now as gas prices continue to rise. We are fortunate though. My husband has a busy and successful business and thankfully at least, we are able to work to make our payments. On Father's Day, we decided against a picnic any further than 5 miles out of town because of the cost of fuel. It is sickening to us that our government cares SO little for the average working American. It is sad that our government has allowed itself to be controlled by secular humanist environmentalists who care more for a spotted owl or a tiny snail than the human family. Just ask anyone here in Salmon how we feel about the forests being shut down to logging—yet it is perfectly fine for the forest that is becoming nothing more than a deadfall tinderbox to burn and choke us with toxic, suffocating smoke for 2 months every summer! Something has to change because if it does not soon—this country is going to enter a depression that makes the Great Depression look like the Good Old Days!!!

Sincerely,

BRENT AND KATIE, *Salmon*.

It is very hard to understand why the United States, the most powerful Nation on Earth, is begging the Middle East for oil. We need to immediately increase drilling off shore, in Alaska and other States, plus utilize technology available to extract oil from shale deposits in the Rocky Mountains. We have advanced technology sufficiently to be safe for the environment and yet provide for ourselves rather than being dependent upon the Middle East.

Is it true that China is drilling off the Florida coast, but we can't? In Idaho Falls, the Chamber is bragging about bringing a French company's new uranium enrichment plant and the corresponding jobs to the area to fuel nuclear power for France. WHAT—we have had the capability of generating nuclear power at the INEL for 35 years. My father worked at the INEL for 35 years. You mean to tell me the environmentalists will allow uranium enrichment for France, but we can't utilize an existing US nuclear plant for power for Idaho?

Bio-fuels are not the whole answer, it puts too much pressure on our farmland that we need to crop food crops. The prices of food are going up enough because of the fuel costs.

The US has substantial coal deposits, we need to build more coal fired power plants. Combined with the nuclear and wind, we should be able to have more than enough power to re-charge hybrid cars.

Besides increasing drilling in the US, we need to invest in some updated/additional refineries.

Then, Congress needs to do something about the speculators driving up the price of crude oil. I don't know if you can make it illegal to speculate on oil futures or restrict it, but news media are reporting that $3.00 of every gallon goes to speculators profits buying and selling.

CHRIS, *Idaho Falls*.

DEAR SENATOR: My husband and I own a small business in Lewiston, where we do print advertising and TV/Video productions (among other things). We live close to our business, so although our fuel prices have increased, it's not having a huge impact—YET. However, we frequently have to travel across or out of the state to shoot various jobs, and we are now having to charge such high travel expenses that we are at risk of losing some clients to production companies closer to their location, even though they would prefer to keep working with us. We are bidding on a job right now which falls in that category—a year ago we would have quoted them $200 for mileage, and now we have to quote almost $500. Obviously this will impact our bottom line by the end of the year—something that we really can't afford.

BOBRI, *Lewiston*.

SENATOR CRAPO: I would guess that my story is different than the story you were looking for.

In 1974 I graduated from the University of California with a B.S. in Mechanical Engineering.

The height of the first real Oil Crisis created by OPEC.

Because of the skyrocketing price of gasoline, gas lines, and shortages, I purchased a manual transmission diesel Volkswagen for $7,500. That car on average got 52 miles per gallon. Diesel is a cheap byproduct of gasoline refinement. At that time, it cost ½ the price of gasoline per gallon.

Tell me why it costs more than gasoline now?

A few weeks after graduation, I was granted a full scholarship to continue engineering graduate school at UC.

In 1979 I graduated from UC with a Ph.D. in Mechanical Engineering, my specialty: thermodynamics, energy, and materials science. My thesis was on the extraction of heat energy from hot geothermal brine solutions.

I started working for a startup company purchased by Weyerhaeuser. My project was researching burning lignite (dirty coal) in a fluidized bed reactor to produce clean coal energy. It included the removal of NO_X, SO_X, and high temperature particulate down below the submicron size.

My research burned one train car load of lignite (environmentally the worst coal to burn with the lowest heating value) from West Virginia, in Menlo Park, CA every day 24/7 for nearly 9 months performing experiments under contract with the US DOE. Our work was successful but went no further. During the operation of that combustion system and the associated experiments we passed all EPA combustion gas stream standards. That company years later went bankrupt. I left after 2 years to join Hewlett Packard in their computer systems group. For the past 25 years I've been involved in semiconductor manufacturing.

Thirty years have passed and sadly our government is no closer to a long term proactive energy policy than it was in 1979.

It is a national disgrace and one day will be a national disaster which will make the Great Depression pale in comparison.

PLEASE, wait no longer. Turning food stocks into ethanol, waiting for cheap solar, and looking to the wind to solve this global crisis is beyond ridiculous.

Drill now in ANWR, Drill off the Coasts of Florida, and California, Turn on the clean coal industry and liquefy coal for fuel, build as many nuclear power plants as fast as possible (then maybe we can avoid the energy depression). I don't believe we have another 30 years to gamble away.

Regards,

LARRY, *Eagle*.

MIKE, I really believe that we don't need to find alternative fuels. America is set up to burn petroleum based products and there are so many drawbacks to all of the ''bio'' fuels. We have lots of oil right off of our own coasts and in the Gulf on Mexico, ANWR and North and South Dakota with oil shale.

Our problem to being independent is not supply, Arabs or the environment! It's Congress and the wacko left enviro crowd who would rather see us all on bicycles!

I'm 62 years old and I DO ride a bicycle. However, like you mentioned in your opening letter, bikes don't work all the time in Idaho. Matter of fact between October and June, they suck! We had 2″ of snow in Moscow on June 10th this year.

Congress needs to just get out of the way and let industry do its thing.

Mike, I realize you're only one Senator from a little-known state out West that doesn't matter to everybody East of the Mississippi River but some how we have to find the courage to stand up to the liberal Dems before our economy state and country are turned into a Third World European nightmare like B. H. O is designing.

Sincerely,

DAVE, *Moscow*.

ADDITIONAL STATEMENTS

IN RECOGNITION OF ROBERT LINGENFELTER

• Mr. CARPER. Mr. President, today I recognize Robert Lingenfelter, affectionately known as ''Link,'' for being named Delaware History Teacher of the Year by the Gilder Lehrman Institute of American History and Preserve America. Link has dedicated his life to the thousands of school children whose lives he has touched as a teacher, as a coach and as a mentor.

The History Teacher of the Year Award, now in its fifth year, was designed to promote and celebrate the teaching of American history in classrooms across our Nation. The award honors one exceptional teacher from each State and U.S. territory. The selection of the State winner is based upon several criteria, including a deep

career commitment to teaching American history; evidence of creativity and imagination in the classroom that address literacy and content beyond state standards; and evidence of thoughtful assessment of student achievement. Through Link's 13 dedicated years of teaching, it is clear that he embodies all of these criteria and many more.

After working for years as a night supervisor for what is now AstraZeneca, Link graduated from Wilmington College in 1995 with a bachelor's degree in education on a day that I was privileged to deliver the commencement address there. Three years later, he earned his master's of instruction from Wilmington College, which is now Wilmington University. He was motivated to become a teacher because of his interest in American History, his love of coaching and his passion to motivate children to achieve their true potential.

His interest in American history was increased in part by his work with me as a volunteer photographer over the past 26 years. During that time, Link also has documented a host of important events throughout Delaware. In his own words, he ''created history with his camera lens.''

In addition to teaching, Link has coached high school baseball for 14 years. He developed a love of the game as a child and wanted to see the same passion he felt for the game in the eyes of the children he coached. He stresses individual success for each of his players and he has always believed that once a child experiences success, they start believing that anything is possible. Link tries to foster this ''anything is possible'' mentality in all of his students and players, continually encouraging them to do their absolute best and settle for nothing less.

He has been instrumental in the growth of many children, building their confidence and showing them the path to personal success. His dedication to the children he coached is apparent to all who know him as he teaches his players lessons that will help them in all walks of life, both on and off the diamond.

Noticing his innate ability to connect with students and his drive to help them grow, Link's friends and players' parents suggested he pursue a career in teaching. With their encouragement, he decided to combine his love for American history and his commitment to helping children succeed. He became a teacher.

Link started his teaching career at Stanton Middle School, where he worked from 1995–1998 as a 7th grade social studies and language arts teacher. In 1998, he joined Skyline Middle School where he teaches today. He is an 8th grade American history and social studies teacher and also serves as the social studies department chair. In addition, he works as an adjunct professor at Wilmington University.

Link has been recognized many times as the Social Studies Teacher of the Year by the Red Clay School District and was named the 2002–2003 Teacher of the Year at Skyline Middle School. These awards are a tribute to Link's creative teaching style and his genuine desire to help his students succeed.

Link's teaching style is unique and specifically tailored to helping students not just learn history but relive it. Link and others think of him as more than just a teacher. He is something of an actor, as well. He brings history alive in his classroom with props and costumes and engages his students in a way no textbook can. He and his students hold simulations of historical events, assuming the roles of prominent historic figures and acting out the sequence of the events. His students reenact the Boston massacre mock trial, the Constitution Convention of 1787, slavery and the underground railroad, and even battles of the Civil War. He doesn't simply teach history he engages his students to participate in history, bringing to mind the old Chinese proverb: Tell me, and I'll forget. Show me, and I may remember. Involve me, and I'll understand.

Link also utilizes the historic sites in the area to further instill in his students an understanding of America's past. He takes his students on trips to the Constitution Center in Philadelphia and to Fort Delaware, as well as to any number of sites in Washington, DC. His ''classroom museum'' is a place of interactive learning that is far from a memorization of dates and locations; instead, it is a journey through American history, with stops and detours along the way where students fully embrace America's past and its impact on the present.

Link is a powerful teacher with a deep love for his students and for history. He has a lighthearted attitude that allows him to connect with students on a level that few can. He can always be counted on to have a joke ready to break up the stresses of the students he teaches. Using his sense of humor to his advantage, Link constantly builds a closer relationship with his students to the point where they know they can come to him with anything from a history question to a problem with a friend at school.

Link is a truly remarkable teacher and human being. He encourages his students to reach beyond their limits and settle for nothing less. He instills in them the confidence they need to stand up for principles they believe in and become proponents of change in the future. His teaching philosophy is one to be admired and emulated as it allows students to be participants in history as opposed to mere observers.

Robert ''Link'' Lingenfelter has become one of the finest teachers in Delaware, and he is on his way to becoming one of the finest teachers in America. It is with a genuine sense of honor and joy that I rise today to extend heartfelt congratulations to my good friend for his award. There could not be a more deserving recipient. He will always be a role model, not just to his own students, but to all of us.●

TRIBUTE TO LEROY KOPPENDRAYER

● Mr. COLEMAN. Mr. President, today, I honor the distinguished public career of LeRoy Koppendrayer, retiring chairman of the Minnesota Public Utilities Commission. LeRoy was appointed commissioner in 1998 and chairman in 2003. He has served Minnesotans honorably for 10 years, upholding and protecting the interests of Minnesota's utility ratepayers while enjoying the respect and camaraderie of his fellow commissioners and those who have come to know him.

LeRoy's journey to becoming a commissioner has been filled with a lifetime of experiences anyone would admire. In the 1990s, LeRoy was elected to four terms as a representative in Minnesota's Legislature where he worked successfully on issues ranging from agriculture to energy to education. He also worked for years as a dairy farmer and then as an international agricultural consultant, spending time in South America, Africa, Jamaica, Philippines, and Indonesia, consulting farmers and working to develop and improve their economies and their lives. LeRoy's appointment to the commission caps his decades-long commitment to public service.

LeRoy's work as commissioner includes decisions on a myriad of issues facing Minnesota's utility ratepayers, such as rate cases filed by natural gas, electric, and telephone utility companies, the twin cities metro area code split, the establishment of rules governing reliability standards for electric utilities, renewable energy projects and the citing and routing of energy facilities and transmission pipelines, to name just a few.

LeRoy's committee memberships include the National Association of Regulatory Commissioners, known as NARUC; as liaison to NARUC's International Relations Committee; the NARUC Regulatory Advisory Committee to the Institute of Public Utilities; and the NARUC Committee on Electricity and Subcommittee on Strategic Issues. He has also served as chair of the Nuclear Waste Strategy Coalition and as a member of the board of the Organization of Midwest States, which oversees the Midwest electricity grid.

As chairman, LeRoy has ensured the integrity of the commission's process through thoughtful consideration of issues and a friendly rapport with those who appear before the commission. Whether it is a lawyer representing a utility or a concerned citizen appearing for the first time, LeRoy's approach is the same. He treats everyone with genuine respect and professional courtesy and with a sincere interest in understanding each person's point of view.

And on top of it all, LeRoy recently found time to make a 150-mile bicycle trip with his wife Carolyn and 10 other family members in support of MS research.

LeRoy is a man of loyalty, conviction, and fortitude. He commands great respect and great affection. He has an enviable capacity for warmth and kindness and is driven by his value for hard work. He stands firm in what he believes and yet finds common ground where there are differences, using a welcoming approach and a friendly smile to bring people together. And if all else fails, he'll make you laugh, mostly at his own expense, by poking fun at himself.

Today, at this bittersweet moment, it is with gratitude and admiration that I stand before you to honor LeRoy's longstanding contributions to the people of Minnesota through his years of service as commissioner of the Minnesota Public Utilities Commission.●

125TH ANNIVERSARY OF BELFIELD, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I am pleased to honor a community in North Dakota that is celebrating its 125th anniversary. From July 11 to July 13, the residents of Belfield, ND, will celebrate their community's history and founding.

Belfield is situated along the banks of the Heart River in western North Dakota. As the westward expansion of the Northern Pacific Railroad progressed, settlers established this community and first identified it as Fort Houston. Belfield is said to have later adopted its current name after Belle Field, the daughter of a railroad engineer.

Belfield offers visitors and residents fresh air and beautiful scenery. From Custer's Trail and Initial Rock, to Belfield Dam and the Maah Daah Hey Trail, Belfield has a wealth of outdoor recreational activities. This gateway to the west is also birthplace of North Dakota Supreme Court Judge Herbert L. Meschke.

To celebrate its 125th anniversary, Belfield is organizing a weekend filled with events such as a parade, class reunions, a demolition derby, a steak fry, historical photo and pottery displays, and games for all ages. Belfield will also be host to the Black Daggers, a U.S. Army Special Operations Command Parachute Demonstration Team. The team will be performing parachute jumps throughout the weekend at various locations. It will no doubt add a breathtaking element to this celebration.

Mr. President, I ask the U.S. Senate to join me in congratulating Belfield, ND, and its residents on their first 125 years and in wishing them well in the future. By honoring Belfield and all the other historic small towns of North Dakota, we keep the pioneering frontier spirit alive for future generations. It is places such as Belfield that have helped to shape this country into what it is today, which is why this fine community is deserving of our recognition.

Belfield has a proud past and a bright future.●

125TH ANNIVERSARY OF MENOKEN, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I am pleased to honor a community in North Dakota that recently celebrated its 125th anniversary. On June 21, the residents of Menoken gathered to celebrate their community and its historic founding.

Menoken is located in Burleigh County, just a few miles from the State capital. Although its population is small, Menoken holds an important place in our State's history. As the first tracks of the Northern Pacific Railroad were being laid across North Dakota, the Seventeenth Siding was marked; later to be known as what is now Menoken. Upon the completion of the railroad, settlers from Maine occupied the territory and named the town Blaine, after Maine Senator James G. Blaine. Once more the town's name was changed to Clark, and then finally secured as Menoken.

The citizens of Menoken take great pride in their community enriched with history. The town is home to the Menoken Indian Village, which is a preserved prehistoric earthlodge village that dates back to the early 13th century A.D. In addition, the battlegrounds of General Sibley's campaign of 1863 are located near Menoken. These two landmarks are among many of the town's sacred keepsakes that resemble the very essence of North Dakota.

The 125th anniversary celebration included a school tour, fashion show, and parade. It was followed by a horseshoe tournament, tractor pull, and old-time music. Once evening set in, people witnessed an exceptional cavalry reenactment. It was no doubt a day unlike any other.

Mr. President, I ask the U.S. Senate to join me in congratulating Menoken, ND, and its residents on their 125th anniversary and in wishing them well for the future. By honoring Menoken and all other towns of North Dakota, we keep the pioneering, frontier spirit alive for future generations. It is places such as Menoken that have helped to shape this country into what it is today, which is why this fine community is deserving of our recognition.

Menoken has a proud past and a bright future.●

125TH ANNIVERSARY OF MICHIGAN, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I am pleased to honor a community in North Dakota that is celebrating it 125th anniversary. On July 24 through July 27, the residents of Michigan will celebrate their community's history and founding.

Michigan is a small town with a population of 345 residents located in Nelson County in northeastern North Dakota. It was established on January 2, 1883, with the completion of its post office with C.J. Bondurant as postmaster. Soon after its establishment, railroad tracks were completed, and, in March of 1883, the first train reached Michigan. The town quickly became known as a trading center. With the railroads came more people, who built businesses, churches and schools. The settlers began to cultivate the land and raise crops. Agriculture soon became the center of their economy and remains so to this day.

Today, Michigan remains a proud community that has a prosperous economy consisting of farming, manufacturing industries, and retail businesses. Residents of Michigan are known for their honesty, strong work ethic, and living off the land. It is a great place for enjoying the outdoors all year round, including hunting, cross-country skiing, fishing, boating, and camping. Michigan Days is a highlight each summer. During Michigan Days, the residents enjoy live music, a softball tournament, street dances, a tractor pull, and ice cream socials.

As part of the weekend anniversary celebration residents will be able to go to the interesting Dakota Mysteries and Oddities Museum. Michigan will also hold a golf tournament at the Duffers Club and dedicate the Veteran's Memorial Building for all the brave residents of Michigan who have served in past wars. Several other wonderful activities will be taking place throughout the weekend.

Mr. President, I ask the U.S. Senate to join me in congratulating Michigan, ND, and its residents on their 125th anniversary and in wishing them well in the future. By honoring Michigan and all the other historic towns of North Dakota, we keep the pioneering frontier spirit alive for future generations. It is places such as Michigan that have helped shape this country into what it is today, which is why this community is deserving of our recognition.

Michigan has a proud past and a bright future.●

125TH ANNIVERSARY OF MILNOR, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I wish to recognize a community in North Dakota that will be celebrating its 125th anniversary. On July 18–20, the residents of Milnor will gather to celebrate their community's history and founding.

During the summer of 1863, Henry Hastings Sibley and his army camped on the shore of Storm Lake—Camp Buel—and about 20 years later, in 1883, Milnor was established on that historical site. Milnor was named after William E. Milnor, the first telegrapher at the Milnor Station and WM Milnor Roberts, a famous civil engineer of the

day. In October 1883, Milnor's post office was established, and it became a city in 1914.

Today, Milnor remains a small, proud community. Each year, the community gathers in June for its annual Jamboree. The residents celebrate with a BBQ, golf tournament, street dance, parade and many other fun activities. During the summer, many Milnor residents can be found at the local pool, catching up with friends and family, or at the Lakeview golf course playing a few holes. Two National Wildlife Refugees are located near Milnor, the Tewaukon and Storm Lake Refuges. Many residents enjoy camping, fishing, and spotting wildlife at these beautiful sites. Milnor also has many other outdoor recreational areas located nearby, like Buffalo Lake—Kandiotta Lake—and Dead Colt Creek.

To celebrate the 125th anniversary, the residents of Milnor will gather for many fun and exciting activities, including a parade, a street dance, and a time capsule unveiling.

Mr. President, I ask the U.S. Senate to join me in congratulating Milnor, ND, and its residents on their first 125 years and wishing them well in the future. By honoring Milnor and all the other historic small towns of North Dakota, we keep the great pioneering frontier spirit alive for future generations. It is places such as Milnor that have helped to shape this country into what it is today, which is why this fine community is deserving of our recognition.

Milnor has a proud past and a bright future.●

125TH ANNIVERSARY OF MINTO, NORTH DAKOTA

● Mr. CONRAD. Mr. President, I am pleased today to recognize a community in North Dakota that will be celebrating its 125th anniversary. On July 25 to 27, the residents of Minto will gather to celebrate their community's history and founding.

Minto is a community of over 600 residents located in the fertile Red River Valley in northeast North Dakota. The Homestead Act brought the first settlers to the Minto area, including a Canadian by the name of Angus Gillespie, Sr., who left his home in Minto Township, Ontario, to farm in North Dakota. Minto was incorporated in 1883. Twenty years later, Minto was recognized as a city. Minto's links with its Canadian forefathers have been renewed as the town of Minto, ND, became the sister city of Minto, Ontario, in 2007.

The community of Minto is host to many businesses and amenities. There are numerous enterprises dedicated to farming, including elevators, implement dealerships, and trucking services. It also offers its citizens many leisure activities. Residents of the town and the surrounding area are able to enjoy a meal at the town's café and have their hair done at one of the salons. Families often gather in Minto's beautiful park, which has a baseball field, tennis court, playground, and picnic area. In the winter, the children of Minto can be found skating or playing hockey at the town's outdoor ice rink.

Current and former residents of Minto will gather to celebrate the 125th anniversary. Events will begin with the telling of area Polish family histories at Minto's new community center. The Walsh County Historical Museum will also be open to the public. Minto's park will host a classic car show, magic show, and community baseball game. Each day of celebration will close with a dance.

Mr. President, I ask the U.S. Senate to join me in congratulating Minto, ND, and its residents on their first 125 years and in wishing them well in the future. By honoring Minto and all the other historic small towns of North Dakota, we keep the frontier spirit alive for future generations. It is places like Minto that have helped to shape this country into what it is today, which is why this community is deserving of our recognition.

Minto has a proud past and a bright future.●

NEA'S HONORING OF PAUL MANN

● Mr. HARKIN. Mr. President, in early July, when nearly 9,000 educators are in Washington for the National Education Association's annual Representative Assembly, they will posthumously honor one of Iowa's most dedicated and respected teachers, Paul Mann. Lola Mann, Paul's wife of 38 years, will accept the Applegate-Dorros Award on behalf of her late husband at NEA's annual Human and Civil Rights Awards Dinner on July 2.

The Applegate-Dorros Award is given each year to an individual who has made lasting contributions to the cause of international understanding, and who has encouraged young people to study the world and work for world peace. Over a long and distinguished career spanning nearly four decades as a teacher with the Des Moines public school system, Paul both lived and taught those ideals. He shaped the thinking of generations of students, and he was active on the national stage as a long-time leader of NEA's Midwest Peace and Justice Caucus.

I do not believe that democracy is a spectator sport, and neither did Paul. As his wife Lola said, ''he felt strongly that he was placed on this earth for a purpose . . . that he was here to help make the world a better place.'' He challenged his colleagues and students alike to get involved in campaigns and in the broader political process. His own passion for politics and engagement was infectious.

Paul stood up for social justice and the peaceful resolution of conflict. Just as Gandhi counseled that ''You must be the change you wish to see in the world,'' Paul lived a life that embodied the progressive ideals that he advocated.

Paul Mann was born in Onawa, IA on March 12, 1947, graduated from Central Missouri State University in 1969, and earned a master's in public administration from Drake University in 1981. He began teaching in Des Moines in 1969 and was an energetic, beloved teacher right up until his sudden passing in September of 2006. At the time of his death, he was a teacher of world civilization and government at Central Academy, the magnet school for Des Moines' gifted and talented middle- and high-school students.

As a teacher, Paul was a consummate professional who had a deep personal commitment to ensuring that every child receives a high-quality public education. This commitment led to his activism and leadership within the Des Moines Education Association, including 8 years as president. He served in a various leadership positions at the local, State and national levels within the National Education Association. He was also active in local and State politics.

I have always appreciated what Lee Iacocca said about teachers. ''In a completely rational society,'' he said, ''the best of us would be teachers, and the rest of us would have to settle for something else.'' Fortunately, in Iowa, so many of our best and brightest do go into teaching. And Paul Mann was one of the very finest.

To honor his activism in the cause of world peace and understanding, the Paul Mann Memorial School has been established in Chiapas, Mexico. In addition, he has another living legacy: countless former students who are living the noble ideals that he taught in his classroom and embodied in his life.

Paul Mann lived a life of constant activism and thoughtful action both in and out of the classroom. His life is one worthy of recognition and I commend his family and all of his former colleagues for doing their part in honoring him with the Applegate-Dorros Award.●

125TH ANNIVERSARY OF IPSWICH, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I recognize the community of Ipswich, SD, on reaching the 125th anniversary of its founding. As the county seat of Edmunds County, the rural community of Ipswich is infused with hospitality, beauty, and an exceptional quality of life.

The town of Ipswich was founded in 1883, with the railroad industry jumpstarting the area as a business and transportation center. Ipswich was noted for its many buildings made of native prairie stone, and was eventually given the nicknames: ''the Home of the Yellowstone Trail,'' ''the Arch City,'' and ''the Zinnia City.''

Today, Ipswich has come a long way from its days as a railroad supply center. The town now boasts a variety of businesses, including those in the service, manufacturing, and agricultural

sectors. For the outdoor enthusiasts, Ipswich offers an abundance of local hunting and fishing.

The people of Ipswich celebrated their Trail Days on the weekend of June 13–15, 2008, with an all-school reunion, a parade, a pie-baking contest, a demolition derby and a street dance. South Dakota's small communities are the bedrock of our economy and vital to the future of our state. It is especially because of our small communities, and the feelings of loyalty and familiarity that they engender, that I am proud to call South Dakota home. Towns like Ipswich and its citizens are no different and truly know what it means to be South Dakotan. One hundred and twenty five years after its founding, Ipswich remains a vital community and a great asset to the wonderful state of South Dakota. I am proud to honor Ipswich on this historic milestone.●

HONORING ARROWS RESTAURANT

● Ms. SNOWE. Mr. President, today I honor Arrows Restaurant of Ogunquit, ME, on the occasion of its 20th anniversary and to recognize the tremendous talent and innovative environmental stewardship of its owners, award-winning chefs Mark Gaier and Clark Frasier.

Quite simply, Arrows is one of America's great restaurants. It has received recognition from national publications such as Gourmet magazine, which ranked it 14th on its list of ''America's Top 50 Restaurants in 2006,'' and Bon Appétit, which named Arrows ''one of the country's 10 most romantic restaurants.''

Arrows has also received some of the highest and most consistent ratings in the annual Zagat survey. In addition, Mr. Gaier and Mr. Frasier were nominated as Best Chefs in the Northeast by the James Beard Foundation, a national organization whose annual awards have been deemed the ''Oscars of the food world'' by Time magazine.

Arrows has further distinguished itself by its extraordinary garden, which offers more than 300 varieties of herbs, flowers, fruits, and vegetables. It provides Mr. Gaier and Mr. Frasier with the source of most of the ingredients for their menu and serves as a wonderful illustration of how sensitive environmental stewardship and entrepreneurial spirit can go hand-in-hand. It should come as no surprise that Arrows has been featured on television programs such as PBS's ''Victory Garden,'' and NBC's ''Today Show.''

Like the restaurant, the garden has received tremendous acclaim in the press. Bon Appétit noted that ''[Arrows] helped pioneer the idea of growing your own food and paying attention to what's seasonal in a place that is unforgiving in its climate.'' Earlier this year, the Daily Green—a Web site that reports on the environmental concerns of everyday Americans—praised Mr. Gaier and Mr. Frasier as '' . . . stalwart forerunners of the sustainable movement.''

As ranking member of the U.S. Senate Committee on Small Business and Entrepreneurship, I am eminently proud of all of Maine's small firms, and am particularly impressed by Mr. Gaier's and Mr. Frasier's dedication to making Arrows the premier dining establishment that it has become. These two restaurateurs have helped transform American cuisine, and have brought the world to Maine—as well as Maine to the world. They are truly deserving of our admiration and praise, and I wish them well in all that they do.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States sumitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY THAT WAS ORIGINALLY DECLARED IN EXECUTIVE ORDER 13219 OF JUNE 26, 2001, WITH RESPECT TO THE WESTERN BALKANS—PM 54

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication stating that the Western Balkans emergency is to continue in effect beyond June 26, 2008.

The crisis constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting (i) extremist violence in the Republic of Macedonia and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo, that led to the declaration of a national emergency on June 26, 2001, in Executive Order 13219 and to Executive Order 13304 of May 28, 2003, has not been resolved. The acts of extremist violence and obstructionist activity outlined in Executive Order 13219, as amended, are hostile to U.S. interests and pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency declared with respect to the Western Balkans and maintain in force the comprehensive sanctions to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *June 24, 2008*.

MESSAGES FROM THE HOUSE

At 10:30 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 3403) to promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve 911 and E–911 access to those with disabilities.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 3403. An act to promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E–911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve 911 and E–911 access to those with disabilities.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

ENROLLED BILLS SIGNED

The President pro tempore (Mr. BYRD) announced that on today, June 24, 2008, he had signed the following enrolled bills, previously signed by the Speaker of the House:

H.R. 634. An act to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

H.R. 814. An act to require the Consumer Product Safety Commission to issue regulations mandating child-resistant closures on all portable gasoline containers.

H.R. 5778. An act to preserve the independence of the District of Columbia Water and Sewer Authority.

S. 188. An act to revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

S. 254. An act to award posthumously a Congressional gold medal to Constantino Brumidi.

S. 682. An act to award a congressional gold medal to Edward William Brooke III in

recognition of his unprecedented and enduring service to our Nation.

S. 1692. An act to grant a Federal charter to Korean War Veterans Association, Incorporated.

S. 2146. An act to authorize the Administrator of the Environmental Protection Agency to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects, and for other purposes.

At 3:25 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2452. An act to amend the Federal Water Pollution Control Act to ensure that publicly owned treatment works monitor for and report sewer overflows, and for other purposes.

H.R. 4044. An act to amend title 11 of the United States Code to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

H.R. 5001. An act to authorize the Administrator of General Services to provide for the redevelopment of the Old Post Office Building located in the District of Columbia.

H.R. 6040. An act to amend the Water Resources Development Act of 2007 to clarify the authority of the Secretary of the Army to provide reimbursement for travel expenses incurred by members of the Committee on Levee Safety.

H.R. 6109. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster hazard mitigation program, and for other purposes.

H.R. 6331. An act to amend titles XVIII and XIX of the Social Security Act to extend expiring provisions under the Medicare Program, to improve beneficiary access to preventive and mental health services, to enhance low-income benefit programs, and to maintain access to care in rural areas, including pharmacy access, and for other purposes.

H.R. 6344. An act to provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 2. Concurrent resolution expressing the sense of the Congress that children in the United States should understand and appreciate the contributions of individuals from the territories of the United States and the contributions of such individuals in United States history.

H. Con. Res. 372. Concurrent resolution supporting the goals and ideals of Black Music Month and to honor the outstanding contributions that African-American singers and musicians have made to the United States.

The message further announced that pursuant to section 4(a) of the Commission on the Abolition of the Transatlantic Slave Trade (Public Law 110–183), and the order of the House of January 4, 2007, the Speaker appoints the following members on the part of the House of Representatives to the Commission on the Abolition of the Transatlantic Slave Trade:

Mr. DONALD PAYNE of Newark, New Jersey.

Mr. Howard Dodson of New York, New York.

Ms. Evelyn Brooks Higginbotham of Cambridge, Massachusetts.

At 6:21 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6327. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 379. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4044. An act to amend title 11 of the United States Code to exempt for a limited period, from the application of the means-test presumption of abuse under Chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days; to the Committee on the Judiciary.

H.R. 5001. An act to authorize the Administrator of General Services to provide for the redevelopment of the Old Post Office Building located in the District of Columbia; to the Committee on Environment and Public Works.

H.R. 6109. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster hazard mitigation program, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 6344. An act to provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, and for other purposes; to the Committee on the Judiciary.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 2. Concurrent resolution expressing the sense of the Congress that children in the United States should understand and appreciate the contributions of individuals from the territories of the United States and the contributions of such individuals in United States history; to the Committee on Energy and Natural Resources.

H. Con. Res. 372. Concurrent resolution supporting the goals and ideals of Black Music Month and to honor the outstanding contributions that African American singers and musicians have made to the United States; to the Committee on Health, Education, Labor, and Pensions.

MEASURES DISCHARGED

The following measure was discharged from the Committee on Homeland Security and Governmental Affairs by unanimous consent, and referred as indicated:

S. 3145. A bill to designate a portion of United States Route 20A, located in Orchard Park, New York, as the ''Timothy J. Russert Highway''; to the Committee on Environment and Public Works.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 6331. An act to amend titles XVIII and XIX of the Social Security Act to extend expiring provisions under the Medicare Program, to improve beneficiary access to preventive and mental health services, to enhance low-income benefit programs, and to maintain access to care in rural areas, including pharmacy access, and for other purposes.

S. 3186. A bill to provide funding for the Low-Income Home Energy Assistance Program.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, June 24, 2008, she had presented to the President of the United States the following enrolled bills:

S. 188. An act to revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

S. 254. An act to award posthumously a Congressional gold medal to Constantino Brumidi.

S. 682. An act to award a congressional gold medal to Edward William Brooke III in recognition of his unprecedented and enduring service to our Nation.

S. 1692. An act to grant a Federal charter to Korean War Veterans Association, Incorporated.

S. 2146. An act to authorize the Administrator of the Environmental Protection Agency to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6718. A communication from the Director, Naval Reactors, transmitting, pursuant to law, the Naval Nuclear Propulsion Program's latest reports on environmental monitoring and ideological waste disposal, worker radiation exposure, and occupational safety and health; to the Committee on Armed Services.

EC–6719. A communication from the Executive Vice President and Chief Financial Officer, Federal Home Loan Bank of Atlanta, transmitting, pursuant to law, the Bank's management reports and statements on system of internal controls for fiscal year 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–6720. A communication from the Administrator, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, notification of the fact that the cost of response and recovery efforts for FEMA–3285–EM in

the State of Wisconsin has exceeded the limit for a single emergency declaration; to the Committee on Banking, Housing, and Urban Affairs.

EC–6721. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of the discontinuation of service in an acting role for the position of Secretary, received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6722. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Guaranteed Loans; Number of Days of Interest Paid on Loss Claims'' (RIN0560–AH55) received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6723. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (73 FR 33313) received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6724. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (73 FR 33315) received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6725. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (73 FR 33317) received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6726. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' (73 FR 33311) received on June 20, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6727. A communication from the Vice President and Controller, Federal Home Loan Bank of Des Moines, transmitting, pursuant to law, the Bank's management report for fiscal year 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–6728. A communication from the Assistant Secretary, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act'' (RIN1010–AD17) received on June 19, 2008; to the Committee on Energy and Natural Resources.

EC–6729. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting a document issued by the Agency entitled, ''Hazard Education Before Renovation of Target Housing; State of Colorado Authorization Application''; to the Committee on Environment and Public Works.

EC–6730. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Florida; Prevention of Significant Deterioration'' (FRL No. 8684–4) received on June 20, 2008; to the Committee on Environment and Public Works.

EC–6731. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Exhaust Emission Standards for 2012 and Later Model Year Snowmobiles'' (FRL No. 8684–6) received on June 20, 2008; to the Committee on Environment and Public Works.

EC–6732. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities'' ((RIN2060–AM74)(FRL No. 8684–8)) received on June 20, 2008; to the Committee on Environment and Public Works.

EC–6733. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories'' ((RIN2060–A027) (FRL No. 8683–3)) received on June 20, 2008; to the Committee on Environment and Public Works.

EC–6734. A communication from the Deputy Director, National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Technology Innovation Program'' (RIN0693–AB59) received on June 24, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6735. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 5'' (RIN3150–AI24) received on June 24, 2008; to the Committee on Environment and Public Works.

EC–6736. A communication from the Administrator, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, transmitting, pursuant to law, a report entitled, ''National Alcohol and Drug Addiction Recovery Month''; to the Committee on Homeland Security and Governmental Affairs.

EC–6737. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of a vacancy and designation of an acting officer for the position of Assistant Secretary, Office of Postsecondary Education, received on June 20, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–6738. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of a vacancy and designation of an acting officer for the position of Assistant Secretary, Office of Management, received on June 20, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–6739. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, a report on Federal agencies' use of the physicians' comparability allowance program; to the Committee on Homeland Security and Governmental Affairs.

EC–6740. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2007, through March 31, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6741. A communication from the Secretary and Director, Postal Regulatory Commission, transmitting, pursuant to law, the report of a vacancy and designation of an acting officer for the position of Commissioner, received on June 20, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6742. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, a report on the Proposed Personnel Demonstration Project; to the Committee on Homeland Security and Governmental Affairs.

EC–6743. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a discontinuation of service in acting role in the position of U.S. Attorney of the District of South Carolina, received on June 20, 2008; to the Committee on the Judiciary.

EC–6744. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a confirmation for the position of U.S. Attorney of the District of South Carolina, received on June 20, 2008; to the Committee on the Judiciary.

EC–6745. A communication from the Director of Regulations Management, National Cemetery Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capital Crimes'' (RIN2900–AM86) received on June 20, 2008; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 2504. A bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes (Rept. No. 110–399).

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

S. 2565. A bill to establish an awards mechanism to honor exceptional acts of bravery in the line of duty by Federal law enforcement officers.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

Mr. INOUYE. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Coast Guard nomination of Jeffrey R. Platt, to be Lieutenant.

*Coast Guard nomination of Eileen M. Lutkenhouse, to be Lieutenant Commander.

*Coast Guard nomination of Nakeisha B. Hills, to be Lieutenant Commander.

*Coast Guard nomination of Elizabeth A. McNamara, to be Lieutenant Commander.

*National Oceanic and Atmospheric Administration nominations beginning with Mark H. Pickett and ending with Patrick M. Sweeney III, which nominations were received by the Senate and appeared in the Congressional Record on May 22, 2008.

By Mr. BIDEN for the Committee on Foreign Relations.

*Liliana Ayalde, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Paraguay.

Nominee: Liliana Ayalde.

Post: Ambassador to Paraguay.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses: Stefanie Narvaez, none; Natalia Narvaez, none.

4. Parents: Jaime Ayalde, none; Mercedes Ayalde, none.

5. Grandparents: N/A.

6. Brothers and spouses: Jaime H. Ayalde (brother), none; Julie Ayalde (sister-in-law), none.

7. Sisters and spouses: Maria E. Ayalde (sister), none; Sergio Romero (brother-in-law), none; Gloria Perez-Ayalde (sister), none; Gustavo Perez (brother-in-law), none.

*John R. Beyrle, of Michigan, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Russian Federation.

Nominee: John Beyrle.

Post: U.S. Ambassador, Moscow.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self: John Beyrle, 0.

2. Spouse: Jocelyn Greene, 0.

3. Children: Alison Beyrle, 0; Caroline Beyrle, 0.

4. Parents: JoAnne Beyrle, deceased; Joseph Beyrle I, deceased.

5. Grandparents: deceased.

6. Brothers and spouses: Joseph Beyrle II, 0, Kathy Alward, 0.

7. Sisters and spouses: Julie Schugars, 0; Jack Schugars, 0.

*Asif J. Chaudhry, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Moldova.

Nominee: Asif J. Chaudhry.

Post: Moldova.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, N/A.

2. Spouse, $250, February 2004, John Kerry.

3. Children and Spouses: N/A.

4. Parents: N/A.

5. Grandparents: N/A.

6. Brothers and Spouses: N/A

7. Sisters and Spouses: N/A.

*James Culbertson, of North Carolina, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of the Netherlands.

Nominee: James B. Culbertson.

Post: Ambassador to the Kingdom of the Netherlands.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, $750, 10/28/2004, Richard Burr; $1,000, 03/10/2005, Virginia Foxx; $2,100, 05/19/2005, Elizabeth Dole; $2,100, 05/19/2005, Elizabeth Dole; $2,300, 05/07/2007, Rudy Giuliani; $250, 10/17/2007, Richard Burr.

2. Spouse: Germaine C. Culbertson, $800, 05/19/2005, Elizabeth Dole; $250, 10/16/2006, Richard Burr; $2,300, 05/07/2007, Rudy Giuliani.

3. Children and spouses: Blair and James W. Robbins, no contributions.

4. Parents: Arthur B. and Siddie Belle Culbertson, deceased.

5. Grandparents: Livi Angus and Mary Braswell Lancaster, deceased; Henry Young and Dora Durham Culbertson, deceased.

6. Brothers and spouses: Arthur B. and Brenda Culbertson, Jr., no contributions.

7. Sisters and spouses: none.

*Rosemary Anne DiCarlo, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

*David F. Girard-diCarlo, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Austria.

Nominee: David Franklin Girard-diCarlo.

Post: Chief of Mission, U.S. Embassy, Rep. of Austria.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, See attached.

2. Spouse, See attached.

3. Children and spouses, none.

4. Parents, deceased.

5. Grandparents, deceased.

6. Brothers and spouses: John Girard-diCarlo, none; Pamela Girard-diCarlo, none.

7. Sisters and spouses: Elizabeth Severino, ncone.

1. Contributions for David Franklin Girard-diCarlo: 2,300, 1/16/2008, McCain 2008; 5,000, 2/26/2008, D & G PAC (Dent and Gerlach); 2,300, 3/21/2008, Texans for Senator John Cornyn; 1,000, 3/28/2008, Manion for Congress, *Contribution made after Mr. Girard-diCarlo signed SFRC questionnaire on 3/26/08.

2,100, 1/15/2007, McCain 2008; 1,000, 3/5/2007, Davis for Congress; 2,300, 3/5/2007, Senate Majority Fund; 500, 4/10/2007, Collins for Senate; 2,300, 4/25/2007, Coleman for Senate; 200, 6/1/2007, McCain 2008; 2,300, 6/1/2007, Citizens for Arlen Specter; 2,300, 6/1/2007, Treadwell for Congress; 1,000, 6/19/2007, Team Sununu (R–NH); 1,000, 7/20/2007, Castle Campaign Fund; 1,000, 7/20/2007, People for English; 1,000, 10/2/2007, Ferguson for Congress; 5,000, 10/10/2007, Republican Federal Committee of PA; 2,300, 11/6/2007, Treadwell for Congress; 1,000, 11/7/2007, Collins for Senate; 2,300, 12/19/2007, Re-elect Senator Arlen Specter.

1,000, 2/22/2006, PHILPAC (Cong Phil English); 2,100, 2/22/2006, Kean for U.S. Senate; 2,100, 3/22/2006, Friends of Conrad Burns; 1,000, 3/27/2006, Tom Davis for Congress; 1,000, 3/27/2006, Fitzpatrick for Congress; 25,000, 4/27/2006, Republican National Committee; 4,200, 4/30/2006, Steele for Maryland, Inc.; 1,000, 5/16/2006, Dent for Congress; 5,000, 6/15/2006, Santorum Majority Committee; 2,100, 8/26/2006, Weldon Victory Committee; 2,100, 10/27/2006, DeWine for Senate; 1,000, 10/27/2006, Nancy Johnson for Congress.

1,000, 5/1/2005, Friends of George Allen; 4,200, 5/1/2005, Santorum 2006; 2,100, 5/1/2005, Friends of Don Sherwood; 2,100, 5/1/2005, Talent for Senate; 25,000, 5/11/2005, Republican Regents; 2,100, 6/1/2005, Talent for Senate; 500, 6/9/2005, People with Hart; 1,600, 6/26/2005, People with Hart; 1,000, 7/18/2005, Stevens for Senate Committee; 1,000, 9/12/2005, Senate Republican Majority; 1,000, 9/16/2005, Kyl for Senate; 1,000, 9/22/2005, Friends of Mike Ferguson; 4,200, 9/28/2005, Gerlach for Congress; 2,100, 10/26/2005, Delay Congressional Committee; 5,000, 10/26/2005, McCain—Straight Talk America PAC.

1,000, 3/2/2004, Castle Campaign Fund; 2,000, 3/2/2004, Citizens for Arlen Specter; 2,000, 3/2/2004, Friends of Melissa Brown; 2,000, 3/2/2004, Martinez for Senate; 4,000, 4/22/2004, Bill Shuster for Congress; 25,000, 4/27/2004, Republican National Committee; 2,000, 5/17/2004, Thune for Senate; 2,000, 8/27/2004, Charlie Dent for Congress; 2,000, 8/27/2004, Jim Gerlach for Congress Committee; 2,000, 8/27/2004, Scott Paterno for Congress; 2,000, 8/27/2004, The Richard Burr Committee; 5,000, 10/15/2004, Republican Federal Committee of PA.

2. Contributions for Constance Bricker Girard-diCarlo: 2,300, 1/16/2008, McCain 2008; 5,000, 2/26/2008, D & G PAC (Dent and Gerlach); 2,300, 3/21/2008, Texans for Senator John Cornyn.

2,100, 1/15/2007, McCain 2008; 2,300, 3/5/2007, Senate Majority Fund; 2,300, 4/25/2007, Coleman for Senate; 200, 6/1/2007, McCain 2008; 2,300, 6/1/2007, Citizens for Arlen Specter; 2,300, 6/1/2007, Treadwell for Congress; 1,000, 7/20/2007, Castle Campaign Fund; 1,000, 7/20/2007, People for English; 1,000, 10/2/2007, Ferguson for Congress; 2,300, 11/6/2007, Treadwell for Congress; 1,000, 11/7/2007, Collins for Senate; 2,300, 12/19/2007, Re-elect Senator Arlen Specter.

1,000, 2/22/2006, PHILPAC (Phil English); 2,100, 2/22/2006, Kean for U.S. Senate; 2,100, 3/22/2006, Friends of Conrad Burns; 1,000, 3/27/2006, Fitzpatrick for Congress; 25,000, 4/27/2006, Republican National Committee; 2,100, 4/30/2006, Steele for Maryland, Inc.; 2,100, 5/16/2006, Friends of Don Sherwood; 8,000, 6/15/2006, Santorum Majority Committee; 2,100, 8/26/2006, Weldon Victory Committee; 2,100, 10/27/2006, DeWine for Senate; 500, 12/6/2006, Stevens for Senate Committee.

1,000, 3/9/2005, Dent for Congress; 4,200, 5/1/2005, Santorum 2006; 2,000, 5/11/2005, Senate Victory Fund; 1,000, 5/11/2005, People for English; 25,000, 5/11/2005, Republican Regents; 1,000, 5/19/2005, Young—Alaskans for Don Young; 4,200, 6/1/2005, Talent for Senate; 4,200, 9/28/2005, Gerlach for Congress; 2,100, 10/26/2005, Delay Congressional Committee.

2,000, 1/26/2004, HALPAC; 1,000, 3/2/2004, Castle Campaign Fund; 2,000, 3/2/2004, Friends of Melissa Brown; 2,000, 3/2/2004, Martinez for Senate; 4,000, 3/2/2004, Citizens for Arlen Specter; 1,000, 3/30/2004, Citizens for Bunning (KY); 1,000, 3/30/2004, Citizens for Cochran (MS); 1,000, 3/30/2004, Vitter for US Senate (LA); 4,000, 4/22/2004, Bill Shuster for Congress; 25,000, 4/27/2004, Republican National Committee; 2,000, 5/17/2004, Thune for Senate; 2,000, 6/7/2004, Friends of Don Sherwood; 2,000, 8/27/2004, Charlie Dent for Congress; 2,000, 8/27/2004, Jim Gerlach for Congress Committee; 2,000, 8/27/2004, Scott Paterno for Congress; 2,000, 8/27/2004, The Richard Burr Committee.

John Melvin Jones, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Co-operative Republic of Guyana.

Noninee: John Melvin Jones.

Post—Georgetown, Guyana.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.

2. Spouse, none.
3. Children and spouses: Christie R. and Keenan Aden, Jamal H.M. Jones, none.
4. Parents: Beverly E. and Bertha L. Jones, both decreased.
5. Grandparents: John and Marian Porter, both deceased.
6. Brothers and spouses; Earl B. Jones, decreased.
7. Sisters and spouses: Elaine V. Williams; Jaculyn L. Jones, none.

*Tina S. Kaidanow, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kosovo.

Nominee: Tina S. Kaidanow.

Post: U.S. Ambassador to Kosovo.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses, n/a.
4. Parents: Esther Kaidanow, none; Howard Kaidanow, none.
5. Grandparents, n/a.
6. Brothers and spouses: Eric Kaidanow, none; Patricia Kaidanow, none.
7. Sisters and spouses, n/a.

*Philip Thomas Reeker, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Macedonia.

Nominee: Philip T. Reeker.

Post: Ambassador to Macedonia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Philip T. Reeker $250, 12/13/05, Gabrielle Giffords; $250, 03/18/06, Gabrielle Giffords; $250, 06/26/06, Gabrielle Giffords.
2. Spouse: Solveig C. Reeker, none.
3. Children and spouses: N/A.
4. Parents: Larry H. Reeker (father), none; Linda K. Davenport (mother), none.
5. Grandparents: Walter M. & Frances M. Reeker, both deceased; Emery I. Karman and Constance K. St. Clair, both deceased.
6. Brothers and Spouses: David A. and Laura Reeker, none; Greg J. Reeker, none; Seth S. Reeker, none.
7. Sister and Spouse: Christina & Patrick Davenport, none.

*Kristen Silverberg, of Texas, to be Representative of the United States of America to the European Union, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Nominee: Kristen Lee Silverberg.

Post: Ambassador to the European Union.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, President George W. Bush, $2000.
2. Parents: Eric and Rhoda Silverberg, none.
3. Grandparents: Axel Silverberg, none.
4. Sister and Spouse: Lee Silverberg and Lane Duncan, none.

*Rosemary Anne DiCarlo, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Alternate Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Alternate Representative of the United States of America for Special Political Affairs in the United Nations.

* Lezlee J. Westine, of Virginia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 2009.

* Lyndon L. Olson, Jr., of Texas, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 2008.

* Eric J. Boswell, of the District of Columbia, to be an Assistant Secretary of State (Diplomatic Security).

* Eric J. Boswell, of the District of Columbia, to be Director of the Office of Foreign Missions, and to have the rank of Ambassador during his tenure of service.

Mr. BIDEN. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

* Foreign Service nomination of Russell Green.

* Foreign Service nomination of Dawn M. Liberi.

* Foreign Service nominations beginning with Matthew Kazuaki Asada and ending with Adam Zerbinopoulos, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on May 22, 2008. (minus 1 nominee: Tunisia M. Owens)

* Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DORGAN (for himself, Mr. NELSON of Florida, and Mr. CARPER):

S. 3183. A bill to amend the Commodity Exchange Act to provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KERRY:

S. 3184. A bill to make grants to States to implement statewide portal initiatives, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL (for herself, Mr. WHITEHOUSE, Mr. SANDERS, Mr. KERRY, Mr. WYDEN, and Mr. NELSON of Florida):

S. 3185. A bill to provide for regulation of certain transactions involving energy commodities, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act and the Federal Power Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SANDERS (for himself, Mr. LEAHY, Mr. BROWN, and Mr. CARDIN):

S. 3186. A bill to provide funding for the Low-Income Home Energy Assistance Program; read the first time.

By Mr. BIDEN (for himself and Mr. LUGAR) (by request):

S.J. Res. 42. A joint resolution relating to the approval of the proposed agreement for nuclear cooperation between the United States and the Russian Federation; to the Committee on Foreign Relations pursuant to 42 U.S.C. 2159, for not to exceed 45 calendar days.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN (for himself, Ms. SNOWE, Mrs. BOXER, Mr. LUGAR, Mr. KERRY, Mr. SPECTER, Mr. MENENDEZ, Mr. BROWNBACK, Mr. BAYH, Ms. STABENOW, and Mr. FEINGOLD):

S. Res. 598. A resolution expressing the sense of the Senate regarding the need for the United States to lead renewed international efforts to assist developing nations in conserving natural resources and preventing the impending extinction of a large portion of the world's plant and animal species; to the Committee on Foreign Relations.

By Mr. NELSON of Nebraska (for himself, Mr. HARKIN, Mr. HAGEL, and Mr. GRASSLEY):

S. Res. 599. A resolution expressing the condolences of the Senate to those affected by the tragic events following the tornado that hit the Little Sioux Scout Ranch in Little Sioux, Iowa, on June 11, 2008; considered and agreed to.

By Mr. REID (for Mr. OBAMA (for himself, Mr. SPECTER, Mr. LEAHY, and Mr. SCHUMER)):

S. Res. 600. A resolution commemorating the 44th anniversary of the deaths of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 621

At the request of Mr. FEINGOLD, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 621, a bill to establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II.

S. 661

At the request of Mrs. CLINTON, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 661, a bill to establish kinship navigator programs, to establish guardianship assistance payments for children, and for other purposes.

S. 803

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a

cosponsor of S. 803, a bill to repeal a provision enacted to end Federal matching of State spending of child support incentive payments.

S. 960

At the request of Mrs. CLINTON, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 960, a bill to establish the United States Public Service Academy.

S. 1232

At the request of Mr. DODD, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1232, a bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a voluntary policy for managing the risk of food allergy and anaphylaxis in schools, to establish school-based food allergy management grants, and for other purposes.

S. 1410

At the request of Mr. COLEMAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1410, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids.

S. 1661

At the request of Mr. DORGAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1661, a bill to communicate United States travel policies and improve marketing and other activities designed to increase travel in the United States from abroad.

S. 1963

At the request of Mr. ROCKEFELLER, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1963, a bill to amend the Internal Revenue Code of 1986 to allow bonds guaranteed by the Federal home loan banks to be treated as tax exempt bonds.

S. 1970

At the request of Mr. DODD, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1970, a bill to establish a National Commission on Children and Disasters, a National Resource Center on Children and Disasters, and for other purposes.

S. 2042

At the request of Ms. STABENOW, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2042, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 2140

At the request of Mr. DORGAN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 2140, a bill to award a Congressional Gold Medal to Francis Collins, in recognition of his outstanding contributions and leadership in the fields of medicine and genetics.

S. 2173

At the request of Mr. HARKIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2173, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 2279

At the request of Mr. BIDEN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 2279, a bill to combat international violence against women and girls.

S. 2504

At the request of Mr. NELSON of Florida, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 2504, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 2505

At the request of Ms. CANTWELL, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2505, a bill to allow employees of a commercial passenger airline carrier who receive payments in a bankruptcy proceeding to roll over such payments into an individual retirement plan, and for other purposes.

S. 2618

At the request of Mr. ISAKSON, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 2618, a bill to amend the Public Health Service Act to provide for research with respect to various forms of muscular dystrophy, including Becker, congenital, distal, Duchenne, Emery-Dreifuss Facioscapulohumeral, limb-girdle, myotonic, and oculopharyngeal muscular dystrophies.

S. 2666

At the request of Ms. CANTWELL, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2666, a bill to amend the Internal Revenue Code of 1986 to encourage investment in affordable housing, and for other purposes.

S. 2681

At the request of Mr. INHOFE, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 2681, a bill to require the issuance of medals to recognize the dedication and valor of Native American code talkers.

S. 2731

At the request of Mr. BIDEN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2731, a bill to authorize appropriations for fiscal years 2009 through 2013 to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes.

S. 2790

At the request of Ms. LANDRIEU, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2790, a bill to amend title XVIII of the Social Security Act to provide for coverage of comprehensive cancer care planning under the Medicare program and to improve the care furnished to individuals diagnosed with cancer by establishing a Medicare hospice care demonstration program and grants programs for cancer palliative care and symptom management programs, provider education, and related research.

S. 2818

At the request of Mr. ENZI, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2818, a bill to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide for enhanced health insurance marketplace pooling and relating market rating.

S. 2908

At the request of Mr. BROWN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2908, a bill to amend title II of the Social Security Act to prohibit the display of Social Security account numbers on Medicare cards.

S. 3072

At the request of Mr. WICKER, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 3072, a bill to provide for comprehensive health reform.

S. 3122

At the request of Ms. CANTWELL, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3122, a bill to amend the Commodity Exchange Act to provide for the regulation of oil commodities markets, and for other purposes.

S. 3130

At the request of Mr. DURBIN, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 3130, a bill to provide energy price relief by authorizing greater resources and authority for the Commodity Futures Trading Commission, and for other purposes.

S. 3131

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3131, a bill to amend the Commodity Exchange Act to ensure the application of speculation limits to speculators in energy markets, and for other purposes.

S. 3134

At the request of Mr. NELSON of Florida, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 3134, a bill to amend the Commodity Exchange Act to require energy commodities to be traded only on regulated markets, and for other purposes.

S. 3167

At the request of Mr. BURR, the names of the Senator from Alaska (Mr.

STEVENS), the Senator from South Carolina (Mr. DEMINT) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of S. 3167, a bill to amend title 38, United States Code, to clarify the conditions under which veterans, their surviving spouses, and their children may be treated as adjudicated mentally incompetent for certain purposes.

S. RES. 530

At the request of Mr. DORGAN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. Res. 530, a resolution designating the week beginning October 5, 2008, as ''National Sudden Cardiac Arrest Awareness Week''.

S. RES. 580

At the request of Mr. BAYH, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 580, a resolution expressing the sense of the Senate on preventing Iran from acquiring a nuclear weapons capability.

AMENDMENT NO. 4979

At the request of Mr. NELSON of Florida, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Illinois (Mr. OBAMA), the Senator from Illinois (Mr. DURBIN), the Senator from Washington (Ms. CANTWELL) and the Senator from Montana (Mr. TESTER) were added as cosponsors of amendment No. 4979 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5009

At the request of Mr. CRAPO, the names of the Senator from Arizona (Mr. KYL) and the Senator from Utah (Mr. HATCH) were added as cosponsors of amendment No. 5009 intended to be proposed to H.R. 3221, a bill to provide needed housing reform and for other purposes.

AMENDMENT NO. 5020

At the request of Mr. ENSIGN, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of amendment No. 5020 intended to be proposed to H.R. 3221, a bill to provide needed housing reform and for other purposes.

AMENDMENT NO. 5024

At the request of Ms. COLLINS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of amendment No. 5024 intended to be proposed to H.R. 3221, a bill to provide needed housing reform and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN (for himself, Mr. NELSON of Florida, and Mr. CARPER):

S. 3183. A bill to amend the Commodity Exchange Act to provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Mr. President, I rise to introduce a piece of legislation on behalf of myself, Senator NELSON of Florida, and Senator CARPER dealing with the subject of energy speculation. I want to run through a couple charts, and I want to describe the reason for the introduction of this legislation.

This chart shows the price of oil and what has happened to the price of oil. The price of oil has nearly doubled in a year. There is no justification for it, no fundamentals of supply and demand that explain what has happened to the price of oil.

These commodity contracts, by and large, are traded in this country on something called the commodity exchange—NYMEX, it is called. This is what it looks like. They trade back and forth, and there are legitimate reasons to trade on the exchanges. Those reasons to trade on the exchanges are for legitimate hedging for actual physical petroleum products for future delivery. The problem is, with respect to the oil markets, the legitimate hedging has become a smaller part of what is traded. There is now this unbelievable speculation going on in the commodity markets. That speculation has perverted the market, broken the market, causing the price of oil and gasoline to be well above that which is justifiable.

We have an organization in the Government called the Energy Information Administration, the EIA. They are the ones who know what there is to know about energy issues. As shown on this chart, here is what they have told us. Back in May of 2007—last year—here is where they said the price of oil would be. Back in July, they said it would be on this line, as shown on this chart; back in September, on this line. I hope they were not buying any commodities on the basis of their advice—they would be flat broke in a month. Here is what happened to the price. It went straight up. All the while, the EIA did not seem to have the foggiest notion of where the price was going to go. Why? Because the fundamentals do not justify what is happening.

Now I have the EIA coming down to testify before my subcommittee this week. I want to ask them these questions. They insist there is very little speculation in this marketplace. But most experts insist this has become an unbelievable spectacle of speculation that injures America's drivers and consumers, injures our industry, and causes great damage to our economy.

A House study, just in the last few days, from the House Subcommittee on Oversight and Investigations, said here is what has happened to the commodities market with respect to oil. As to the oil futures market: 37 percent used to be speculators in that market. Now it has gone to 71 percent. The speculators have taken over that market.

When the Commodity Exchange Act was passed by the Congress in the 1930s, here is what the congressional report said: This bill authorizes the Commission—the Commodity Futures Trading Commission; that is supposed to be the regulating body—to fix limitations on purely speculative trades and commitments.

Hedging is exempted. But for purely speculative positions, we provided the authority to the Commodity Futures Trading Commission to deal with that because we did not want this market to be taken over by speculators.

I have used these charts many times.

This one has to do with Fadel Gheit, the top energy analyst for Oppenheimer & Co. Here is what he says:

> There is absolutely no shortage of oil. I'm convinced that oil prices shouldn't be a dime above $55 a barrel.
>
> I call it the world's largest gambling hall. . . . It's open 24/7. . . . Unfortunately, it's totally unregulated. . . . This is like a highway with no cops on the beat and no speed limit and everybody's going 120 miles an hour.

I will not show all the charts I have shown in the past, but the CEO of Marathon Oil says:

> $100 oil isn't justified by the physical demand in the market.

It was recently reported Americans drove 4.5 to 5 billion fewer miles in the last 6 months than in the previous 6 months. So we are driving 4 or 5 billion fewer miles, using less energy. Four of the first 5 months of this year, crude oil inventories were up—not down, up. So if the supply of the product is going up and the use of the product is going down, the marketplace would have you believe—or at least you would expect—the price would come down. Instead, the price has gone up, which demonstrates this is not about market fundamentals. It is about an unbelievable orgy of speculation in the marketplace that is not justified.

Now the question is, Will Congress do something about it or will it just apply some lip gloss? Is this just something where we act as if we are doing something or are we going to drive the speculators out of this market? I am introducing legislation that is tough and real and will address this issue.

The regulating body here is the Commodity Futures Trading Commission. It has acted like most regulating bodies in recent years. Most of them are run by people who came to the Government not liking Government and not wanting to regulate. It all goes back to Mr. Pitt, back in 2001, in which he said: The Securities and Exchange Commission is going to be a business-friendly place. Well, we have seen a lot of these agencies that are business friendly. They just get out of the way and pretend they are in a deep Rip van Winkle sleep, and they are not going to see anything and they are not going to know anything and they are not going to care much about anything.

This agency is not much different—the Commodity Futures Trading Commission. The fact is, it has been asleep on its feet, just dead from the neck up. It is time for us to say to this agency: It is your job to regulate. The fact is, Franklin Delano Roosevelt, when he signed this legislation some 70, 80 years ago, said:

> It should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations.

Franklin Roosevelt knew it. Why doesn't this Commodity Futures Trading Commission know it?

The legislation I am introducing today does a couple things. No. 1, it demands the Commodity Futures Trading Commission by date certain to distinguish between that which represents normal hedging transactions between producers and consumers of a physical product and the rest, which is speculation. It says this market is designed for normal hedging of risks between producers and consumers of a physical product. Others who are engaged in excess speculation are going to be slapped with a higher margin—a 25-percent margin requirement—that is either quadruple or quintuple the current requirement, depending on what is assessed between the 5- and 7-percent rate. But this essentially says to speculators: It is going to cost you more to speculate in this marketplace if you are one of these folks who just want to speculate to make a lot of money.

Will Rogers talked about this long ago. He talked about people buying things they will never get from people who never had it. That is what is going on with investment banks, hedge funds, and a lot of others who are neck deep in this marketplace. They have never seen a barrel of oil. They don't want a barrel of oil. All they want to do is speculate and make a bundle of money. The problem is, it is damaging this country.

My legislation, No. 1, requires the separation of legitimate traders verses speculators. It puts an increased margin requirement on the speculators to try to wring some of that speculation out of the market.

No. 2, it requires position limits that are significant, imposed by the Commodity Futures Trading Commission.

No. 3, it requires the Commodity Futures Trading Commission to revoke or modify any previous actions they have taken in which they have prevented themselves from being able to regulate and see the transactions that exist in this futures market.

Unbelievably almost, the Commodity Futures Trading Commission, which is the regulator, decided, on its own volition, that it would allow, for example, a London exchange, largely owned by American interests, to come in and trade on computer terminals in Atlanta, GA, and pretend they are not American. So the Commodity Futures Trading Commission said: Do you know what, we will do a letter of no action so we can't regulate and can't see it. That is unbelievable, in my judgment. It is an unbelievably irresponsible position for a regulator to have taken. It is taken, I suppose, by those who believe ''regulations'' is a four-letter word. It is not. If ever we wonder about that, take a look at what has happened to the price of oil and gas in a situation where speculators have taken over.

The Commodity Futures Trading Commission is a regulator of this market. It has done a miserable job. It has nearly all the authority it needs to do the right thing. What I propose to do with the Commodity Futures Trading Commission is wring the speculators out of this market. They have distorted the market, broken the market, and we end up in a situation now where the price of gasoline is devastating this economy. The price of oil is not justified by supply and demand. When that happens, there is a responsibility for this Congress to act. It is an urgent responsibility, in my judgment, now for this Congress to say what is happening is wrong, it is hurting this country's economy, it is hurting industries and the American people, and we need to do something about it. The best start, in my judgment, would be to pass this legislation I am introducing today.

One final point. I am reaching out to Democratic and Republican offices in the hopes that this will be a bipartisan piece of legislation that will address a very serious issue on an urgent basis and begin to do something that moderates the price of oil and gas that many experts have told us is 20, 30, and in some cases 40 percent above that which is justified by the marketplace. We should not stand for it. We do not have to. We ought to pass this legislation soon.

By Mr. KERRY:

S. 3184. A bill to make grants to States to implement statewide portal initiatives, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, we must do all we can to ensure that our young people have the skills necessary to compete in today's global economy. My home State of Massachusetts has done an outstanding job ensuring that educators have access to the high-quality tools necessary to adequately prepare our students for the future. In particular, they have been one of a handful of pioneering states that have created a statewide, online education ''portal'', which is a suite of web-based tools that enhance the teaching and learning experience for teachers, parents, and students.

Education portals are a one-stop resource for educators, parents, and students to support teaching and learning, as well as leadership skills. Portals provide access to shared resources and create an entry point to other information and services including: lesson plans; research-based training resources; model classroom examples; engaging interactive media; listservs; and after-school resources. Among other things, a portal allows educators to quickly search for lesson plans or other resources by content standard, grade level, specific student and classroom needs, and/or topic. It also provides a secure, on-line community for educators to collaborate and discuss teaching and learning experiences, as well as providing a vital communication tool between the school and parents.

It is for these reasons, I am sponsoring legislation to help my State and others secure the funding they need to improve their education systems and prepare their students for success. While it is true that Congress has done a lot to promote education technology and set higher standards for teachers, more must be done to address the divide that afflicts so many of our rural and urban schools.

What is missing is a funding source for states to develop and maintain web-based tools for training, communication, collaboration, and curriculum planning. The Empowering Teaching and Learning Through Education Portals Act establishes annual competitive grants that will provide funding on a one-to-one basis for states that wish to implement and maintain best-practice education portals. The legislation also provides new tax incentives to private organizations that support State education portal efforts.

The Empowering Teaching and Learning Through Education Portals Act bridges the urban-rural digital divide by ensuring that all districts have access to the best available resources. It supports high quality teaching, professional development and retention of teachers and promotes an on-line support network and learning community for teachers and administrators. Furthermore, it provides teacher coaching and guidance in order to address the challenges of teaching a diverse student body, and collaborate on winning strategies to address various learning styles, needs, and achievement levels. It offers administrators tools to securely communicate and collaborate with district personnel, as well as with the Department of Education, and gives them access to formative assessments and other resources. Finally, it provides a means to actively engage students in a rich, relevant, multimedia environment that results in improved learning and student retention.

It is imperative that we prepare our children for the sophisticated workforce of the 21st century and an increasingly competitive global economy. This legislation takes some of the brightest ideas for modernizing teaching and learning and matches them with the dollars needed to translate them from paper to practice. That, I believe, is a goal we can all agree on.

I urge my colleagues to support the Empowering Teaching and Learning Through Education Portals Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3184

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Empowering Teaching and Learning Through Education Portals Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) 21ST CENTURY SKILLS.—The term ''21st century skills''—

(A) means skills that students need to succeed in school, work, and life; and

(B) includes—

(i) skills related either to core academic subjects or to 21st century themes;

(ii) learning and innovation skills, such as—

(I) creativity and innovation;

(II) critical thinking and problem solving; or

(III) communication and collaboration; and

(iii) life and career skills to prepare students for the global economy, such as—

(I) flexibility and adaptability;

(II) productivity and accountability; or

(III) leadership and responsibility.

(2) CORE ACADEMIC SUBJECTS; EDUCATIONAL AGENCIES; SCHOOLS; STATE.—The terms ''core academic subjects'', ''elementary school'', ''local educational agency'', ''secondary school'', ''State'', and ''State educational agency'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) COVERED EDUCATOR.—The term ''covered educator'' means a teacher, administrator, or other professional staff member, at a covered school.

(4) COVERED PARENT.—The term ''covered parent'' means the parent of a covered student.

(5) COVERED SCHOOL.—The term ''covered school'' means a Head Start agency operating a Head Start program, or a public school that is a preschool, elementary school, secondary school, or institution of higher education (including such an institution offering a program leading to a baccalaureate degree or a program leading to an advanced degree).

(6) COVERED STUDENT.—The term ''covered student'' means a student at a covered school.

(7) COVERED TEACHER.—The term ''covered teacher'' means a teacher at a covered school.

(8) EDUCATION TECHNOLOGY.—The term ''education technology'' means any technology resource that improves the learning, training, and engagement of students or helps teachers learn, improve their knowledge, and practice.

(9) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

(10) PROFESSIONAL DEVELOPMENT.—The term ''professional development'' means a resource or training that increases a teacher's skills, content knowledge, or other information that has a positive impact on student learning.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

SEC. 3. GRANTS.

(a) IN GENERAL.—The Secretary may award grants to eligible States, to pay for the Federal share of the cost of implementing and maintaining education portal initiatives.

(b) AMOUNTS.—The Secretary may award the grants for periods of not less than 1 year and not more than 3 years.

(c) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of the cost described in subsection (a) shall be 50 percent.

(2) NON-FEDERAL SHARE.—The State may provide the non-Federal share of the cost in cash or in kind, fairly evaluated, including plant, equipment, or services. The State may provide the non-Federal share from State, local, or private sources.

SEC. 4. APPLICATIONS AND AWARDS.

(a) IN GENERAL.—To be eligible to receive a grant under this section for an initiative, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(b) CONTENTS.—The application shall contain, at a minimum—

(1) a comprehensive plan for the initiative for which the State seeks the grant, including evidence that the initiative meets the requirements of subsections (a) and (c) of section 5;

(2) information describing how the State will provide the non-Federal share of the cost described in section 3(a), and will continue to provide that share during the implementation of the initiative and the remainder of the grant period;

(3) information describing how the State will meet the maintenance of effort requirements in section 6;

(4) information explaining the protocol the State will use to ensure safe and legal access to the education portal;

(5) an assurance that the State has established or will establish an advisory panel, to provide advice on the implementation and maintenance of the initiative, including representatives of leaders in school districts, leaders at institutions of higher education, State educational agencies, parents, and teachers; and

(6) a plan to ensure sufficient statewide bandwidth capacity and systems access to implement and maintain the State education portal.

(c) AWARDS.—In determining the amounts of grants under this Act, the Secretary—

(1) shall take into consideration the extent to which a State has developed and implemented an education portal initiative prior to the date of the submission of the application involved; but

(2) shall not penalize States that have made greater progress in developing and implementing such initiatives.

SEC. 5. USE OF FUNDS.

(a) REQUIRED USES.—A State that receives a grant under this Act for a fiscal year shall use the funds made available through the grant to implement or maintain an education portal initiative that includes—

(1) collecting and making available—

(A) high quality resources (including data, tools, and digital media content) for covered educators, covered students, and covered parents, that support teaching, leading, and learning, and are, as appropriate, aligned with State education standards; and

(B) information for covered teachers to use in assisting covered students to attain skills such as 21st century skills; and

(2) collecting resources for ongoing and sustainable professional development for covered educators, related to the use of education technology, and making the resources available through the implementation of research-based methods and strategies for teacher coaching, collaborating, or mentoring.

(b) ALLOWABLE USES.—The State may use the funds made available through the grant for such an initiative, for a portal that—

(1) gives covered educators access to formative assessment and other resources to address various student learning styles, needs, and achievement levels;

(2) provides an entry point to other information or services, including information on model examples of effective classroom practices, subscriptions or data systems, content standards, lesson plans, courses of study, engaging interactive media, Web resources, e-mail list management software, online portfolios, after-school program resources, and other educational resources;

(3) provides access to technology-based curriculum resources and tools that promote the teaching and learning of 21st century skills;

(4) enables covered educators to quickly search for lesson plans, professional development resources, model examples of effective classroom practices, or other resources, by content standard, grade level, or topic;

(5) provides an online support network or community for covered educators to collaborate on and discuss teaching, learning, curricula, and experiences, and serves as a communication tool between covered educators and covered parents;

(6) includes digital media content developed by a television public broadcasting entity in coordination with the grant recipient; or

(7) makes available access to 1 or more resource sections of the education portal, subject to the protocol described in section 4(b)(4), by covered education, covered students, and covered parents, from other States (with no requirement for State-specific log-ins), so that those covered educators, covered students, and covered parents can benefit from resources developed in the State, thereby expanding access to the national learning community.

(c) PROVISION OF AND ACCESS TO RESOURCES.—The covered educators, covered students, and covered parents in the State may provide resources and information for the education portal, subject to the protocol described in section 4(b)(4). The resources and information in the education portal shall be accessible statewide by the educators, students, and parents, subject to the protocol.

(d) OTHER FEDERAL FUNDS.—A State that receives a grant under part A of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.) may use funds made available through that grant to maintain (but not implement) the State's education portal initiative under this Act, after the end of the period in which the State receives funding under this Act.

(e) CONFORMING AMENDMENT.—Section 2113(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6613(a)) is amended by striking ''A'' and inserting ''Subject to section 5 of the Empowering Teaching and Learning Through Education Portals Act, a''.

SEC. 6. MAINTENANCE OF EFFORT.

(a) IN GENERAL.—A State that receives a grant under this Act for a fiscal year shall maintain the expenditures of the State for education portal initiatives at a level not less than the level of such expenditures of the State for the fiscal year preceding the first fiscal year for which the State received such a grant.

(b) REDUCTION.—If the Secretary determines that a State, during a fiscal year, expends less than the sum required to comply with subsection (a), the Secretary shall—

(1) determine the difference between the required sum and the expenditure; and

(2) reduce the State's grant under this Act for the following year by the amount of the difference.

SEC. 7. EVALUATIONS AND CONFERENCE.

(a) FEDERAL EVALUATION.—The Secretary shall conduct an evaluation of each initiative funded under this Act. The Secretary

shall submit a report containing the results of the evaluation to Congress.

(b) FEDERAL CONFERENCE.—Not less often than once every 2 years, the Secretary shall hold a conference for advisory panels described in section 4(b)(5), to share information on best practices relating to education portal initiatives.

(c) STATE EVALUATIONS.—Each State that receives a grant under this Act shall conduct an evaluation of the initiative funded under the grant, using funds provided as part of the non-Federal share of the costs described in section 3(a). The State shall prepare and submit to the Secretary a report containing the results of the evaluation.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $100,000,000 for each of fiscal years 2009 through 2012, and such sums as may be necessary for each of the following 2 fiscal years.

SEC. 9. SPECIAL RULES RELATING TO CORPORATE CHARITABLE CONTRIBUTIONS TO EDUCATION PORTAL PROJECTS OF ELIGIBLE STATES.

(a) IN GENERAL.—Paragraph (2) of Section 170(b) of the Internal Revenue Code of 1986 (related to percentage limitations) is amended by redesignating subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CORPORATE CONTRIBUTIONS TO EDUCATION PORTAL PROJECTS OF ELIGIBLE STATES.—

''(i) IN GENERAL.—In the case of qualified education portal project contributions—

''(I) subparagraph (A) shall be applied separately with respect to such contributions and with respect to other charitable contributions of the taxpayer, and

''(II) in applying subparagraph (A) to such qualified education portal project contributions, subparagraph (A) shall be applied by substituting '50 percent' for '10 percent'.

''(ii) QUALIFIED EDUCATION PORTAL PROJECT CONTRIBUTION.—For purposes of this paragraph, the term 'qualified education portal project contribution' means a charitable contribution in cash—

''(I) to a State (as defined in section 2 of the Empowering Teaching and Learning Through Education Portals Act) which has a grant application approved under section 4 of such Act, and

''(II) for the purpose of paying the non-Federal share of the cost of implementing and maintaining education portal initiatives (within the meaning of section 3 of such Act).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

Mr. BIDEN (for himself and Mr. LUGAR) (by request):

S.J. Res. 42. A joint resolution relating to the approval of the proposed agreement for nuclear cooperation between the United States and the Russian Federation; to the Committee on Foreign Relations pursuant to 42 U.S.C. 2159, for not to exceed 45 calendar days.

Mr. BIDEN. Mr. President, today Senator LUGAR and I introduce, by request, a resolution of approval of the proposed agreement for peaceful nuclear cooperation between the United States and the Russian Federation, which the President transmitted to Congress on May 13, 2008, pursuant to sections 123b. and 123d. of the Atomic Energy Act. Pursuant to section 130i.(2) of that Act, the majority and minority leaders have designated Senator LUGAR and me to introduce this resolution.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 598—EXPRESSING THE SENSE OF THE SENATE REGARDING THE NEED FOR THE UNITED STATES TO LEAD RENEWED INTERNATIONAL EFFORTS TO ASSIST DEVELOPING NATIONS IN CONSERVING NATURAL RESOURCES AND PREVENTING THE IMPENDING EXTINCTION OF A LARGE PORTION OF THE WORLD'S PLANT AND ANIMAL SPECIES

Mr. BIDEN (for himself, Ms. SNOWE, Mrs. BOXER, Mr. LUGAR, Mr. KERRY, Mr. SPECTER, Mr. MENENDEZ, Mr. BROWNBACK, Mr. BAYH, Ms. STABENOW, and Mr. FEINGOLD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 598

Whereas scientists estimate that approximately 1/10 of the world's known biological diversity is currently in danger of extinction, including at least 1/4 of all mammals, 1/3 of all primates, 1/3 of all amphibians, and 1/8 of all birds;

Whereas scientists have concluded that the initial stages of a major worldwide extinction event are occurring now and have estimated that by the end of the 21st century as much as 2/3 of the world's plant and animal species could be in danger of extinction;

Whereas scientists estimate that approximately 3/4 of the world's terrestrial plant and animal species reside in whole or in part in developing nations, where in many cases poor management of natural resources has exacerbated the threat of extinction to many species and directly harmed local communities;

Whereas, in addition to producing 20 percent of the world's carbon emissions, unsustainable forestry practices and illegal logging operations have led to the destruction of vast areas of forested land around the world, which, in turn, has led to species loss, increased flooding, erosion, insect infestations, and higher incidences of malaria and other infectious diseases;

Whereas the degradation of the marine environment and unsustainable fishing practices in many parts of the world have led to dramatic declines of many fish and other marine species;

Whereas the introduction of invasive species threatens natural habitats;

Whereas scientists have concluded that many species could face an increased risk of extinction from global climate change;

Whereas sound natural resource management and the conservation of species and habitats are vital to alleviating poverty for many communities in developing countries that depend on these resources for their livelihoods, food, medicinal compounds, housing material, and other necessities;

Whereas there are significant risks to the global and national economies from the destruction of natural resources around the world and the valuable services they provide, such as water and air purification, soil fertility and erosion control, flood and drought mitigation, protection from storm surges, and the sequestration of carbon;

Whereas human encroachment into natural ecosystems increases opportunities for the emergence and transmission of new animal-borne diseases that could cause high levels of human mortality and affect major global industries including travel, trade, tourism, food production, and finance;

Whereas loss of species can jeopardize important future pharmaceutical discoveries, given that more than 1/4 of all medicinal drugs possess active ingredients from wild species and that at least 1/2 of the most prescribed medicines in the United States are derived from natural compounds;

Whereas natural pollinators and the opportunities of wild and domesticated cross-breeding are vital to world and United States agriculture;

Whereas poverty aggravated by natural resource degradation contributes to political instability, ethnic and sectarian conflict, and the social conditions that can fuel increased violence and terrorism;

Whereas the extinction of plant and animal species raises profound ethical questions, and many religious traditions call upon human beings to act as good stewards of the Earth;

Whereas opportunities for sustainably managing natural resources and conserving viable populations of species and their habitats rapidly diminish every year;

Whereas a substantial body of academic and field research has identified global strategies and market based approaches for better managing natural resources and protecting biological diversity;

Whereas strategic large-scale and site-specific habitat conservation could help to buffer the impacts of climate change on endangered species and human communities;

Whereas an effective international conservation effort that ensures the use of natural resources on a sustainable basis and prevents the worst predicted extinction scenarios from unfolding will require commitment and action from all nations; and

Whereas the United States's traditional role in confronting international challenges, protecting the environment, expanding opportunities for people, and articulating a moral vision for global action gives the Nation the opportunity to lead an international conservation effort: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Government should make full use of Federal laws, regulations and policies, diplomatic agreements, and other appropriate mechanisms to—

(A) identify global conservation goals that help ensure the sustainable use of natural resources and protect biological diversity in terrestrial and marine environments of developing countries;

(B) focus international conservation efforts on natural areas that are important biodiversity conservation priorities and for which there is a good likelihood of success;

(C) raise the international profile of the debate by putting the issue of rapidly declining global biodiversity and poor natural resource management on the agenda of major international decision-making bodies;

(D) work with other donor nations to increase funding and other support for global conservation strategies that focus on achieving each of the goals identified in subparagraphs (A) through (C); and

(E) achieve meaningful progress in the next 5 years toward the goals identified in subparagraphs (A) through (C);

(2) the United States should use diplomatic mechanisms, relevant international institutions and agreements, and other appropriate mechanisms to lead other nations toward the

goals and actions identified in paragraph (1); and

(3) the efforts of Federal agencies should reflect a recognition of the extreme urgency of the problem and recognize that opportunities for increased conservation are rapidly dwindling, by annually providing to the appropriate Committees of Congress progress reports and action plans with regard to the goals and activities identified in paragraphs (1) and (2).

Mr. BIDEN. Mr. President, the evidence is clear. We stand at the brink of major losses among the living species on our planet. By the end of this century, as many as two out of every three plant and animal species could be in danger of extinction. This disturbing trend has many causes, but several are clear and manmade—they are our responsibility and they are within our control.

Our industrial emissions are changing our world's climate and, in so doing, drastically altering habitats—habitats already threatened by deforestation and other landuse changes. Unsustainable fishing and the spread of invasive species due to enhanced global commerce pose similar manmade challenges.

That is why I am introducing, along with Senators SNOWE, BOXER, LUGAR, KERRY, SPECTER, MENENDEZ, BROWNBACK, BAYH, STABENOW, and FEINGOLD, a resolution expressing the sense of the Senate that the United States should take a leadership role in protecting international biodiversity. With one out of every ten species facing extinction, with habitats declining, and with developing countries searching to build a better economic future while protecting their natural environments, now is the time for renewed efforts to protect our living world.

This morning, my colleagues and I hosted a briefing by Dr. Edward O. Wilson, renowned University Research Professor Emeritus at Harvard and author of two Pulitzer Prize-winning books, and Dr. Eric Chivian, who shared the Nobel Peace Prize and is Founder and Director of the Center for Health and the Global Environment at Harvard Medical School. These two eminent scientists made the case that biodiversity is not just a moral, ecological, and economic issue, but also one of major importance to human health.

We often find, Mr. President, that the areas most in danger are in developing nations, which have the least ability to protect them. Developing nations face very real economic and human challenges. Many are struggling to provide enough food for their people, especially given the recent rise in food prices. They now face the choice between feeding their people and preserving their environment. We know how that will turn out. We must give them another choice.

To do that, the United States and other wealthy nations must help. The 10 colleagues with whom I worked on this resolution understand that protecting our global biodiversity is actually in our own national interest. Sustainable agricultural practices promise sustainable economies in the developing world. A stable climate will reduce the threat of water shortages, shifting growing seasons, population movements, and resource wars. Protecting habitats not only protects the rich diversity of life on earth—protecting habitats will preserve some of the most basic building blocks of our economies and societies.

Not least, as Dr. Wilson and Dr. Chivian so persuasively argue, the preservation of biodiversity is an investment in human health. More than a quarter of the world's medicinal drugs possess active ingredients from wild species, and more than half of the most prescribed medicines in the United States are based on natural compounds. If we hope to advance medicine, to ease pain and suffering and to extend lifespans, the bounty of nature offers an indispensable guide and resource.

Finally, we have a moral obligation to protect biodiversity. Ensuring that we can feed and clothe and shelter millions more people while preserving the elaborate tapestry of creation will allow our children and grandchildren to inherit the rich planet that we were bequeathed. Species extinctions are nothing new. But species extinctions that are avoidable, that are within our power to prevent, extinctions due to our greed, or our ignorance, impose on us a special responsibility. Those are mistakes that can never be undone. We must resolve to do all we can to replace greed with a better calculation of our long-term interests. We must resolve to replace ignorance with knowledge and with wisdom.

That is why my colleagues and I are offering the resolution, to express the will of the Senate to redouble United States efforts internationally to protect our world in all its complexity, and diversity.

SENATE RESOLUTION 599—EXPRESSING THE CONDOLENCES OF THE SENATE TO THOSE AFFECTED BY THE TRAGIC EVENTS FOLLOWING THE TORNADO THAT HIT THE LITTLE SIOUX SCOUT RANCH IN LITTLE SIOUX, IOWA, ON JUNE 11, 2008.

Mr. NELSON of Nebraska (for himself, Mr. HARKIN, Mr. HAGEL, and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 599

Whereas, on the evening of June 11, 2008, a tornado struck the Little Sioux Scout Ranch in Little Sioux, Iowa;

Whereas 4 lives were tragically lost, and many other people were injured;

Whereas Boy Scouts and Boy Scout leaders at the camp showed great heroism and courage in providing aid and assistance to their fellow Scouts;

Whereas the first responders, firefighters, and law enforcement, and medical personnel worked valiantly to help provide care and comfort to those who were injured;

Whereas the Boy Scouts of America will continue to feel the loss and remember the courage of the Boy Scouts who were at the Little Sioux Scout Ranch the evening of June 11, 2008;

Whereas the Boy Scouts of America will continue to develop young men who show the character, strength, and bravery that was demonstrated by the Boy Scouts at the Little Sioux Scout Ranch on the evening of June 11, 2008; and

Whereas the people of Nebraska and Iowa have embraced those affected and will continue to offer support to the families of those who were lost and injured; Now, therefore, be it:

Resolved, That the Senate—

(1) expresses its heartfelt condolences to the families and friends of those who lost their lives in the terrible events of June 11, 2008, at the Little Sioux Scout Ranch in Little Sioux, Iowa: Sam Thomsen, Josh Fennen, and Ben Petrzilka of Omaha, Nebraska, and Aaron Eilerts of Eagle Grove, Iowa;

(2) shares its thoughts and prayers for a full recovery for all those who were injured;

(3) commends the Boy Scouts of America for the support the organization has provided to the families and friends of those who were lost and injured;

(4) extends its thanks to the first responders, firefighters, and law enforcement, and medical personnel who took quick action to provide aid and comfort to the victims; and

(5) stands with the people of Nebraska and Iowa as they begin the healing process following this terrible event.

SENATE RESOLUTION 600—COMMEMORATING THE 44TH ANNIVERSARY OF THE DEATHS OF CIVIL RIGHTS WORKERS ANDREW GOODMAN, JAMES CHANEY, AND MICHAEL SCHWERNER IN PHILADELPHIA, MISSISSIPPI, WHILE WORKING IN THE NAME OF AMERICAN DEMOCRACY TO REGISTER VOTERS AND SECURE CIVIL RIGHTS DURING THE SUMMER OF 1964, WHICH HAS BECOME KNOWN AS ''FREEDOM SUMMER''

Mr. REID (for Mr. OBAMA (for himself, Mr. SPECTER, Mr. LEAHY, and Mr. SCHUMER)) submitted the following resolution; which was considered and agreed to:

S. RES. 600

Whereas 44 years ago, on June 21, 1964, Andrew Goodman, James Chaney, and Michael Schwerner were murdered in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer'';

Whereas Andrew Goodman was a 20-year-old White anthropology major at New York's Queens College, who volunteered for the ''Freedom Summer'' project;

Whereas James Chaney, from Meridian, Mississippi, was a 21-year-old African-American civil rights activist who joined the Congress of Racial Equality (CORE) in 1963 to work on voter education and registration;

Whereas Michael ''Mickey'' Schwerner, from Brooklyn, New York, was a 24-year-old White CORE field secretary in Mississippi and a veteran of the civil rights movement;

Whereas in 1964, Mississippi had a Black voting-age population of 450,000, but only 16,000 Blacks were registered to vote;

Whereas most Black voters were disenfranchised by law or practice in Mississippi;

Whereas in 1964, Andrew Goodman, James Chaney, and Michael Schwerner volunteered to work as part of the ''Freedom Summer'' project that involved several civil rights organizations, including the Mississippi State chapter of the National Association for the Advancement of Colored People, the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, and CORE, with the purpose of registering Black voters in Mississippi;

Whereas on the morning of June 21, 1964, the 3 men left the CORE office in Meridian and set out for Longdale, Mississippi, where they were to investigate the recent burning of the Mount Zion Methodist Church, a Black church that had been functioning as a Freedom School for education and voter registration;

Whereas on their way back to Meridian, James Chaney, Andrew Goodman, and Michael Schwerner were detained and later arrested and taken to the Philadelphia, Mississippi, jail;

Whereas later that same evening, on June 21, 1964, they were taken from the jail, turned over to the Ku Klux Klan, and beaten, shot, and killed;

Whereas 2 days later, their burnt, charred, and gutted blue Ford station wagon was pulled from the Bogue Chitto Creek, just outside Philadelphia, Mississippi;

Whereas the national uproar caused by the disappearance of the civil rights workers led President Lyndon B. Johnson to order Secretary of Defense Robert McNamara to send 200 active duty Navy sailors to search the swamps and fields in the area for the bodies of the 3 civil rights workers, and Attorney General Robert F. Kennedy to order his Federal Bureau of Investigation (FBI) director, J. Edgar Hoover, to send 150 agents to Mississippi to work on the case;

Whereas the FBI investigation led to the discovery of the bodies of several other African-Americans from Mississippi, whose disappearances over the previous several years had not attracted attention outside their local communities;

Whereas the bodies of Andrew Goodman, James Chaney, and Michael Schwerner, beaten and shot, were found on August 4, 1964, buried under a mound of dirt;

Whereas on December 4, 1964, 21 White Mississippians from Philadelphia, Mississippi, including the sheriff and his deputy, were arrested, and the Department of Justice charged them with conspiring to deprive Andrew Goodman, James Chaney, and Michael Schwerner of their civil rights, since murder was not a Federal crime;

Whereas on December 10, 1964, the same day Dr. Martin Luther King, Jr. received the Nobel Peace Prize, a United States District judge dismissed charges against the 21 men accused of depriving the 3 civil right workers of their civil rights by murder;

Whereas in 1967, after an appeal to the Supreme Court and new testimony, 7 individuals were found guilty, but 2 of the defendants, including Edgar Ray Killen, who had been strongly implicated in the murders by witnesses, were acquitted because the jury came to a deadlock on their charges;

Whereas on January 6, 2005, a Neshoba County, Mississippi, grand jury indicted Edgar Ray Killen on 3 counts of murder;

Whereas on June 21, 2005, a jury convicted Edgar Ray Killen on 3 counts of manslaughter;

Whereas June 21, 2008, was the 44th anniversary of Andrew Goodman, James Chaney, and Michael Schwerner's ultimate sacrifice;

Whereas by the end of ''Freedom Summer'', volunteers, including Andrew Goodman, James Chaney, and Michael Schwerner, helped register 17,000 African-Americans to vote;

Whereas the national uproar in response to the deaths of these brave men helped create the necessary climate to bring about passage of the Voting Rights Act of 1965;

Whereas Andrew Goodman, James Chaney, and Michael Schwerner worked for freedom, democracy, and equal justice under the law for all; and

Whereas the Federal Government should find an appropriate way to honor these courageous young men and their contributions to civil rights and voting rights: Now, therefore, be it

Resolved, That the Senate—

(1) encourages all Americans to pause and remember Andrew Goodman, James Chaney, and Michael Schwerner and the 44th anniversary of their deaths;

(2) commemorates the life and work of Andrew Goodman, James Chaney, Michael Schwerner, and all of the other brave Americans who made the ultimate sacrifice in the name of civil rights and voting rights for all Americans; and

(3) commemorates and acknowledges the legacy of the brave Americans who participated in the civil rights movement and the role that they played in changing the hearts and minds of Americans and creating the political climate necessary to pass legislation to expand civil rights and voting rights for all Americans.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5030. Mr. ROBERTS (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table.

SA 5031. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5032. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5033. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5034. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5035. Mr. GRASSLEY (for himself, Mr. HARKIN, Mr. DURBIN, Mr. COLEMAN, Mrs. MCCASKILL, Mr. BOND, Mr. LUGAR, Mr. BAYH, Ms. KLOBUCHAR, and Mr. OBAMA) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5036. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5037. Mr. BAYH (for himself, Mr. NELSON, of Nebraska, and Ms. KLOBUCHAR) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5038. Mrs. LINCOLN (for herself and Mr. PRYOR) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5039. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5040. Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mr. HARKIN, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5041. Mr. CASEY (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5042. Mr. WYDEN (for himself, Mr. SMITH, Ms. CANTWELL, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5043. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5044. Mrs. LINCOLN (for herself and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5045. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5046. Mr. CORNYN (for himself, Mrs. BOXER, Mr. ROBERTS, Mr. PRYOR, Mr. ISAKSON, and Mr. SALAZAR) submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5047. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5048. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5049. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5050. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5051. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5052. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5053. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5054. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5055. Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 5056. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 5030. Mr. ROBERTS (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 615, between lines 2 and 3, insert the following:

SEC. 3083. EXTENSION OF CERTAIN BONUS DEPRECIATION PLACED IN SERVICE REQUIREMENTS.

Section 15345(d)(1) of Public Law 110–246 is amended—

(1) by striking ''December 31, 2008'' in subparagraph (C) and inserting ''December 31, 2010'', and

(2) by striking ''December 31, 2009'' in subparagraph (D) and inserting ''December 31, 2011''.

SA 5031. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 133, strike line 10 and all that follows through page 160, line 17.

SA 5032. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

Beginning on page 615, line 4, strike all through page 623, line 12.

SA 5033. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 506, strike line 16 and all that follows through page 518, line 3.

SA 5034. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 414, strike line 24 and all that follows through page 415, line 3.

SA 5035. Mr. GRASSLEY (for himself, Mr. HARKIN, Mr. DURBIN, Mr. COLEMAN, Mrs. MCCASKILL, Mr. BOND, Mr. LUGAR, Mr. BAYH, Ms. KLOBUCHAR, and Mr. OBAMA) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3211, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of subtitle A of title III of division C, insert the following:

SEC. _____. TEMPORARY TAX RELIEF FOR AREAS DAMAGED BY 2008 MIDWESTERN SEVERE STORMS, TORNADOS, AND FLOODING.

(a) IN GENERAL.—Subject to the modifications described in this section, the following provisions of or relating to the Internal Revenue Code of 1986 shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply:

(1) GO ZONE BENEFITS.—

(A) Section 1400N (relating to tax benefits) other than subsections (b), (i), and (j) thereof.

(B) Section 1400O (relating to education tax benefits).

(C) Section 1400P (relating to housing tax benefits).

(D) Section 1400Q (relating to special rules for use of retirement funds).

(E) Section 1400R(a) (relating to employee retention credit for employers).

(F) Section 1400S (relating to additional tax relief) other than subsection (d) thereof.

(G) Section 1400T (relating to special rules for mortgage revenue bonds).

(2) OTHER BENEFITS INCLUDED IN KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—Sections 302, 303, 304, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(3) OTHER BENEFITS.—Section 3082(a) of this Act (relating to use of amended income tax returns to take into account receipt of certain casualty loss grants by disallowing previously taken casualty loss deductions).

(b) MIDWESTERN DISASTER AREA.—

(1) IN GENERAL.—For purposes of this section and for applying the substitutions described in subsections (d) and (e), the term ''Midwestern disaster area'' means an area—

(A) with respect to which a major disaster has been declared by the President after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, and Wisconsin, and

(B) determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributable to such severe storms, tornados, or flooding.

(2) CERTAIN BENEFITS AVAILABLE TO AREAS ELIGIBLE ONLY FOR PUBLIC ASSISTANCE.—For purposes of applying this section to benefits under the following provisions, paragraph (1) shall be applied without regard to subparagraph (B):

(A) Sections 1400Q, 1400S(b), and 1400S(d) of the Internal Revenue Code of 1986.

(B) Sections 302, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(c) REFERENCES.—

(1) AREA.—Any reference in such provisions to the Hurricane Katrina disaster area or the Gulf Opportunity Zone shall be treated as a reference to any Midwestern disaster area and any reference to the Hurricane Katrina disaster area or the Gulf Opportunity Zone within a State shall be treated as a reference to all Midwestern disaster areas within the State.

(2) ITEMS ATTRIBUTABLE TO DISASTER.—Any reference in such provisions to any loss, damage, or other item attributable to Hurricane Katrina shall be treated as a reference to any loss, damage, or other item attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(3) APPLICABLE DISASTER DATE.—For purposes of applying the substitutions described in subsections (d) and (e), the term ''applicable disaster date'' means, with respect to any Midwestern disaster area, the date on which the severe storms, tornados, or flooding giving rise to the Presidential declaration described in subsection (b)(1)(A) occurred.

(d) MODIFICATIONS TO 1986 CODE.—The following provisions of the Internal Revenue Code of 1986 shall be applied with the following modifications:

(1) TAX-EXEMPT BOND FINANCING.—Section 1400N(a)—

(A) by substituting ''qualified Midwestern disaster area bond'' for ''qualified Gulf Opportunity Zone Bond'' each place it appears,

(B) by substituting ''any State in which a Midwestern disaster area is located'' for ''the State of Alabama, Louisiana, or Mississippi'' in paragraph (2)(B),

(C) by substituting ''designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)'' for ''designated for purposes of this section'' in paragraph (2)(C),

(D) by substituting ''January 1, 2013'' for ''January 1, 2011'' in paragraph (2)(D),

(E) in paragraph (3)(A)—

(i) by substituting ''$5,000'' for ''$2,500'', and

(ii) by substituting ''before the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''before August 28, 2005'',

(F) by substituting ''qualified Midwestern disaster area repair or construction'' for ''qualified GO Zone repair or construction'' each place it appears, and

(G) by substituting ''after the date of the enactment of the Housing and Economic Recovery Act of 2008 and before January 1, 2013'' for ''after the date of the enactment of this paragraph and before January 1, 2011'' in paragraph (7)(C).

(2) LOW-INCOME HOUSING CREDIT.—Section 1400N(c)—

(A) only with respect to calendar years 2009, 2010, and 2011,

(B) by substituting ''Disaster Recovery Assistance housing amount'' for ''Gulf Opportunity housing amount'',

(C) by substituting ''before the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''before August 28, 2005'' in paragraph (1)(B), and

(D) determined without regard to paragraphs (2), (3), (4), (5), and (6) thereof.

(3) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED ON OR AFTER THE APPLICABLE DISASTER DATE.—Section 1400N(d)—

(A) by substituting ''qualified Disaster Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' each place it appears,

(B) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(C) by substituting ''December 31, 2011'' for ''December 31, 2007'' in paragraph (2)(A)(v),

(D) by substituting ''December 31, 2012'' for ''December 31, 2008'' in paragraph (2)(A)(v),

(E) by substituting ''the day before the applicable disaster date'' for ''August 27, 2005'' in paragraph (3)(A), and

(F) determined without regard to paragraph (6) thereof.

(4) INCREASE IN EXPENSING UNDER SECTION 179.—Section 1400N(e), by substituting ''qualified section 179 Disaster Recovery Assistance property'' for ''qualified section 179 Gulf Opportunity Zone property'' each place it appears.

(5) EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.—Section 1400N(f)—

(A) by substituting ''qualified Disaster Recovery Assistance clean-up cost'' for ''qualified Gulf Opportunity Zone clean-up cost'' each place it appears, and

(B) by substituting ''beginning on the applicable disaster date and ending on December 31, 2010'' for ''beginning on August 28, 2005, and ending on December 31, 2007'' in paragraph (2).

(6) EXTENSION OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS.—Section 1400N(g)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(B) by substituting ''January 1, 2011'' for ''January 1, 2008'' in paragraph (1), and

(C) by substituting ''December 31, 2010'' for ''December 31, 2007''.

(7) INCREASE IN REHABILITATION CREDIT.—Section 1400N(h)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'', and

(B) by substituting ''January 1, 2011'' for ''January 1, 2008'' in paragraph (1).

(8) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO DISASTER LOSSES.—Section 1400N(k)—

(A) by substituting ''qualified Disaster Recovery Assistance loss'' for ''qualified Gulf Opportunity Zone loss'' each place it appears,

(B) by substituting ''after the day before the applicable disaster date, and before January 1, 2011'' for ''after August 27, 2005, and before January 1, 2008'' each place it appears,

(C) by substituting ''the applicable disaster date'' for ''August 28, 2005'' in paragraph (2)(B)(ii)(I),

(D) by substituting ''qualified Disaster Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' in paragraph (2)(B)(iv), and

(E) by substituting ''qualified Disaster Recovery Assistance casualty loss'' for ''qualified Gulf Opportunity Zone casualty loss'' each place it appears.

(9) CREDIT TO HOLDERS OF TAX CREDIT BONDS.—Section 1400N(l)—

(A) by substituting ''Midwestern tax credit bond'' for ''Gulf tax credit bond'' each place it appears,

(B) by substituting ''any State in which a Midwestern disaster area is located'' for ''the State of Alabama, Louisiana, or Mississippi'' in paragraph (4)(A)(i),

(C) by substituting ''after December 31, 2008 and before January 1, 2010'' for ''after December 31, 2005, and before January 1, 2007'',

(D) by substituting ''shall not exceed $100,000,000.'' for ''shall not exceed'' and all that follows in paragraph (4)(C), and

(E) by substituting ''the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''August 28, 2005'' in paragraph (5)(A).

(10) NEW MARKETS TAX CREDIT.—Section 1400N(m)—

(A) by substituting ''$300,000,000 for 2009 and 2010'' for ''$300,000,000 for 2005 and 2006'' in paragraph (2)(A), and

(B) by substituting ''$400,000,000 for 2011'' for ''$400,000,000 for 2007'' in paragraph (2)(B).

(11) EDUCATION TAX BENEFITS.—Section 1400O, by substituting ''2008 or 2009'' for ''2005 or 2006''.

(12) HOUSING TAX BENEFITS.—Section 1400P, by substituting ''the applicable disaster date'' for ''August 28, 2005'' in subsection (c)(1).

(13) SPECIAL RULES FOR USE OF RETIREMENT FUNDS.—Section 1400Q—

(A) by substituting ''qualified Disaster Recovery Assistance distribution'' for ''qualified hurricane distribution'' each place it appears,

(B) by substituting ''on or after the applicable disaster date and before January 1, 2010'' for ''on or after August 25, 2005, and before January 1, 2007'' in subsection (a)(4)(A)(i),

(C) by substituting ''the applicable disaster date'' for ''August 28, 2005'' in subsections (a)(4)(A)(i) and (c)(3)(B),

(D) by disregarding clauses (ii) and (iii) of subsection (a)(4)(A) thereof,

(E) by substituting ''qualified storm damage distribution'' for ''qualified Katrina distribution'' each place it appears,

(F) by substituting ''after the date which is 6 months before the applicable disaster date and before the date which is the day after the applicable disaster date'' for ''after February 28, 2005, and before August 29, 2005'' in subsection (b)(2)(B)(ii),

(G) by substituting ''the Midwestern disaster area, but not so purchased or constructed on account of severe storms, tornados, or flooding giving rise to the designation of the area as a disaster area'' for ''the Hurricane Katrina disaster area, but not so purchased or constructed on account of Hurricane Katrina'' in subsection (b)(2)(B)(iii),

(H) by substituting ''beginning on the applicable disaster date and ending on the date which is 5 months after the date of the enactment of the Housing and Economic Recovery Act of 2008'' for ''beginning on August 25, 2005, and ending on February 28, 2006'' in subsection (b)(3)(A),

(I) by substituting ''qualified storm damage individual'' for ''qualified Hurricane Katrina individual'' each place it appears,

(J) by substituting ''December 31, 2009'' for ''December 31, 2006'' in subsection (c)(2)(A),

(K) by substituting ''beginning on the date of the enactment of the Housing and Economic Recovery Act of 2008 and ending on December 31, 2009'' for ''beginning on September 24, 2005, and ending on December 31, 2006'' in subsection (c)(4)(A)(i),

(L) by substituting ''the applicable disaster date'' for ''August 25, 2005'' in subsection (c)(4)(A)(ii), and

(M) by substituting ''January 1, 2010'' for ''January 1, 2007'' in subsection (d)(2)(A)(ii).

(14) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY SEVERE STORMS, TORNADOS, AND FLOODING.—Section 1400R(a)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(B) by substituting ''January 1, 2009'' for ''January 1, 2006'' both places it appears, and

(C) only with respect to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before the applicable disaster date.

(15) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Section 1400S(a), by substituting the following paragraph for paragraph (4) thereof:

''(4) QUALIFIED CONTRIBUTIONS.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified contribution' means any charitable contribution (as defined in section 170(c)) if—

''(i) such contribution—

''(I) is paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008, in cash to an organization described in section 170(b)(1)(A), and

''(II) is made for relief efforts in 1 or more Midwestern disaster areas,

''(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8)) that such contribution was used (or is to be used) for relief efforts in 1 or more Midwestern disaster areas, and

''(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

''(B) EXCEPTION.—Such term shall not include a contribution by a donor if the contribution is—

''(i) to an organization described in section 509(a)(3), or

''(ii) for establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)).

''(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.''.

(16) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Section 1400S(b)(1), by substituting ''the applicable disaster date'' for ''August 25, 2005''.

(17) SPECIAL RULE FOR DETERMINING EARNED INCOME.—Section 1400S(d)—

(A) by treating an individual as a qualified individual if such individual's principal place of abode on the applicable disaster date was located in a Midwestern disaster area,

(B) by treating the applicable disaster date with respect to any such individual as the applicable date for purposes of such subsection, and

(C) by treating an area as described in paragraph (2)(B)(ii) thereof if the area is a Midwestern disaster area only by reason of subsection (b)(2) of this section (relating to areas eligible only for public assistance)

(18) ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS.—Section 1400S(e), by substituting ''2008 or 2009'' for ''2005 or 2006''.

(e) MODIFICATIONS TO KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—The following provisions of the Katrina Emergency Tax Relief Act of 2005 shall be applied with the following modifications:

(1) ADDITIONAL EXEMPTION FOR HOUSING DISPLACED INDIVIDUAL.—Section 302—

(A) by substituting ''Midwestern displaced individual'' for ''Hurricane Katrina displaced individual'' each place it appears, and

(B) by treating an area as a core disaster area for purposes of applying subsection (c) thereof if the area is a Midwestern disaster area without regard to subsection (b)(2) of this section (relating to areas eligible only for public assistance).

(2) INCREASE IN STANDARD MILEAGE RATE.—Section 303, by substituting ''beginning on the applicable disaster date and ending on December 31, 2009'' for ''beginning on August 25, 2005, and ending on December 31, 2006''.

(3) MILEAGE REIMBURSEMENTS FOR CHARITABLE VOLUNTEERS.—Section 304—

(A) by substituting ''beginning on the applicable disaster date and ending on December 31, 2009'' for ''beginning on August 25, 2005, and ending on December 31, 2006'' in subsection (a), and

(B) by substituting ''the applicable disaster date'' for ''August 25, 2005'' in subsection (a).

(4) EXCLUSION OF CERTAIN CANCELLATION OF INDEBTEDNESS INCOME.—Section 401—

(A) by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area (determined without regard to subsection (b)(2) of this section) as an individual described in subsection (b)(1) thereof, and by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area solely by reason of subsection (b)(2) of this section as an individual described in subsection (b)(2) thereof,

(B) by substituting ''the applicable disaster date'' for ''August 28, 2005'' both places it appears, and

(C) by substituting ''January 1, 2010'' for ''January 1, 2007'' in subsection (e).

(5) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Section 405, by substituting ''on or after the applicable disaster date'' for ''on or after August 25, 2005''.

SEC. _____. ENHANCED CHARITABLE DEDUCTIONS FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) INCREASED AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) (relating to termination) of the Internal Revenue Code of 1986 is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to contributions made after December 31, 2007.

(b) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—Section 170(b) of such Code is amended by adding at the end the following new paragraph:

''(3) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

''(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

''(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. _____. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.

(a) EXTENSION.—Clause (iv) of section 170(e)(3)(D) of the Internal Revenue Code of 1986 (relating to termination) of the Internal Revenue Code of 1986 is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(b) CLERICAL AMENDMENT.—Clause (iii) of section 170(e)(3)(D) of such Code (relating to certification by donee) is amended by inserting ''of books'' after ''to any contribution''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2007.

SEC. _____. REPORTING REQUIREMENTS RELATING TO DISASTER RELIEF CONTRIBUTIONS.

(a) IN GENERAL.—Section 6033(b) of the Internal Revenue Code of 1986 (relating to returns of certain organizations described in section 501(c)(3)) is amended by striking ''and'' at the end of paragraph (13), by redesignating paragraph (14) as paragraph (15), and by adding after paragraph (13) the following new paragraph:

''(14) such information as the Secretary may require with respect to disaster relief activities, including the amount and use of qualified contributions to which section 1400S(a) applies, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to any extension) occurs after December 31, 2008.

SA 5036. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. PROTECTION OF TAXPAYERS.

Notwithstanding any other provision of this Act, title III of Division B of this Act shall not take effect.

SA 5037. Mr. BAYH (for himself, Mr. NELSON of Nebraska, and Ms. KLOBUCHAR) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

Beginning on page 573, line 12, strike through page 574, line 14, and insert the following:

''(8) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

''(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

''(B) $500 ($1,000 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.''.

SA 5038. Mrs. LINCOLN (for herself and Mr. PRYOR) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of subtitle A of title III of division C, insert the following:

SEC. _____. TEMPORARY TAX RELIEF FOR AREAS DAMAGED BY 2008 MIDWESTERN SEVERE STORMS, TORNADOS, AND FLOODING.

(a) IN GENERAL.—Subject to the modifications described in this section, the following provisions of or relating to the Internal Revenue Code of 1986 shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply:

(1) GO ZONE BENEFITS.—

(A) Section 1400N (relating to tax benefits) other than subsections (b), (i), and (j) thereof.

(B) Section 1400O (relating to education tax benefits).

(C) Section 1400P (relating to housing tax benefits).

(D) Section 1400Q (relating to special rules for use of retirement funds).

(E) Section 1400R(a) (relating to employee retention credit for employers).

(F) Section 1400S (relating to additional tax relief) other than subsection (d) thereof.

(G) Section 1400T (relating to special rules for mortgage revenue bonds).

(2) OTHER BENEFITS INCLUDED IN KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—Sections 302, 303, 304, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(3) OTHER BENEFITS.—Section 3082(a) of this Act (relating to use of amended income tax returns to take into account receipt of certain casualty loss grants by disallowing previously taken casualty loss deductions).

(b) MIDWESTERN DISASTER AREA.—

(1) IN GENERAL.—For purposes of this section and for applying the substitutions described in subsections (d) and (e), the term ''Midwestern disaster area'' means an area—

(A) with respect to which a major disaster has been declared by the President after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, and Wisconsin, and

(B) determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributable to such severe storms, tornados, or flooding.

In the case of a State with respect to which the President during the period beginning on January 1, 2008, and ending on July 31, 2008, has declared major disasters under such Act with respect to at least 75 percent of the counties of such State, subparagraph (A) shall be applied by substituting ''December 31, 2007'' for ''May 20, 2008''.

(2) CERTAIN BENEFITS AVAILABLE TO AREAS ELIGIBLE ONLY FOR PUBLIC ASSISTANCE.—For purposes of applying this section to benefits under the following provisions, paragraph (1) shall be applied without regard to subparagraph (B):

(A) Sections 1400Q, 1400S(b), and 1400S(d) of the Internal Revenue Code of 1986.

(B) Sections 302, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(c) REFERENCES.—

(1) AREA.—Any reference in such provisions to the Hurricane Katrina disaster area or the Gulf Opportunity Zone shall be treated as a reference to any Midwestern disaster area and any reference to the Hurricane Katrina disaster area or the Gulf Opportunity Zone within a State shall be treated as a reference to all Midwestern disaster areas within the State.

(2) ITEMS ATTRIBUTABLE TO DISASTER.—Any reference in such provisions to any loss, damage, or other item attributable to Hurricane Katrina shall be treated as a reference to any loss, damage, or other item attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(3) APPLICABLE DISASTER DATE.—For purposes of applying the substitutions described in subsections (d) and (e), the term ''applicable disaster date'' means, with respect to any Midwestern disaster area, the date on which the severe storms, tornados, or flooding giving rise to the Presidential declaration described in subsection (b)(1)(A) occurred.

(d) MODIFICATIONS TO 1986 CODE.—The following provisions of the Internal Revenue Code of 1986 shall be applied with the following modifications:

(1) TAX-EXEMPT BOND FINANCING.—Section 1400N(a)—

(A) by substituting ''qualified Midwestern disaster area bond'' for ''qualified Gulf Opportunity Zone Bond'' each place it appears,

(B) by substituting ''any State in which a Midwestern disaster area is located'' for ''the State of Alabama, Louisiana, or Mississippi'' in paragraph (2)(B),

(C) by substituting ''designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)'' for ''designated for purposes of this section'' in paragraph (2)(C),

(D) by substituting ''January 1, 2013'' for ''January 1, 2011'' in paragraph (2)(D),

(E) in paragraph (3)(A)—

(i) by substituting ''$5,000'' for ''$2,500'', and

(ii) by substituting ''before the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''before August 28, 2005'',

(F) by substituting ''qualified Midwestern disaster area repair or construction'' for ''qualified GO Zone repair or construction'' each place it appears, and

(G) by substituting ''after the date of the enactment of the Housing and Economic Recovery Act of 2008 and before January 1, 2013'' for ''after the date of the enactment of this paragraph and before January 1, 2011'' in paragraph (7)(C).

(2) LOW-INCOME HOUSING CREDIT.—Section 1400N(c)—

(A) only with respect to calendar years 2009, 2010, and 2011,

(B) by substituting ''Disaster Recovery Assistance housing amount'' for ''Gulf Opportunity housing amount'',

(C) by substituting ''before the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''before August 28, 2005'' in paragraph (1)(B), and

(D) determined without regard to paragraphs (2), (3), (4), (5), and (6) thereof.

(3) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED ON OR AFTER THE APPLICABLE DISASTER DATE.—Section 1400N(d)—

(A) by substituting ''qualified Disaster Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' each place it appears,

(B) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(C) by substituting ''December 31, 2011'' for ''December 31, 2007'' in paragraph (2)(A)(v),

(D) by substituting ''December 31, 2012'' for ''December 31, 2008'' in paragraph (2)(A)(v),

(E) by substituting ''the day before the applicable disaster date'' for ''August 27, 2005'' in paragraph (3)(A), and

(F) determined without regard to paragraph (6) thereof.

(4) INCREASE IN EXPENSING UNDER SECTION 179.—Section 1400N(e), by substituting ''qualified section 179 Disaster Recovery Assistance property'' for ''qualified section 179 Gulf Opportunity Zone property'' each place it appears.

(5) EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.—Section 1400N(f)—

(A) by substituting ''qualified Disaster Recovery Assistance clean-up cost'' for ''qualified Gulf Opportunity Zone clean-up cost'' each place it appears, and

(B) by substituting ''beginning on the applicable disaster date and ending on December 31, 2010'' for ''beginning on August 28, 2005, and ending on December 31, 2007'' in paragraph (2).

(6) EXTENSION OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS.—Section 1400N(g)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(B) by substituting ''January 1, 2011'' for ''January 1, 2008'' in paragraph (1), and

(C) by substituting ''December 31, 2010'' for ''December 31, 2007''.

(7) INCREASE IN REHABILITATION CREDIT.—Section 1400N(h)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'', and

(B) by substituting ''January 1, 2011'' for ''January 1, 2008'' in paragraph (1).

(8) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO DISASTER LOSSES.—Section 1400N(k)—

(A) by substituting ''qualified Disaster Recovery Assistance loss'' for ''qualified Gulf Opportunity Zone loss'' each place it appears,

(B) by substituting ''after the day before the applicable disaster date, and before January 1, 2011'' for ''after August 27, 2005, and before January 1, 2008'' each place it appears,

(C) by substituting ''the applicable disaster date'' for ''August 28, 2005'' in paragraph (2)(B)(ii)(I),

(D) by substituting ''qualified Disaster Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' in paragraph (2)(B)(iv), and

(E) by substituting ''qualified Disaster Recovery Assistance casualty loss'' for ''qualified Gulf Opportunity Zone casualty loss'' each place it appears.

(9) CREDIT TO HOLDERS OF TAX CREDIT BONDS.—Section 1400N(l)—

(A) by substituting ''Midwestern tax credit bond'' for ''Gulf tax credit bond'' each place it appears,

(B) by substituting ''any State in which a Midwestern disaster area is located'' for ''the State of Alabama, Louisiana, or Mississippi'' in paragraph (4)(A)(i),

(C) by substituting ''after December 31, 2008 and before January 1, 2010'' for ''after December 31, 2005, and before January 1, 2007'',

(D) by substituting ''shall not exceed $100,000,000.'' for ''shall not exceed'' and all that follows in paragraph (4)(C), and

(E) by substituting ''the earliest applicable disaster date for Midwestern disaster areas within the State'' for ''August 28, 2005'' in paragraph (5)(A).

(10) NEW MARKETS TAX CREDIT.—Section 1400N(m)—

(A) by substituting ''$300,000,000 for 2009 and 2010'' for ''$300,000,000 for 2005 and 2006'' in paragraph (2)(A), and

(B) by substituting ''$400,000,000 for 2011'' for ''$400,000,000 for 2007'' in paragraph (2)(B).

(11) EDUCATION TAX BENEFITS.—Section 1400O, by substituting ''2008 or 2009'' for ''2005 or 2006''.

(12) HOUSING TAX BENEFITS.—Section 1400P, by substituting ''the applicable disaster date'' for ''August 28, 2005'' in subsection (c)(1).

(13) SPECIAL RULES FOR USE OF RETIREMENT FUNDS.—Section 1400Q—

(A) by substituting ''qualified Disaster Recovery Assistance distribution'' for ''qualified hurricane distribution'' each place it appears,

(B) by substituting ''on or after the applicable disaster date and before January 1, 2010'' for ''on or after August 25, 2005, and before January 1, 2007'' in subsection (a)(4)(A)(i),

(C) by substituting ''the applicable disaster date'' for ''August 28, 2005'' in subsections (a)(4)(A)(i) and (c)(3)(B),

(D) by disregarding clauses (ii) and (iii) of subsection (a)(4)(A) thereof,

(E) by substituting ''qualified storm damage distribution'' for ''qualified Katrina distribution'' each place it appears,

(F) by substituting ''after the date which is 6 months before the applicable disaster date and before the date which is the day after the applicable disaster date'' for ''after February 28, 2005, and before August 29, 2005'' in subsection (b)(2)(B)(ii),

(G) by substituting ''the Midwestern disaster area, but not so purchased or constructed on account of severe storms, tornados, or flooding giving rise to the designation of the area as a disaster area'' for ''the Hurricane Katrina disaster area, but not so purchased or constructed on account of Hurricane Katrina'' in subsection (b)(2)(B)(iii),

(H) by substituting ''beginning on the applicable disaster date and ending on the date which is 5 months after the date of the enactment of the Housing and Economic Recovery Act of 2008'' for ''beginning on August 25, 2005, and ending on February 28, 2006'' in subsection (b)(3)(A),

(I) by substituting ''qualified storm damage individual'' for ''qualified Hurricane Katrina individual'' each place it appears,

(J) by substituting ''December 31, 2009'' for ''December 31, 2006'' in subsection (c)(2)(A),

(K) by substituting ''beginning on the date of the enactment of the Housing and Economic Recovery Act of 2008 and ending on December 31, 2009'' for ''beginning on September 24, 2005, and ending on December 31, 2006'' in subsection (c)(4)(A)(i),

(L) by substituting ''the applicable disaster date'' for ''August 25, 2005'' in subsection (c)(4)(A)(ii), and

(M) by substituting ''January 1, 2010'' for ''January 1, 2007'' in subsection (d)(2)(A)(ii).

(14) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY SEVERE STORMS, TORNADOS, AND FLOODING.—Section 1400R(a)—

(A) by substituting ''the applicable disaster date'' for ''August 28, 2005'' each place it appears,

(B) by substituting ''January 1, 2009'' for ''January 1, 2006'' both places it appears, and

(C) only with respect to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before the applicable disaster date.

(15) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Section 1400S(a), by substituting the following paragraph for paragraph (4) thereof:

''(4) QUALIFIED CONTRIBUTIONS.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified contribution' means any charitable contribution (as defined in section 170(c)) if—

''(i) such contribution—

''(I) is paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008, in cash to an organization described in section 170(b)(1)(A), and

''(II) is made for relief efforts in 1 or more Midwestern disaster areas,

''(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8)) that such contribution was used (or is to be used) for relief efforts in 1 or more Midwestern disaster areas, and

''(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

''(B) EXCEPTION.—Such term shall not include a contribution by a donor if the contribution is—

''(i) to an organization described in section 509(a)(3), or

''(ii) for establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)).

''(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.''.

(16) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Section 1400S(b)(1), by substituting ''the applicable disaster date'' for ''August 25, 2005''.

(17) SPECIAL RULE FOR DETERMINING EARNED INCOME.—Section 1400S(d)—

(A) by treating an individual as a qualified individual if such individual's principal place of abode on the applicable disaster date was located in a Midwestern disaster area,

(B) by treating the applicable disaster date with respect to any such individual as the applicable date for purposes of such subsection, and

(C) by treating an area as described in paragraph (2)(B)(ii) thereof if the area is a Midwestern disaster area only by reason of subsection (b)(2) of this section (relating to areas eligible only for public assistance)

(18) ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS.—Section 1400S(e), by substituting ''2008 or 2009'' for ''2005 or 2006''.

(e) MODIFICATIONS TO KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—The following provisions of the Katrina Emergency Tax Relief Act of 2005 shall be applied with the following modifications:

(1) ADDITIONAL EXEMPTION FOR HOUSING DISPLACED INDIVIDUAL.—Section 302—

(A) by substituting ''Midwestern displaced individual'' for ''Hurricane Katrina displaced individual'' each place it appears, and

(B) by treating an area as a core disaster area for purposes of applying subsection (c) thereof if the area is a Midwestern disaster area without regard to subsection (b)(2) of this section (relating to areas eligible only for public assistance).

(2) INCREASE IN STANDARD MILEAGE RATE.—Section 303, by substituting ''beginning on the applicable disaster date and ending on December 31, 2009'' for ''beginning on August 25, 2005, and ending on December 31, 2006''.

(3) MILEAGE REIMBURSEMENTS FOR CHARITABLE VOLUNTEERS.—Section 304—

(A) by substituting ''beginning on the applicable disaster date and ending on December 31, 2009'' for ''beginning on August 25, 2005, and ending on December 31, 2006'' in subsection (a), and

(B) by substituting ''the applicable disaster date'' for ''August 25, 2005'' in subsection (a).

(4) EXCLUSION OF CERTAIN CANCELLATION OF INDEBTEDNESS INCOME.—Section 401—

(A) by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area (determined without regard to subsection (b)(2) of this section) as an individual described in subsection (b)(1) thereof, and by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area solely by reason of subsection (b)(2) of this section as an individual described in subsection (b)(2) thereof,

(B) by substituting ''the applicable disaster date'' for ''August 28, 2005'' both places it appears, and

(C) by substituting ''January 1, 2010'' for ''January 1, 2007'' in subsection (e).

(5) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Section 405, by substituting ''on or after the applicable disaster date'' for ''on or after August 25, 2005''.

SEC. _____. ENHANCED CHARITABLE DEDUCTIONS FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) INCREASED AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) (relating to termination) of the Internal Revenue Code of 1986 is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to contributions made after December 31, 2007.

(b) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—Section 170(b) of such Code is amended by adding at the end the following new paragraph:

''(3) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

''(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

''(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. _____. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.

(a) EXTENSION.—Clause (iv) of section 170(e)(3)(D) of the Internal Revenue Code of 1986 (relating to termination) of the Internal Revenue Code of 1986 is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(b) CLERICAL AMENDMENT.—Clause (iii) of section 170(e)(3)(D) of such Code (relating to certification by donee) is amended by inserting ''of books'' after ''to any contribution''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2007.

SEC. _____. REPORTING REQUIREMENTS RELATING TO DISASTER RELIEF CONTRIBUTIONS.

(a) IN GENERAL.—Section 6033(b) of the Internal Revenue Code of 1986 (relating to returns of certain organizations described in section 501(c)(3)) is amended by striking ''and'' at the end of paragraph (13), by redesignating paragraph (14) as paragraph (15), and by adding after paragraph (13) the following new paragraph:

''(14) such information as the Secretary may require with respect to disaster relief activities, including the amount and use of qualified contributions to which section 1400S(a) applies, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to any extension) occurs after December 31, 2008.

SA 5039. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing

carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 455, between lines 14 and 15, insert the following:

SEC. 1606. VALUATION OF MULTIFAMILY PROPERTIES IN NONCOMPETITIVE SALES BY HUD TO STATES AND LOCALITIES.

Subtitle A of title II of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 7) is amended by adding at the end the following new section:

"SEC. 2004. VALUATION OF MULTIFAMILY PROPERTIES IN NONCOMPETITIVE SALES BY HUD TO STATES AND LOCALITIES.

''Notwithstanding any other provision of law, in determining the market value of any multifamily real property or multifamily loan for any noncompetitive sale to a State or local government entity occurring during fiscal years 2008, 2009, or 2010, the Secretary shall consider, but not be limited to, industry standard appraisal practices, including the cost of repairs needed to bring the property at least to minimum State and local code standards and of maintaining the existing affordability restrictions imposed by the Secretary on the multifamily real property or multifamily loan.''.

SA 5040. Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mr. HARKIN, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 510, strike lines 1 through 5, and insert the following:

(C) establish land banks for homes that have been foreclosed upon;

(D) demolish blighted structures; and

(E) redevelop demolished, blighted, or vacant properties, including those damaged or destroyed in areas subject to a disaster declaration by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

SA 5041. Mr. CASEY (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 455, between lines 14 and 15, insert the following:

SEC. 1606. SENSE OF THE SENATE ON THE JOINT EFFORTS OF THE CITY OF PHILADELPHIA AND PHILADELPHIA COURT OF COMMON PLEAS TO PREVENT HOME FORECLOSURES.

(a) FINDINGS.—The Senate finds that—

(1) the Mortgage Bankers Association reported this month that over 1,000,000 homes have entered foreclosure proceedings, the highest rate of such proceedings ever recorded;

(2) the Center for Responsible Lending reports that 7,200,000 families now hold a subprime loan;

(3) the Joint Economic Committee of the Congress estimates that from the third quarter of 2007 through the fourth quarter of 2009 there will be 45,470 subprime foreclosures in Pennsylvania;

(4) the Joint Economic Committee further predicts that the cumulative loss in property value resulting from these foreclosures will exceed $2,400,000,000 and the estimated loss in property taxes will be $34,000,000;

(5) the Pew Charitable Trusts reports that 1,684,475 Pennsylvania homeowners will experience home devaluation due to subprime foreclosures in 2008 and 2009;

(6) a 2005 Freddie Mac/Roper poll of homeowners indicates that more than 6 in 10 delinquent borrowers are not aware of services that lenders offer to individuals having trouble with their mortgage;

(7) the Department of Housing and Urban Development program statistics show that 96 percent of the families that receive housing counseling services avoid foreclosure;

(8) Philadelphia County reported 730 properties filed for foreclosure in April 2008, more foreclosure filings than any other county in Pennsylvania;

(9) the Center for Responsible Lending estimates that Philadelphia County could lose up to 4,444 homes to foreclosure; and

(10) it has been over 1 year since the first legislation dealing with the subprime mortgage crisis was introduced in the Senate to consider housing legislation that provides homeowners with relief and that alleviates the foreclosure crisis.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the City of Philadelphia and the Philadelphia Court of Common Pleas should be commended for their efforts to facilitate negotations between borrowers and lenders to attempt to restructure loan terms and prevent foreclosures;

(2) the commitment of such entitites to their home foreclosure prevention program, such program's requirement of mandatory counseling for delinquent borrowers, and such program's use of professional housing counselors to negotiate between lenders and homeowners represent the best practices in the industry; and

(3) the Secretary of Housing and Urban Development should, to the extent possible, inform other cities about the Philadelphia program and advise such other cities that the funds provided under section 2401 may be used to defray the cost of similar foreclosure prevention programs.

SA 5042. Mr. WYDEN (for himself, Mr. SMITH, Ms. CANTWELL, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security; developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 614, line 23, insert '', but only with respect to property the acquisition of which has not occurred, or the construction, reconstruction, or renovation of which has not begun, before the date of the enactment of the Housing Assistance Tax Act of 2008'' after ''Alabama''.

SA 5043. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security; developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. INCREASING ACCESS AND UNDERSTANDING OF ENERGY EFFICIENT MORTGAGES.

(a) DEFINITION.—As used in this section, the term ''energy efficient mortgage'' has the same meaning as given that term in paragraph (24) of section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(24)).

(b) RECOMMENDATIONS TO ELIMINATE BARRIERS TO USE OF ENERGY EFFICIENT MORTGAGES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of Housing and Urban Development, in conjunction with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall consult with the residential mortgage industry and States to develop recommendations to eliminate the barriers that exist to increasing the availability, use, and purchase of energy efficient mortgages, including such barriers as—

(A) the lack of reliable and accessible information on such mortgages, including estimated energy savings and other benefits of energy efficient housing;

(B) the confusion regarding underwriting requirements and differences among various energy efficient mortgage programs;

(C) the complex and time consuming process of securing such mortgages;

(D) the lack of publicly available research on the default risk of such mortgages; and

(E) the availability of certified or accredited home energy rating services.

(2) REPORT TO CONGRESS.—The Secretary of Housing and Urban Development shall submit a report to Congress that—

(A) summarizes the recommendations developed under paragraph (1); and

(B) includes any recommendations for statutory, regulatory, or administrative changes the Secretary deems necessary to institute such recommendations.

(c) ENERGY EFFICIENT MORTGAGES OUTREACH CAMPAIGN.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development, in consultation and coordination with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and State Energy and Housing Finance Directors, shall carry out an education and outreach campaign to inform and educate consumers, home builders, residential lenders, and other real estate professionals on the availability, benefits, and advantages of—

(A) improved energy efficiency in housing; and

(B) energy efficient mortgages.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the education and outreach campaign described under paragraph (1).

SA 5044. Mrs. LINCOLN (for herself and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security; developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 587, line 24, insert ''and '80 percent of the class life of such property' shall be substituted for '20 years' in paragraph (1)(B)(ii)(III) thereof'' after ''thereof''.

SA 5045. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 630, after line 2, insert the following:

TITLE IV—ENERGY TAX INCENTIVES

Subtitle A—Energy Production Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 3101. RENEWABLE ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—

(1) 1-YEAR EXTENSION FOR WIND FACILITIES.—Paragraph (1) of section 45(d) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(2) 3-YEAR EXTENSION FOR CERTAIN OTHER FACILITIES.—Each of the following provisions of section 45(d) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2012'':

(A) Clauses (i) and (ii) of paragraph (2)(A).

(B) Clauses (i)(I) and (ii) of paragraph (3)(A).

(C) Paragraph (4).

(D) Paragraph (5).

(E) Paragraph (6).

(F) Paragraph (7).

(G) Subparagraphs (A) and (B) of paragraph (9).

(b) MODIFICATION OF CREDIT PHASEOUT.—

(1) REPEAL OF PHASEOUT.—Subsection (b) of section 45 is amended—

(A) by striking paragraph (1), and

(B) by striking ''the 8 cent amount in paragraph (1),'' in paragraph (2) thereof.

(2) LIMITATION BASED ON INVESTMENT IN FACILITY.—Subsection (b) of section 45 is amended by inserting before paragraph (2) the following new paragraph:

''(1) LIMITATION BASED ON INVESTMENT IN FACILITY.—

''(A) IN GENERAL.—In the case of any qualified facility originally placed in service after December 31, 2009, the amount of the credit determined under subsection (a) for any taxable year with respect to electricity produced at such facility shall not exceed the product of—

''(i) the applicable percentage with respect to such facility, multiplied by

''(ii) the eligible basis of such facility.

''(B) CARRYFORWARD OF UNUSED LIMITATION AND EXCESS CREDIT.—

''(i) UNUSED LIMITATION.—If the limitation imposed under subparagraph (A) with respect to any facility for any taxable year exceeds the prelimitation credit for such facility for such taxable year, the limitation imposed under subparagraph (A) with respect to such facility for the succeeding taxable year shall be increased by the amount of such excess.

''(ii) EXCESS CREDIT.—If the prelimitation credit with respect to any facility for any taxable year exceeds the limitation imposed under subparagraph (A) with respect to such facility for such taxable year, the credit determined under subsection (a) with respect to such facility for the succeeding taxable year (determined before the application of subparagraph (A) for such succeeding taxable year) shall be increased by the amount of such excess. With respect to any facility, no amount may be carried forward under this clause to any taxable year beginning after the 10-year period described in subsection (a)(2)(A)(ii) with respect to such facility.

''(iii) PRELIMITATION CREDIT.—The term 'prelimitation credit' with respect to any facility for a taxable year means the credit determined under subsection (a) with respect to such facility for such taxable year, determined without regard to subparagraph (A) and after taking into account any increase for such taxable year under clause (ii).

''(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable percentage' means, with respect to any facility, the appropriate percentage prescribed by the Secretary for the month in which such facility is originally placed in service.

''(ii) METHOD OF PRESCRIBING APPLICABLE PERCENTAGES.—The applicable percentages prescribed by the Secretary for any month under clause (i) shall be percentages which yield over a 10-year period amounts of limitation under subparagraph (A) which have a present value equal to 35 percent of the eligible basis of the facility.

''(iii) METHOD OF DISCOUNTING.—The present value under clause (ii) shall be determined—

''(I) as of the last day of the 1st year of the 10-year period referred to in clause (ii),

''(II) by using a discount rate equal to the greater of 110 percent of the Federal long-term rate as in effect under section 1274(d) for the month preceding the month for which the applicable percentage is being prescribed, or 4.5 percent, and

''(III) by taking into account the limitation under subparagraph (A) for any year on the last day of such year.

''(D) ELIGIBLE BASIS.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible basis' means, with respect to any facility, the sum of—

''(I) the basis of such facility determined as of the time that such facility is originally placed in service, and

''(II) the portion of the basis of any shared qualified property which is properly allocable to such facility under clause (ii).

''(ii) RULES FOR ALLOCATION.—For purposes of subclause (II) of clause (i), the basis of shared qualified property shall be allocated among all qualified facilities which are projected to be placed in service and which require utilization of such property in proportion to projected generation from such facilities.

''(iii) SHARED QUALIFIED PROPERTY.—For purposes of this paragraph, the term 'shared qualified property' means, with respect to any facility, any property described in section 168(e)(3)(B)(vi)—

''(I) which a qualified facility will require for utilization of such facility, and

''(II) which is not a qualified facility.

''(iv) SPECIAL RULE RELATING TO GEOTHERMAL FACILITIES.—In the case of any qualified facility using geothermal energy to produce electricity, the basis of such facility for purposes of this paragraph shall be determined as though intangible drilling and development costs described in section 263(c) were capitalized rather than expensed.

''(E) SPECIAL RULE FOR FIRST AND LAST YEAR OF CREDIT PERIOD.—In the case of any taxable year any portion of which is not within the 10-year period described in subsection (a)(2)(A)(ii) with respect to any facility, the amount of the limitation under subparagraph (A) with respect to such facility shall be reduced by an amount which bears the same ratio to the amount of such limitation (determined without regard to this subparagraph) as such portion of the taxable year which is not within such period bears to the entire taxable year.

''(F) ELECTION TO TREAT ALL FACILITIES PLACED IN SERVICE IN A YEAR AS 1 FACILITY.—At the election of the taxpayer, all qualified facilities which are part of the same project and which are placed in service during the same calendar year shall be treated for purposes of this section as 1 facility which is placed in service at the mid-point of such year or the first day of the following calendar year.''.

(c) TRASH FACILITY CLARIFICATION.—Paragraph (7) of section 45(d) is amended—

(1) by striking ''facility which burns'' and inserting ''facility (other than a facility described in paragraph (6)) which uses'', and

(2) by striking ''COMBUSTION''.

(d) EXPANSION OF BIOMASS FACILITIES.—

(1) OPEN-LOOP BIOMASS FACILITIES.—Paragraph (3) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) EXPANSION OF FACILITY.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.''.

(2) CLOSED-LOOP BIOMASS FACILITIES.—Paragraph (2) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

''(B) EXPANSION OF FACILITY.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.''.

(e) SALES OF NET ELECTRICITY TO REGULATED PUBLIC UTILITIES TREATED AS SALES TO UNRELATED PERSONS.—Paragraph (4) of section 45(e) is amended by adding at the end the following new sentence: ''The net amount of electricity sold by any taxpayer to a regulated public utility (as defined in section 7701(a)(33)) shall be treated as sold to an unrelated person.''.

(f) MODIFICATION OF RULES FOR HYDROPOWER PRODUCTION.—Subparagraph (C) of section 45(c)(8) is amended to read as follows:

''(C) NONHYDROELECTRIC DAM.—For purposes of subparagraph (A), a facility is described in this subparagraph if—

''(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

''(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

''(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to property originally placed in service after December 31, 2008.

(2) REPEAL OF CREDIT PHASEOUT.—The amendments made by subsection (b)(1) shall apply to taxable years ending after December 31, 2008.

(3) LIMITATION BASED ON INVESTMENT IN FACILITY.—The amendment made by subsection (b)(2) shall apply to property originally placed in service after December 31, 2009.

(4) TRASH FACILITY CLARIFICATION; SALES TO RELATED REGULATED PUBLIC UTILITIES.—The amendments made by subsections (c) and (e) shall apply to electricity produced and sold after the date of the enactment of this Act.

(5) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) shall apply to property placed in service after the date of the enactment of this Act.

SEC. 3102. PRODUCTION CREDIT FOR ELECTRICITY PRODUCED FROM MARINE RENEWABLES.

(a) IN GENERAL.—Paragraph (1) of section 45(c) is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', and'', and by adding at the end the following new subparagraph:

''(I) marine and hydrokinetic renewable energy.''.

(b) MARINE RENEWABLES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraph:

''(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

''(A) IN GENERAL.—The term 'marine and hydrokinetic renewable energy' means energy derived from—

''(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

''(ii) free flowing water in rivers, lakes, and streams,

''(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

''(iv) differentials in ocean temperature (ocean thermal energy conversion).

''(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.''.

(c) DEFINITION OF FACILITY.—Subsection (d) of section 45 is amended by adding at the end the following new paragraph:

''(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term 'qualified facility' means any facility owned by the taxpayer—

''(A) which has a nameplate capacity rating of at least 150 kilowatts, and

''(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2012.''.

(d) CREDIT RATE.—Subparagraph (A) of section 45(b)(4) is amended by striking ''or (9)'' and inserting ''(9), or (11)''.

(e) COORDINATION WITH SMALL IRRIGATION POWER.—Paragraph (5) of section 45(d), as amended by section 3101, is amended by striking ''January 1, 2012'' and inserting ''the date of the enactment of paragraph (11)''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 3103. ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—

(1) SOLAR ENERGY PROPERTY.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) are each amended by striking ''January 1, 2009'' and inserting ''January 1, 2015''.

(2) FUEL CELL PROPERTY.—Subparagraph (E) of section 48(c)(1) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2014''.

(3) MICROTURBINE PROPERTY.—Subparagraph (E) of section 48(c)(2) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2014''.

(b) ALLOWANCE OF ENERGY CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) is amended by striking ''and'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48, and''.

(c) ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.—

(1) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking ''or'' at the end of clause (iii), by inserting ''or'' at the end of clause (iv), and by adding at the end the following new clause:

''(v) combined heat and power system property,''.

(2) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48 is amended by adding at the end the following new subsection:

''(d) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(v)—

''(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(A) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(B) which produces—

''(i) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

''(ii) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(C) the energy efficiency percentage of which exceeds 60 percent, and

''(D) which is placed in service before January 1, 2015.

''(2) LIMITATION.—

''(A) IN GENERAL.—In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

''(B) APPLICABLE CAPACITY.—For purposes of subparagraph (A), the term 'applicable capacity' means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

''(C) MAXIMUM CAPACITY.—The term 'combined heat and power system property' shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

''(3) SPECIAL RULES.—

''(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, the energy efficiency percentage of a system is the fraction—

''(i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(ii) the denominator of which is the lower heating value of the fuel sources for the system.

''(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(B) shall be determined on a Btu basis.

''(C) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(4) SYSTEMS USING BIOMASS.—If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

''(A) paragraph (1)(C) shall not apply, but

''(B) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which

bears the same ratio to such amount of credit (determined without regard to this paragraph) as the energy efficiency percentage of such system bears to 60 percent.''.

(d) INCREASE OF CREDIT LIMITATION FOR FUEL CELL PROPERTY.—Subparagraph (B) of section 48(c)(1) is amended by striking ''$500'' and inserting ''$1,500''.

(e) PUBLIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(B) Paragraph (2) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 3104. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) EXTENSION.—Section 25D(g) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2014''.

(b) MAXIMUM CREDIT FOR SOLAR ELECTRIC PROPERTY.—

(1) IN GENERAL.—Section 25D(b)(1)(A) is amended by striking ''$2,000'' and inserting ''$4,000''.

(2) CONFORMING AMENDMENT.—Section 25D(e)(4)(A)(i) is amended by striking ''$6,667'' and inserting ''$13,333''.

(c) CREDIT FOR RESIDENTIAL WIND PROPERTY.—

(1) IN GENERAL.—Section 25D(a) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year.''.

(2) LIMITATION.—Section 25D(b)(1) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph:

''(D) $500 with respect to each half kilowatt of capacity (not to exceed $4,000) of wind turbines for which qualified small wind energy property expenditures are made.''.

(3) QUALIFIED SMALL WIND ENERGY PROPERTY EXPENDITURES.—

(A) IN GENERAL.—Section 25D(d) is amended by adding at the end the following new paragraph:

''(4) QUALIFIED SMALL WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified small wind energy property expenditure' means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.''.

(B) NO DOUBLE BENEFIT.—Section 45(d)(1) is amended by adding at the end the following new sentence: ''Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.''.

(4) MAXIMUM EXPENDITURES IN CASE OF JOINT OCCUPANCY.—Section 25D(e)(4)(A) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) $1,667 in the case of each half kilowatt of capacity (not to exceed $13,333) of wind turbines for which qualified small wind energy property expenditures are made.''.

(d) CREDIT FOR GEOTHERMAL HEAT PUMP SYSTEMS.—

(1) IN GENERAL.—Section 25D(a), as amended by subsection (c), is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting '', and'', and by adding at the end the following new paragraph:

''(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.''.

(2) LIMITATION.—Section 25D(b)(1), as amended by subsection (c), is amended by striking ''and'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting '', and'', and by adding at the end the following new subparagraph:

''(E) $2,000 with respect to any qualified geothermal heat pump property expenditures.''.

(3) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURE.—Section 25D(d), as amended by subsection (c), is amended by adding at the end the following new paragraph:

''(5) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified geothermal heat pump property expenditure' means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

''(B) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY.—The term 'qualified geothermal heat pump property' means any equipment which—

''(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

''(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.''.

(4) MAXIMUM EXPENDITURES IN CASE OF JOINT OCCUPANCY.—Section 25D(e)(4)(A), as amended by subsection (c), is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) $6,667 in the case of any qualified geothermal heat pump property expenditures.''.

(e) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 25D is amended to read as follows:

''(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

''(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

''(2) CARRYFORWARD OF UNUSED CREDIT.—

''(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 23(b)(4)(B) is amended by inserting ''and section 25D'' after ''this section''.

(B) Section 24(b)(3)(B) is amended by striking ''and 25B'' and inserting '', 25B, and 25D''.

(C) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25D''.

(D) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25D''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (e)(2) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendments relate.

SEC. 3105. SPECIAL RULE TO IMPLEMENT FERC AND STATE ELECTRIC RESTRUCTURING POLICY.

(a) EXTENSION FOR QUALIFIED ELECTRIC UTILITIES.—

(1) IN GENERAL.—Paragraph (3) of section 451(i) is amended by inserting ''(before January 1, 2010, in the case of a qualified electric utility)'' after ''January 1, 2008''.

(2) QUALIFIED ELECTRIC UTILITY.—Subsection (i) of section 451 is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following new paragraph:

''(6) QUALIFIED ELECTRIC UTILITY.—For purposes of this subsection, the term 'qualified electric utility' means a person that, as of the date of the qualifying electric transmission transaction, is vertically integrated, in that it is both—

''(A) a transmitting utility (as defined in section 3(23) of the Federal Power Act (16 U.S.C. 796(23))) with respect to the transmission facilities to which the election under this subsection applies, and

''(B) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))).''.

(b) EXTENSION OF PERIOD FOR TRANSFER OF OPERATIONAL CONTROL AUTHORIZED BY FERC.—Clause (ii) of section 451(i)(4)(B) is amended by striking ''December 31, 2007'' and inserting ''the date which is 4 years after the close of the taxable year in which the transaction occurs''.

(c) PROPERTY LOCATED OUTSIDE THE UNITED STATES NOT TREATED AS EXEMPT UTILITY PROPERTY.—Paragraph (5) of section 451(i) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The term 'exempt utility property' shall not include any property which is located outside the United States.''.

(d) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to transactions after December 31, 2007.

(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) shall take effect as if included in section 909 of the American Jobs Creation Act of 2004.

(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) shall apply to transactions after the date of the enactment of this Act.

SEC. 3106. NEW CLEAN RENEWABLE ENERGY BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

''SEC. 54C. NEW CLEAN RENEWABLE ENERGY BONDS.

''(a) NEW CLEAN RENEWABLE ENERGY BOND.—For purposes of this subpart, the term 'new clean renewable energy bond' means any bond issued as part of an issue if—

''(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities,

''(2) the bond is issued by a qualified issuer, and

''(3) the issuer designates such bond for purposes of this section.

''(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

''(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

''(1) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

''(2) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national new clean renewable energy bond limitation of $2,000,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

''(A) not more than 33⅓ percent thereof may be allocated to qualified projects of public power providers,

''(B) not more than 33⅓ percent thereof may be allocated to qualified projects of governmental bodies, and

''(C) not more than 33⅓ percent thereof may be allocated to qualified projects of cooperative electric companies.

''(3) METHOD OF ALLOCATION.—

''(A) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

''(B) ALLOCATION AMONG GOVERNMENTAL BODIES AND COOPERATIVE ELECTRIC COMPANIES.—The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

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

''(1) QUALIFIED RENEWABLE ENERGY FACILITY.—The term 'qualified renewable energy facility' means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

''(2) PUBLIC POWER PROVIDER.—The term 'public power provider' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

''(3) GOVERNMENTAL BODY.—The term 'governmental body' means any State or Indian tribal government, or any political subdivision thereof.

''(4) COOPERATIVE ELECTRIC COMPANY.—The term 'cooperative electric company' means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

''(5) CLEAN RENEWABLE ENERGY BOND LENDER.—The term 'clean renewable energy bond lender' means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

''(6) QUALIFIED ISSUER.—The term 'qualified issuer' means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended to read as follows:

''(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means—

''(A) a qualified forestry conservation bond, or

''(B) a new clean renewable energy bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).''.

(2) Subparagraph (C) of section 54A(d)(2) is amended to read as follows:

''(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means—

''(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e), and

''(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1).''.

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 54C. Qualified clean renewable energy bonds.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

PART II—CARBON MITIGATION PROVISIONS

SEC. 3111. EXPANSION AND MODIFICATION OF ADVANCED COAL PROJECT INVESTMENT CREDIT.

(a) MODIFICATION OF CREDIT AMOUNT.—Section 48A(a) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).''.

(b) EXPANSION OF AGGREGATE CREDITS.—Section 48A(d)(3)(A) is amended by striking ''$1,300,000,000'' and inserting ''$2,550,000,000''.

(c) AUTHORIZATION OF ADDITIONAL PROJECTS.—

(1) IN GENERAL.—Subparagraph (B) of section 48A(d)(3) is amended to read as follows:

''(B) PARTICULAR PROJECTS.—Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

''(i) $800,000,000 for integrated gasification combined cycle projects the application for which is submitted during the period described in paragraph (2)(A)(i),

''(ii) $500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

''(iii) $1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).''.

(2) APPLICATION PERIOD FOR ADDITIONAL PROJECTS.—Subparagraph (A) of section 48A(d)(2) is amended to read as follows:

''(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application—

''(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

''(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i) or the date prescribed by the Secretary.''.

(3) CAPTURE AND SEQUESTRATION OF CARBON DIOXIDE EMISSIONS REQUIREMENT.—

(A) IN GENERAL.—Section 48A(e)(1) is amended by striking ''and'' at the end of subparagraph (E), by striking the period at the end of subparagraph (F) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.''.

(B) HIGHEST PRIORITY FOR PROJECTS WHICH SEQUESTER CARBON DIOXIDE EMISSIONS.—Section 48A(e)(3) is amended by striking ''and'' at the end of subparagraph (A)(iii), by striking the period at the end of subparagraph (B)(iii) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.''.

(C) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—Section 48A is amended by adding at the end the following new subsection:

''(i) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).''.

(4) ADDITIONAL PRIORITY FOR RESEARCH PARTNERSHIPS.—Section 48A(e)(3)(B), as amended by paragraph (3)(B), is amended—

(A) by striking ''and'' at the end of clause (ii),

(B) by redesignating clause (iii) as clause (iv), and

(C) by inserting after clause (ii) the following new clause:

''(iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and''.

(5) CLERICAL AMENDMENT.—Section 48A(e)(3) is amended by striking ''INTEGRATED GASIFICATION COMBINED CYCLE'' in the heading and inserting ''CERTAIN''.

(d) DISCLOSURE OF ALLOCATIONS.—Section 48A(d) is amended by adding at the end the following new paragraph:

''(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to credits the application for which is submitted during the period described in section 48A(d)(2)(A)(ii) of the Internal Revenue Code of 1986 and which are allocated or reallocated after the date of the enactment of this Act.

(2) DISCLOSURE OF ALLOCATIONS.—The amendment made by subsection (d) shall apply to certifications made after the date of the enactment of this Act.

(3) CLERICAL AMENDMENT.—The amendment made by subsection (c)(5) shall take effect as if included in the amendment made by section 1307(b) of the Energy Tax Incentives Act of 2005.

SEC. 3112. EXPANSION AND MODIFICATION OF COAL GASIFICATION INVESTMENT CREDIT.

(a) MODIFICATION OF CREDIT AMOUNT.—Section 48B(a) is amended by inserting ''(30 percent in the case of credits allocated under subsection (d)(1)(B))'' after ''20 percent''.

(b) EXPANSION OF AGGREGATE CREDITS.—Section 48B(d)(1) is amended by striking ''shall not exceed $350,000,000'' and all that follows and inserting ''shall not exceed—

''(A) $350,000,000, plus

''(B) $250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.''.

(c) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—Section 48B is amended by adding at the end the following new subsection:

''(f) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).''.

(d) SELECTION PRIORITIES.—Section 48B(d) is amended by adding at the end the following new paragraph:

''(4) SELECTION PRIORITIES.—In determining which qualifying gasification projects to certify under this section, the Secretary shall—

''(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

''(B) give high priority to applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act.

SEC. 3113. TEMPORARY INCREASE IN COAL EXCISE TAX.

Paragraph (2) of section 4121(e) is amended—

(1) by striking ''January 1, 2014'' in subparagraph (A) and inserting ''December 31, 2018'', and

(2) by striking ''January 1 after 1981'' in subparagraph (B) and inserting ''December 31 after 2007''.

SEC. 3114. SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL PRODUCERS AND EXPORTERS.

(a) REFUND.—

(1) COAL PRODUCERS.—

(A) IN GENERAL.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, if—

(i) a coal producer establishes that such coal producer, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a possession of the United States, or caused such coal to be exported or shipped, the export or shipment of which was other than through an exporter who meets the requirements of paragraph (2),

(ii) such coal producer filed an excise tax return on or after October 1, 1990, and on or before the date of the enactment of this Act, and

(iii) such coal producer files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such coal producer an amount equal to the tax paid under section 4121 of such Code on such coal exported or shipped by the coal producer or a party related to such coal producer, or caused by the coal producer or a party related to such coal producer to be exported or shipped.

(B) SPECIAL RULES FOR CERTAIN TAXPAYERS.—For purposes of this section—

(i) IN GENERAL.—If a coal producer or a party related to a coal producer has received a judgment described in clause (iii), such coal producer shall be deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States under subparagraph (A)(i).

(ii) AMOUNT OF PAYMENT.—If a taxpayer described in clause (i) is entitled to a payment under subparagraph (A), the amount of such payment shall be reduced by any amount paid pursuant to the judgment described in clause (iii).

(iii) JUDGMENT DESCRIBED.—A judgment is described in this subparagraph if such judgment—

(I) is made by a court of competent jurisdiction within the United States,

(II) relates to the constitutionality of any tax paid on exported coal under section 4121 of the Internal Revenue Code of 1986, and

(III) is in favor of the coal producer or the party related to the coal producer.

(2) EXPORTERS.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, and a judgment described in paragraph (1)(B)(iii) of this subsection, if—

(A) an exporter establishes that such exporter exported coal to a foreign country or shipped coal to a possession of the United States, or caused such coal to be so exported or shipped,

(B) such exporter filed a tax return on or after October 1, 1990, and on or before the date of the enactment of this Act, and

(C) such exporter files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such exporter an amount equal to $0.825 per ton of such coal exported by the exporter or caused to be exported or shipped, or caused to be exported or shipped, by the exporter.

(b) LIMITATIONS.—Subsection (a) shall not apply with respect to exported coal if a settlement with the Federal Government has been made with and accepted by, the coal producer, a party related to such coal producer, or the exporter, of such coal, as of the date that the claim is filed under this section with respect to such exported coal. For purposes of this subsection, the term ''settlement with the Federal Government'' shall not include any settlement or stipulation entered into as of the date of the enactment of this Act, the terms of which contemplate a judgment concerning which any party has reserved the right to file an appeal, or has filed an appeal.

(c) SUBSEQUENT REFUND PROHIBITED.—No refund shall be made under this section to the extent that a credit or refund of such tax on such exported or shipped coal has been paid to any person.

(d) DEFINITIONS.—For purposes of this section—

(1) COAL PRODUCER.—The term ''coal producer'' means the person in whom is vested ownership of the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similar processing) of coal.

(2) EXPORTER.—The term ''exporter'' means a person, other than a coal producer, who does not have a contract, fee arrangement, or any other agreement with a producer or seller of such coal to export or ship such coal to a third party on behalf of the producer or seller of such coal and—

(A) is indicated in the shipper's export declaration or other documentation as the exporter of record, or

(B) actually exported such coal to a foreign country or shipped such coal to a possession of the United States, or caused such coal to be so exported or shipped.

(3) RELATED PARTY.—The term ''a party related to such coal producer'' means a person who—

(A) is related to such coal producer through any degree of common management, stock ownership, or voting control,

(B) is related (within the meaning of section 144(a)(3) of the Internal Revenue Code of 1986) to such coal producer, or

(C) has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Treasury or the Secretary's designee.

(e) TIMING OF REFUND.—With respect to any claim for refund filed pursuant to this section, the Secretary shall determine whether the requirements of this section are met not later than 180 days after such claim is filed. If the Secretary determines that the

requirements of this section are met, the claim for refund shall be paid not later than 180 days after the Secretary makes such determination.

(f) INTEREST.—Any refund paid pursuant to this section shall be paid by the Secretary with interest from the date of overpayment determined by using the overpayment rate and method under section 6621 of the Internal Revenue Code of 1986.

(g) DENIAL OF DOUBLE BENEFIT.—The payment under subsection (a) with respect to any coal shall not exceed—

(1) in the case of a payment to a coal producer, the amount of tax paid under section 4121 of the Internal Revenue Code of 1986 with respect to such coal by such coal producer or a party related to such coal producer, and

(2) in the case of a payment to an exporter, an amount equal to $0.825 per ton with respect to such coal exported by the exporter or caused to be exported by the exporter.

(h) APPLICATION OF SECTION.—This section applies only to claims on coal exported or shipped on or after October 1, 1990, through the date of the enactment of this Act.

(i) STANDING NOT CONFERRED.—

(1) EXPORTERS.—With respect to exporters, this section shall not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer.

(2) COAL PRODUCERS.—With respect to coal producers, this section shall not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter.

SEC. 3115. CARBON AUDIT OF THE TAX CODE.

(a) STUDY.—The Secretary of the Treasury shall enter into an agreement with the National Academy of Sciences to undertake a comprehensive review of the Internal Revenue Code of 1986 to identify the types of and specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the National Academy of Sciences shall submit to Congress a report containing the results of study authorized under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for the period of fiscal years 2008 and 2009.

Subtitle B—Transportation and Domestic Fuel Security Provisions

SEC. 3121. INCLUSION OF CELLULOSIC BIOFUEL IN BONUS DEPRECIATION FOR BIOMASS ETHANOL PLANT PROPERTY.

(a) IN GENERAL.—Paragraph (3) of section 168(l) is amended to read as follows:

''(3) CELLULOSIC BIOFUEL.—The term 'cellulosic biofuel' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.''.

(b) CONFORMING AMENDMENTS.—Subsection (l) of section 168 is amended—

(1) by striking ''cellulosic biomass ethanol'' each place it appears and inserting ''cellulosic biofuel'',

(2) by striking ''CELLULOSIC BIOMASS ETHANOL'' in the heading of such subsection and inserting ''CELLULOSIC BIOFUEL'', and

(3) by striking ''CELLULOSIC BIOMASS ETHANOL'' in the heading of paragraph (2) thereof and inserting ''CELLULOSIC BIOFUEL''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 3122. CREDITS FOR BIODIESEL AND RENEWABLE DIESEL.

(a) IN GENERAL.—Sections 40A(g), 6426(c)(6), and 6427(e)(5)(B) are each amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) INCREASE IN RATE OF CREDIT.—

(1) INCOME TAX CREDIT.—Paragraphs (1)(A) and (2)(A) of section 40A(b) are each amended by striking ''50 cents'' and inserting ''$1.00''.

(2) EXCISE TAX CREDIT.—Paragraph (2) of section 6426(c) is amended to read as follows:

''(2) APPLICABLE AMOUNT.—For purposes of this subsection, the applicable amount is $1.00.''.

(3) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 40A is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(B) Paragraph (2) of section 40A(f) is amended to read as follows:

''(2) EXCEPTION.—Subsection (b)(4) shall not apply with respect to renewable diesel.''.

(C) Paragraphs (2) and (3) of section 40A(e) are each amended by striking ''subsection (b)(5)(C)'' and inserting ''subsection (b)(4)(C)''.

(D) Clause (ii) of section 40A(d)(3)(C) is amended by striking ''subsection (b)(5)(B)'' and inserting ''subsection (b)(4)(B)''.

(c) UNIFORM TREATMENT OF DIESEL PRODUCED FROM BIOMASS.—Paragraph (3) of section 40A(f) is amended—

(1) by striking ''diesel fuel'' and inserting ''liquid fuel'',

(2) by striking ''using a thermal depolymerization process'', and

(3) by striking ''or D396'' in subparagraph (B) and inserting '', D396, or other equivalent standard approved by the Secretary''.

(d) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—

(1) IN GENERAL.—Paragraph (3) of section 40A(f) (defining renewable diesel) is amended by adding at the end the following new sentence: ''Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3).''.

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 40A(f) is amended by striking ''(as defined in section 45K(c)(3))''.

(e) ELIGIBILITY OF CERTAIN AVIATION FUEL.—Paragraph (3) of section 40A(f) (defining renewable diesel) is amended by adding at the end the following: ''The term 'renewable diesel' also means fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2008.

(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendments made by subsection (d) shall apply to fuel produced, and sold or used, after the date of the enactment of this Act.

SEC. 3123. CLARIFICATION THAT CREDITS FOR FUEL ARE DESIGNED TO PROVIDE AN INCENTIVE FOR UNITED STATES PRODUCTION.

(a) ALCOHOL FUELS CREDIT.—Paragraph (6) of section 40(d) is amended to read as follows:

''(6) LIMITATION TO ALCOHOL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term 'United States' includes any possession of the United States.''.

(b) BIODIESEL FUELS CREDIT.—Subsection (d) of section 40A is amended by adding at the end the following new paragraph:

''(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term 'United States' includes any possession of the United States.''.

(c) EXCISE TAX CREDIT.—

(1) IN GENERAL.—Section 6426 is amended by adding at the end the following new subsection:

''(i) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—

''(1) ALCOHOL.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

''(2) BIODIESEL AND ALTERNATIVE FUELS.—No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term 'United States' includes any possession of the United States.''.

(2) CONFORMING AMENDMENT.—Subsection (e) of section 6427 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel if credit is not allowed with respect to such mixture or alternative fuel by reason of section 6426(i).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to claims for credit or payment made on or after May 15, 2008.

SEC. 3124. CREDIT FOR NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

''SEC. 30D. NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each new qualified plug-in electric drive motor vehicle placed in service by the taxpayer during the taxable year.

''(b) PER VEHICLE DOLLAR LIMITATION.—

''(1) IN GENERAL.—The amount determined under this subsection with respect to any new qualified plug-in electric drive motor vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

''(2) BASE AMOUNT.—The amount determined under this paragraph is $3,000.

''(3) BATTERY CAPACITY.—In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $200, plus $200 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $2,000.

''(c) APPLICATION WITH OTHER CREDITS.—

''(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the

credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

''(2) PERSONAL CREDIT.—

''(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

''(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

''(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the taxable year.

''(d) NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—For purposes of this section—

''(1) IN GENERAL.—The term 'new qualified plug-in electric drive motor vehicle' means a motor vehicle (as defined in section 30(c)(2))—

''(A) the original use of which commences with the taxpayer,

''(B) which is acquired for use or lease by the taxpayer and not for resale,

''(C) which is made by a manufacturer,

''(D) which has a gross vehicle weight rating of less than 14,000 pounds,

''(E) which has received a certificate of conformity under the Clean Air Act and meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

''(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

''(i) has a capacity of not less than 4 kilowatt hours, and

''(ii) is capable of being recharged from an external source of electricity.

''(2) EXCEPTION.—The term 'new qualified plug-in electric drive motor vehicle' shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

''(3) OTHER TERMS.—The terms 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) BATTERY CAPACITY.—The term 'capacity' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

''(e) LIMITATION ON NUMBER OF NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE FOR CREDIT.—

''(1) IN GENERAL.—In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

''(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after the date of the enactment of this section, is at least 60,000.

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) 50 percent for the first 2 calendar quarters of the phaseout period,

''(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

''(C) 0 percent for each calendar quarter thereafter.

''(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

''(f) SPECIAL RULES.—

''(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (c)).

''(2) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

''(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

''(4) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(5) PROPERTY USED BY TAX-EXEMPT ENTITY; INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Rules similar to the rules of paragraphs (6) and (10) of section 30B(h) shall apply for purposes of this section.''.

(b) COORDINATION WITH ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(d)(3) is amended by adding at the end the following new subparagraph:

''(D) EXCLUSION OF PLUG-IN VEHICLES.—Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.''.

(c) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended—

(1) by striking ''and'' each place it appears at the end of any paragraph,

(2) by striking ''plus'' each place it appears at the end of any paragraph,

(3) by striking the period at the end of paragraph (32) and inserting '', plus'', and

(4) by adding at the end the following new paragraph:

''(33) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies.''.

(d) CONFORMING AMENDMENTS.—

(1)(A) Section 24(b)(3)(B), as amended by section 104, is amended by striking ''and 25D'' and inserting ''25D, and 30D''.

(B) Section 25(e)(1)(C)(ii) is amended by inserting ''30D,'' after ''25D,''.

(C) Section 25B(g)(2), as amended by section 104, is amended by striking ''and 25D'' and inserting '', 25D, and 30D''.

(D) Section 26(a)(1), as amended by section 104, is amended by striking ''and 25D'' and inserting ''25D, and 30D''.

(E) Section 1400C(d)(2) is amended by striking ''and 25D'' and inserting ''25D, and 30D''.

(2) Section 1016(a) is amended by striking ''and'' at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting '', and'', and by adding at the end the following new paragraph:

''(37) to the extent provided in section 30D(f)(1).''.

(3) Section 6501(m) is amended by inserting ''30D(f)(4),'' after ''30C(e)(5),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 30D. New qualified plug-in electric drive motor vehicles.''.

(e) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS A PERSONAL CREDIT.—

(1) IN GENERAL.—Paragraph (2) of section 30B(g) is amended to read as follows:

''(2) PERSONAL CREDIT.—The credit allowed under subsection (a) for any taxable year (after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 30C(d)(2) is amended by striking ''sections 27, 30, and 30B'' and inserting ''sections 27 and 30''.

(B) Paragraph (3) of section 55(c) is amended by striking ''30B(g)(2),''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(2) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS PERSONAL CREDIT.—The amendments made by subsection (e) shall apply to taxable years beginning after December 31, 2007.

(g) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

SEC. 3125. EXCLUSION FROM HEAVY TRUCK TAX FOR IDLING REDUCTION UNITS AND ADVANCED INSULATION.

(a) IN GENERAL.—Section 4053 is amended by adding at the end the following new paragraphs:

''(9) IDLING REDUCTION DEVICE.—Any device or system of devices which—

''(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

''(B) is determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

''(10) ADVANCED INSULATION.—Any insulation that has an R value of not less than R35 per inch.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or installations after the date of the enactment of this Act.

SEC. 3126. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Part I of subchapter Y of chapter 1 is amended by redesignating section 1400L as section 1400K and by adding at the end the following new section:

''SEC. 1400L. NEW YORK LIBERTY ZONE TAX CREDITS.

''(a) IN GENERAL.—In the case of a New York Liberty Zone governmental unit, there shall be allowed as a credit against any taxes imposed for any payroll period by section 3402 for which such governmental unit is liable under section 3403 an amount equal to so

much of the portion of the qualifying project expenditure amount allocated under subsection (b)(3) to such governmental unit for the calendar year as is allocated by such governmental unit to such period under subsection (b)(4).

''(b) QUALIFYING PROJECT EXPENDITURE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying project expenditure amount' means, with respect to any calendar year, the sum of—

''(A) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, New York, and

''(B) any such expenditures—

''(i) paid or incurred in any preceding calendar year which begins after the date of enactment of this section, and

''(ii) not previously allocated under paragraph (3).

''(2) QUALIFYING PROJECT.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400K(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

''(3) GENERAL ALLOCATION.—

''(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying project expenditure amount which may be taken into account by such governmental unit under subsection (a) for any calendar year in the credit period.

''(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

''(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

''(i) $115,000,000 ($425,000,000 in the case of the last 2 years in the credit period), plus

''(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

''(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate to New York Liberty Zone governmental units for any calendar year in the 5-year period following the credit period an amount equal to—

''(i) the lesser of—

''(I) such excess, or

''(II) the qualifying project expenditure amount for such calendar year, reduced by

''(ii) the aggregate amount allocated under this subparagraph for all preceding calendar years.

''(4) ALLOCATION TO PAYROLL PERIODS.—Each New York Liberty Zone governmental unit which has been allocated a portion of the qualifying project expenditure amount under paragraph (3) for a calendar year may allocate such portion to payroll periods beginning in such calendar year as such governmental unit determines appropriate.

''(c) CARRYOVER OF UNUSED ALLOCATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if the amount allocated under subsection (b)(3) to a New York Liberty Zone governmental unit for any calendar year exceeds the aggregate taxes imposed by section 3402 for which such governmental unit is liable under section 3403 for periods beginning in such year, such excess shall be carried to the succeeding calendar year and added to the allocation of such governmental unit for such succeeding calendar year.

''(2) REALLOCATION.—If a New York Liberty Zone governmental unit does not use an amount allocated to it under subsection (b)(3) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(3) in the same manner as if it had never been allocated.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CREDIT PERIOD.—The term 'credit period' means the 12-year period beginning on January 1, 2009.

''(2) NEW YORK LIBERTY ZONE GOVERNMENTAL UNIT.—The term 'New York Liberty Zone governmental unit' means—

''(A) the State of New York,

''(B) the City of New York, New York, and

''(C) any agency or instrumentality of such State or City.

''(3) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

''(4) TREATMENT OF CREDIT AMOUNTS FOR PURPOSES OF WITHHOLDING TAXES.—For purposes of this title, a New York Liberty Zone governmental unit shall be treated as having paid to the Secretary, on the day on which wages are paid to employees, an amount equal to the amount of the credit allowed to such entity under subsection (a) with respect to such wages, but only if such governmental unit deducts and withholds wages for such payroll period under section 3401 (relating to wage withholding).

''(e) REPORTING.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly submit to the Secretary an annual report—

''(1) which certifies—

''(A) the qualifying project expenditure amount for the calendar year, and

''(B) the amount allocated to each New York Liberty Zone governmental unit under subsection (b)(3) for the calendar year, and

''(2) includes such other information as the Secretary may require to carry out this section.

''(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to ensure compliance with the purposes of this section.''.

(b) TERMINATION OF SPECIAL ALLOWANCE AND EXPENSING.—Subparagraph (A) of section 1400K(b)(2), as redesignated by subsection (a), is amended by striking the parenthetical therein and inserting ''(in the case of nonresidential real property and residential rental property, the date of the enactment of the Federal Housing Finance Regulatory Reform Act of 2008 or, if acquired pursuant to a binding contract in effect on such enactment date, December 31, 2009)''.

(c) CONFORMING AMENDMENTS.—

(1) Section 38(c)(3)(B) is amended by striking ''section 1400L(a)'' and inserting ''section 1400K(a)''.

(2) Section 168(k)(2)(D)(ii) is amended by striking ''section 1400L(c)(2)'' and inserting ''section 1400K(c)(2)''.

(3) The table of sections for part I of subchapter Y of chapter 1 is amended by redesignating the item relating to section 1400L as an item relating to section 1400K and by inserting after such item the following new item:

''Sec. 1400L. New York Liberty Zone tax credits.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3127. TRANSPORTATION FRINGE BENEFIT TO BICYCLE COMMUTERS.

(a) IN GENERAL.—Paragraph (1) of section 132(f) is amended by adding at the end the following:

''(D) Any qualified bicycle commuting reimbursement.''.

(b) LIMITATION ON EXCLUSION.—Paragraph (2) of section 132(f) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.''.

(c) DEFINITIONS.—Paragraph (5) of section 132(f) is amended by adding at the end the following:

''(F) DEFINITIONS RELATED TO BICYCLE COMMUTING REIMBURSEMENT.—

''(i) QUALIFIED BICYCLE COMMUTING REIMBURSEMENT.—The term 'qualified bicycle commuting reimbursement' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

''(ii) APPLICABLE ANNUAL LIMITATION.—The term 'applicable annual limitation' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

''(iii) QUALIFIED BICYCLE COMMUTING MONTH.—The term 'qualified bicycle commuting month' means, with respect to any employee, any month during which such employee—

''(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

''(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).''.

(d) CONSTRUCTIVE RECEIPT OF BENEFIT.—Paragraph (4) of section 132(f) is amended by inserting ''(other than a qualified bicycle commuting reimbursement)'' after ''qualified transportation fringe''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 3128. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

(a) INCREASE IN CREDIT AMOUNT.—Section 30C is amended—

(1) by striking ''30 percent'' in subsection (a) and inserting ''50 percent'', and

(2) by striking ''$30,000'' in subsection (b)(1) and inserting ''$50,000''.

(b) EXTENSION OF CREDIT.—Paragraph (2) of section 30C(g) is amended by striking ''December 31, 2009'' and inserting ''December 31, 2010''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Energy Conservation and Efficiency Provisions

SEC. 3141. QUALIFIED ENERGY CONSERVATION BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1, as amended by section 3106, is amended by adding at the end the following new section:

"SEC. 54D. QUALIFIED ENERGY CONSERVATION BONDS.

''(a) QUALIFIED ENERGY CONSERVATION BOND.—For purposes of this subchapter, the term 'qualified energy conservation bond' means any bond issued as part of an issue if—

''(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

''(2) the bond is issued by a State or local government, and

''(3) the issuer designates such bond for purposes of this section.

''(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

''(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

''(d) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $3,000,000,000.

''(e) ALLOCATIONS.—

''(1) IN GENERAL.—The limitation applicable under subsection (d) shall be allocated by the Secretary among the States in proportion to the population of the States.

''(2) ALLOCATIONS TO LARGEST LOCAL GOVERNMENTS.—

''(A) IN GENERAL.—In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

''(B) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

''(C) LARGE LOCAL GOVERNMENT.—For purposes of this section, the term 'large local government' means any municipality or county if such municipality or county has a population of 100,000 or more.

''(3) ALLOCATION TO ISSUERS; RESTRICTION ON PRIVATE ACTIVITY BONDS.—Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

''(f) QUALIFIED CONSERVATION PURPOSE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified conservation purpose' means any of the following:

''(A) Capital expenditures incurred for purposes of—

''(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

''(ii) implementing green community programs,

''(iii) rural development involving the production of electricity from renewable energy resources, or

''(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

''(B) Expenditures with respect to research facilities, and research grants, to support research in—

''(i) development of cellulosic ethanol or other nonfossil fuels,

''(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

''(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

''(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

''(v) technologies to reduce energy use in buildings.

''(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

''(D) Demonstration projects designed to promote the commercialization of—

''(i) green building technology,

''(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

''(iii) advanced battery manufacturing technologies,

''(iv) technologies to reduce peak use of electricity, or

''(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

''(E) Public education campaigns to promote energy efficiency.

''(2) SPECIAL RULES FOR PRIVATE ACTIVITY BONDS.—For purposes of this section, in the case of any private activity bond, the term 'qualified conservation purposes' shall not include any expenditure which is not a capital expenditure.

''(g) POPULATION.—

''(1) IN GENERAL.—The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

''(2) SPECIAL RULE FOR COUNTIES.—In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

''(h) APPLICATION TO INDIAN TRIBAL GOVERNMENTS.—An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

''(1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and

''(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d), as amended by section 3106, is amended to read as follows:

''(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means—

''(A) a qualified forestry conservation bond,

''(B) a new clean renewable energy bond, or

''(C) a qualified energy conservation bond, which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).''.

(2) Subparagraph (C) of section 54A(d)(2), as amended by section 3106, is amended to read as follows:

''(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means—

''(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e),

''(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1), and

''(iii) in the case of a qualified energy conservation bond, a purpose specified in section 54D(a)(1).''.

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 54D. Qualified energy conservation bonds.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 3142. CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) EXTENSION OF CREDIT.—Section 25C(g) is amended by striking ''December 31, 2007'' and inserting ''December 31, 2008''.

(b) QUALIFIED BIOMASS FUEL PROPERTY.—

(1) IN GENERAL.—Section 25C(d)(3) is amended—

(A) by striking ''and'' at the end of subparagraph (D),

(B) by striking the period at the end of subparagraph (E) and inserting '', and'', and

(C) by adding at the end the following new subparagraph:

''(F) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.''.

(2) BIOMASS FUEL.—Section 25C(d) is amended by adding at the end the following new paragraph:

''(6) BIOMASS FUEL.—The term 'biomass fuel' means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.''.

(c) COORDINATION WITH CREDIT FOR QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURES.—

(1) IN GENERAL.—Paragraph (3) of section 25C(d), as amended by subsection (b), is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 25C(d)(2) is amended to read as follows:

''(C) REQUIREMENTS AND STANDARDS FOR AIR CONDITIONERS AND HEAT PUMPS.—The standards and requirements prescribed by the Secretary under subparagraph (B) with respect to the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

''(i) shall require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(ii) may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency.''.

(d) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—

(1) IN GENERAL.—Paragraph (1) of section 25C(c) is amended by inserting '', or an asphalt roof with appropriate cooling granules,'' before ''which meet the Energy Star program requirements''.

(2) BUILDING ENVELOPE COMPONENT.—Subparagraph (D) of section 25C(c)(2) is amended—

(A) by inserting ''or asphalt roof'' after ''metal roof'', and

(B) by inserting ''or cooling granules'' after ''pigmented coatings''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made this section shall apply to expenditures made after December 31, 2007.

(2) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—The amendments made by subsection (d) shall apply to property placed in service after the date of the enactment of this Act.

SEC. 3143. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

Subsection (h) of section 179D is amended by striking ''December 31, 2008'' and inserting ''December 31, 2013''.

SEC. 3144. MODIFICATIONS OF ENERGY EFFICIENT APPLIANCE CREDIT FOR APPLIANCES PRODUCED AFTER 2007.

(a) IN GENERAL.—Subsection (b) of section 45M is amended to read as follows:

''(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

''(1) DISHWASHERS.—The applicable amount is—

''(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

''(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

''(2) CLOTHES WASHERS.—The applicable amount is—

''(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

''(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

''(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

''(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

''(3) REFRIGERATORS.—The applicable amount is—

''(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

''(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.''.

(b) ELIGIBLE PRODUCTION.—

(1) SIMILAR TREATMENT FOR ALL APPLIANCES.—Subsection (c) of section 45M is amended—

(A) by striking paragraph (2),

(B) by striking ''(1) IN GENERAL'' and all that follows through ''the eligible'' and inserting ''The eligible'',

(C) by moving the text of such subsection in line with the subsection heading, and

(D) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and by moving such paragraphs 2 ems to the left.

(2) MODIFICATION OF BASE PERIOD.—Paragraph (2) of section 45M(c), as amended by paragraph (1), is amended by striking ''3-calendar year'' and inserting ''2-calendar year''.

(c) TYPES OF ENERGY EFFICIENT APPLIANCES.—Subsection (d) of section 45M (defining types of energy efficient appliances) is amended to read as follows:

''(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

''(1) dishwashers described in subsection (b)(1),

''(2) clothes washers described in subsection (b)(2), and

''(3) refrigerators described in subsection (b)(3).''.

(d) AGGREGATE CREDIT AMOUNT ALLOWED.—

(1) INCREASE IN LIMIT.—Paragraph (1) of section 45M(e) is amended to read as follows:

''(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.''.

(2) EXCEPTION FOR CERTAIN REFRIGERATOR AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended to read as follows:

''(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).''.

(e) QUALIFIED ENERGY EFFICIENT APPLIANCES.—

(1) IN GENERAL.—Paragraph (1) of section 45M(f) (defining qualified energy efficient appliance) is amended to read as follows:

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) any dishwasher described in subsection (b)(1),

''(B) any clothes washer described in subsection (b)(2), and

''(C) any refrigerator described in subsection (b)(3).''.

(2) CLOTHES WASHER.—Section 45M(f)(3) is amended by inserting ''commercial'' before ''residential'' the second place it appears.

(3) TOP-LOADING CLOTHES WASHER.—Subsection (f) of section 45M is amended by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) TOP-LOADING CLOTHES WASHER.—The term 'top-loading clothes washer' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.''.

(4) REPLACEMENT OF ENERGY FACTOR.—Section 45M(f)(6), as redesignated by paragraph (3), is amended to read as follows:

''(6) MODIFIED ENERGY FACTOR.—The term 'modified energy factor' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.''.

(5) GALLONS PER CYCLE; WATER CONSUMPTION FACTOR.—Section 45M(f), as amended by paragraph (3), is amended by adding at the end the following:

''(9) GALLONS PER CYCLE.—The term 'gallons per cycle' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

''(10) WATER CONSUMPTION FACTOR.—The term 'water consumption factor' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007.

SEC. 3145. ACCELERATED RECOVERY PERIOD FOR DEPRECIATION OF SMART METERS AND SMART GRID SYSTEMS.

(a) IN GENERAL.—Section 168(e)(3)(D) is amended by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by inserting after clause (ii) the following new clauses:

''(iii) any qualified smart electric meter, and

''(iv) any qualified smart electric grid system.''.

(b) DEFINITIONS.—Section 168(i) is amended by inserting at the end the following new paragraph:

''(18) QUALIFIED SMART ELECTRIC METERS.—

''(A) IN GENERAL.—The term 'qualified smart electric meter' means any smart electric meter which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) SMART ELECTRIC METER.—For purposes of subparagraph (A), the term 'smart electric meter' means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

''(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

''(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

''(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

''(iv) provides net metering.

''(19) QUALIFIED SMART ELECTRIC GRID SYSTEMS.—

''(A) IN GENERAL.—The term 'qualified smart electric grid system' means any smart grid property used as part of a system for electric distribution grid communications, monitoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) SMART GRID PROPERTY.—For the purposes of subparagraph (A), the term 'smart grid property' means electronics and related equipment that is capable of—

''(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

''(ii) providing real-time, two-way communications to monitor or manage such grid, and

''(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.''.

(c) CONTINUED APPLICATION OF 150 PERCENT DECLINING BALANCE METHOD.—Paragraph (2) of section 168(b) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

''(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 3146. QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) IN GENERAL.—Paragraph (8) of section 142(l) is amended by striking ''September 30, 2009'' and inserting ''September 30, 2012''.

(b) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraph (9) of section 142(l) is amended by striking ''October 1, 2009'' and inserting ''October 1, 2012''.

(c) ACCOUNTABILITY.—The second sentence of section 701(d) of the American Jobs Creation Act of 2004 is amended by striking ''issuance,'' and inserting ''issuance of the last issue with respect to such project,''.

Subtitle D—Revenue Provisions

SEC. 3151. NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.

(a) IN GENERAL.—Subpart B of part II of subchapter E of chapter 1 is amended by inserting after section 457 the following new section:

''SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.

''(a) IN GENERAL.—Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

''(b) NONQUALIFIED ENTITY.—For purposes of this section, the term 'nonqualified entity' means—

''(1) any foreign corporation unless substantially all of its income is—

''(A) effectively connected with the conduct of a trade or business in the United States, or

''(B) subject to a comprehensive foreign income tax, and

''(2) any partnership unless substantially all of its income is allocated to persons other than—

''(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

''(B) organizations which are exempt from tax under this title.

''(c) DETERMINABILITY OF AMOUNTS OF COMPENSATION.—

''(1) IN GENERAL.—If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

''(A) such amount shall be so includible in gross income when determinable, and

''(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

''(i) the amount of interest determined under paragraph (2), and

''(ii) an amount equal to 20 percent of the amount of such compensation.

''(2) INTEREST.—For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) SUBSTANTIAL RISK OF FORFEITURE.—

''(A) IN GENERAL.—The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(B) EXCEPTION FOR COMPENSATION BASED ON GAIN RECOGNIZED ON AN INVESTMENT ASSET.—

''(i) IN GENERAL.—To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

''(ii) INVESTMENT ASSET.—For purposes of clause (i), the term 'investment asset' means any single asset (other than an investment fund or similar entity)—

''(I) acquired directly by an investment fund or similar entity,

''(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

''(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

''(iii) COORDINATION WITH SPECIAL RULE.—Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

''(2) COMPREHENSIVE FOREIGN INCOME TAX.—The term 'comprehensive foreign income tax' means, with respect to any foreign person, the income tax of a foreign country if—

''(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

''(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

''(3) NONQUALIFIED DEFERRED COMPENSATION PLAN.—

''(A) IN GENERAL.—The term 'nonqualified deferred compensation plan' has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

''(B) EXCEPTION.—Compensation shall not be treated as deferred for purposes of this section if the service provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

''(4) EXCEPTION FOR CERTAIN COMPENSATION WITH RESPECT TO EFFECTIVELY CONNECTED INCOME.—In the case a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

''(5) APPLICATION OF RULES.—Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENT.—Section 26(b)(2), as amended by section 3011, is amended by striking ''and'' at the end of subparagraph (V), by striking the period at the end of subparagraph (W) and inserting '', and'', and by adding at the end the following new subparagraph:

''(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).''.

(c) CLERICAL AMENDMENT.—The table of sections of subpart B of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 457 the following new item:

''Sec. 457A. Nonqualified deferred compensation from certain tax indifferent parties.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts deferred which are attributable to services performed after December 31, 2008.

(2) APPLICATION TO EXISTING DEFERRALS.—In the case of any amount deferred to which the amendments made by this section do not apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2009, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, such amounts shall be includible in gross income in the later of—

(A) the last taxable year beginning before 2018, or

(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation (determined in the same manner as determined for purposes of section 457A of the Internal Revenue Code of 1986, as added by this section).

(3) CHARITABLE CONTRIBUTIONS OF EXISTING DEFERRALS PERMITTED.—

(A) IN GENERAL.—Subsection (b) of section 170 of the Internal Revenue Code of 1986 shall not apply to (and subsections (b) and (d) of such section shall be applied without regard to) so much of the taxpayer's qualified contributions made during the taxpayer's last taxable year beginning before 2018 as does not exceed the taxpayer's qualified inclusion amount. For purposes of subsection (b) of section 170 of such Code, the taxpayer's contribution base for such last taxable year shall be reduced by the amount of the taxpayer's qualified contributions to which such subsection does not apply by reason the preceding sentence.

(B) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, the term ''qualified contributions'' means the aggregate charitable contributions (as defined in section 170(c) of such Code) paid in cash by the taxpayer to organizations described in section 170(b)(1)(A) of such Code (other than any organization described in section 509(a)(3) of such Code or any fund or account described in section 4966(d)(2) of such Code).

(C) QUALIFIED INCLUSION AMOUNT.—For purposes of this paragraph, the term ''qualified inclusion amount'' means the amount includible in the taxpayer's gross income for the last taxable year beginning before 2018 by reason of paragraph (2).

(4) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of

this Act, the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a) of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

(5) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance issued under paragraph (4) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.

(6) ACCELERATED PAYMENT NOT TREATED AS MATERIAL MODIFICATION.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (4) or (5) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986.

SA 5046. Mr. CORNYN (for himself, Mrs. BOXER, Mr. ROBERTS, Mr. PRYOR, Mr. ISAKSON, and Mr. SALAZAR) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REQUIRING MORTGAGE DISCLOSURE.

(a) IN GENERAL.—Section 102(a)(4)(A) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by inserting after ''spouse'' the following: '', except that this exception shall not apply to a reporting individual described in section 101(f)(9)''.

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

SA 5047. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 82, strike line 4 and all that follows through page 401, line 4, and insert the following:

''(iii) each enterprise received credit towards achieving each of its goals resulting from a transaction or activity pursuant to section 1331(b)(2); and

''(iv) each enterprise is achieving the purposes of the enterprise established by law; and

''(B) the actions that each enterprise could undertake to promote and expand the purposes of the enterprise;

''(2) aggregate and analyze relevant data on income to assess the compliance of each enterprise with the housing goals established under subpart B;

''(3) aggregate and analyze data on income, race, and gender by census tract and other relevant classifications, and compare such data with larger demographic, housing, and economic trends;

''(4) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime and nontraditional loans;

''(5) compare the characteristics of subprime and nontraditional loans both purchased and securitized by each enterprise to other loans purchased and securitized by each enterprise; and

''(6) compare the characteristics of high-cost loans purchased and securitized, where such securities are not held on portfolio to loans purchased and securitized, where such securities are either retained on portfolio or repurchased by the enterprise, including such characteristics as—

''(A) the purchase price of the property that secures the mortgage;

''(B) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

''(C) the terms of the mortgage;

''(D) the creditworthiness of the borrower; and

''(E) any other relevant data, as determined by the Director.

''(c) DATA COLLECTION AND REPORTING.—

''(1) IN GENERAL.—To assist the Director in analyzing the matters described in subsection (b), the Director shall conduct, on a monthly basis, a survey of mortgage markets in accordance with this subsection.

''(2) DATA POINTS.—Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

''(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

''(i) the price of the house that secures the mortgage;

''(ii) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

''(iii) the terms of the mortgage;

''(iv) the creditworthiness of the borrower or borrowers; and

''(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise;

''(B) the characteristics of individual subprime and nontraditional mortgages that are eligible for purchase by the enterprises and the characteristics of borrowers under such mortgages, including the creditworthiness of such borrowers and determination whether such borrowers would qualify for prime lending; and

''(C) such other matters as the Director determines to be appropriate.

''(3) PUBLIC AVAILABILITY.—The Director shall make any data collected by the Director in connection with the conduct of a monthly survey available to the public in a timely manner, provided that the Director may modify the data released to the public to ensure that the data—

''(A) is not released in an identifiable form; and

''(B) is not otherwise obtainable from other publicly available data sets.

''(4) DEFINITION.—For purposes of this subsection, the term 'identifiable form' means any representation of information that permits the identity of a borrower to which the information relates to be reasonably inferred by either direct or indirect means.''.

SEC. 1126. PUBLIC USE DATABASE.

Section 1323 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (42 U.S.C. 4543) is amended—

(1) in subsection (a)—

(A) by striking ''(a) IN GENERAL.—The Secretary'' and inserting the following:

''(a) AVAILABILITY.—

''(1) IN GENERAL.—The Director''; and

(B) by adding at the end the following new paragraph:

''(2) CENSUS TRACT LEVEL REPORTING.—Such data shall include the data elements required to be reported under the Home Mortgage Disclosure Act of 1975, at the census tract level.'';

(2) in subsection (b)(2), by inserting before the period at the end the following: ''or with subsection (a)(2)''; and

(3) by adding at the end the following new subsection:

''(d) TIMING.—Data submitted under this section by an enterprise in connection with a provision referred to in subsection (a) shall be made publicly available in accordance with this section not later than September 30 of the year following the year to which the data relates.''.

SEC. 1127. REPORTING OF MORTGAGE DATA.

Section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4546) is amended—

(1) in subsection (a), by striking ''The Director'' and inserting ''Subject to subsection (d), the Director''; and

(2) by adding at the end the following:

''(d) MORTGAGE INFORMATION.—Subject to privacy considerations, as described in section 304(j) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the Director shall, by regulation or order, provide that certain information relating to single family mortgage data of the enterprises shall be disclosed to the public, in order to make available to the public—

''(1) the same data from the enterprises that is required of insured depository institutions under the Home Mortgage Disclosure Act of 1975; and

''(2) information collected by the Director under section 1324(b)(6).''.

SEC. 1128. REVISION OF HOUSING GOALS.

(a) REPEAL.—Sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 through 4564) are hereby repealed.

(b) HOUSING GOAL.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting before section 1335 the following:

''SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

''(a) IN GENERAL.—The Director shall, by regulation, establish effective for the first calendar year that begins after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, and each year thereafter, annual housing goals, as described under this subpart, with respect to the mortgage purchases by the enterprises.

''(b) SPECIAL COUNTING REQUIREMENTS.—

''(1) IN GENERAL.—The Director shall determine whether an enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing

goals established pursuant to this section or sections 1332 through 1334.

''(2) CONSIDERATIONS.—In making any determination under paragraph (1), the Director shall consider whether a transaction or activity of an enterprise is substantially equivalent to a mortgage purchase and either (A) creates a new market, or (B) adds liquidity to an existing market, provided however that the terms and conditions of such mortgage purchase is neither determined to be unacceptable, nor contrary to good lending practices, and otherwise promotes sustainable homeownership and further, that such mortgage purchase actually fulfills the purposes of the enterprise and is in accordance with the chartering Act of such enterprise.

''(c) ELIMINATING INTEREST RATE DISPARITIES.—

''(1) IN GENERAL.—In establishing and implementing the housing goals under this subpart, the Director shall require the enterprises to disclose appropriate information to allow the Director to assess if there are any disparities in interest rates charged on mortgages to borrowers who are minorities, as compared with borrowers of similar creditworthiness who are not minorities, as evidenced in reports pursuant to the Home Mortgage Disclosure Act of 1975.

''(2) REPORT TO CONGRESS ON DISPARITIES.—Upon a finding by the Director that a pattern of disparities in interest rates exists pursuant to the information provided by an enterprise under paragraph (1), the Director shall—

''(A) forward to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report detailing the disparities; and

''(B) forward the report prepared under subparagraph (A) to any other appropriate regulatory or enforcement agency.

''(3) IDENTITY OF INDIVIDUALS NOT DISCLOSED.—In carrying out this subsection, the Director shall ensure that no personally identifiable financial information that would enable an individual borrower to be reasonably identified shall be made public.

''(d) TIMING.—The Director shall establish an annual deadline for the establishment of housing goals described in subsection (a), taking into consideration the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such goals.

''SEC. 1331A. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

''(a) AUTHORITY.—

''(1) REVIEW.—The Director shall review the appropriateness of each goal established pursuant to this subpart at least once during each year to assure that given current market conditions that each such goal is feasible.

''(2) PETITION TO REDUCE.—An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal for such year established pursuant to this subpart.

''(b) STANDARD FOR REDUCTION.—The Director may reduce the level for a goal pursuant to such a petition only if—

''(1) market and economic conditions or the financial condition of the enterprise require such action; or

''(2) efforts to meet the goal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of this subpart, section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716(3)), or section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note), as applicable.

''(c) DETERMINATION.—

''(1) 30-DAY PERIOD.—If an enterprise submits a petition for reduction to the Director under subsection (a)(2), the Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition.

''(2) EXTENSION.—The Director may extend the period described in paragraph (1) for a single additional 15-day period, but only if the Director requests additional information from the enterprise.

''SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

''(a) ESTABLISHMENT OF GOALS.—

''(1) IN GENERAL.—The Director shall establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, owner-occupied, purchase money mortgages financing housing for each of the following:

''(A) Low-income families.

''(B) Families that reside in low-income areas.

''(C) Very low-income families.

''(2) GOALS AS PERCENTAGE OF TOTAL PURCHASE MONEY MORTGAGE PURCHASES.—The goals established under paragraph (1) shall be established as a percentage of the total number of single-family dwelling units financed by single-family purchase money mortgage purchases of the enterprise.

''(b) DETERMINATION OF COMPLIANCE.—

''(1) IN GENERAL.—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goals established under this section for such year.

''(2) COMPLIANCE REQUIREMENTS.—An enterprise shall be considered to be in compliance with a goal described under subsection (a) for a year, only if, for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise in such year that serve such families, meets or exceeds the target established under subsection (c) for the year for such type of family.

''(c) ANNUAL TARGETS.—

''(1) IN GENERAL.—The Director shall establish annual targets for each goal described in subsection (a).

''(2) CONSIDERATIONS.—In establishing annual targets under paragraph (1), the Director shall consider—

''(A) national housing needs;

''(B) economic, housing, and demographic conditions;

''(C) the performance and effort of the enterprises toward achieving the housing goals under this section in previous years;

''(D) the ability of the enterprise to lead the industry in making mortgage credit available;

''(E) recent information submitted in compliance with the Home Mortgage Disclosure Act of 1975 and such other reliable mortgage data as may be available;

''(F) the size of the purchase money conventional mortgage market serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market; and

''(G) the need to maintain the sound financial condition of the enterprises.

''(3) HIGH-COST LOANS AND INAPPROPRIATE LENDING PRACTICES.—In establishing annual targets under paragraph (1), the Director shall not consider segments of the market determined to be unacceptable or contrary to good lending practices pursuant to section 1331(b)(2).

''(d) NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.—

''(1) NOTICE.—Within 30 days of making a determination under subsection (b) regarding compliance of an enterprise for a year with the housing goals established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (c).

''(2) COMMENT PERIOD.—The Director shall provide each enterprise and the public an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

''(e) USE OF BORROWER INCOME.—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor's income to be the income of the mortgagor at the time of origination of the mortgage.

''(f) CONSIDERATION OF PROPERTIES WITH RENTAL UNITS.—Mortgages financing 1-to-4 unit owner-occupied properties shall count toward the achievement of the single-family housing goal under this section, if such properties otherwise meet the requirements under this section notwithstanding the use of 1 or more units for rental purposes.

''SEC. 1333. SINGLE-FAMILY HOUSING REFINANCE GOALS.

''(a) PREPAYMENT OF EXISTING LOANS.—

''(1) IN GENERAL.—The Director shall establish annual goals for the purchase by each enterprise of mortgages on conventional, conforming, single-family, owner-occupied housing given to pay off or prepay an existing loan served by the same property for each of the following:

''(A) Low-income families.

''(B) Families that reside in low-income areas.

''(C) Very low-income families.

''(2) GOALS AS PERCENTAGE OF TOTAL REFINANCING MORTGAGE PURCHASES.—The goals described under paragraph (1) shall be established as a percentage of the total number of single-family dwelling units refinanced by mortgage purchases of each enterprise.

''(b) DETERMINATION OF COMPLIANCE.—

''(1) IN GENERAL.—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing refinance goals established under this section for such year.

''(2) COMPLIANCE.—An enterprise shall be considered to be in compliance with the goals of this section for a year, only if, for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied refinancing mortgages purchased by each enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (c).

''(c) ANNUAL TARGETS.—

''(1) IN GENERAL.—The Director shall establish annual targets for each goal described in subsection (a).

''(2) CONSIDERATIONS.—In establishing annual targets under paragraph (1), the Director shall consider—

''(A) national housing needs;

''(B) economic, housing, and demographic conditions;

''(C) the performance and effort of the enterprises toward achieving the housing goals under this section in previous years;

''(D) the ability of the enterprise to lead the industry in making mortgage credit available;

''(E) recent information submitted in compliance with the Home Mortgage Disclosure Act of 1975 and such other reliable mortgage data as may be available;

''(F) the size of the purchase money conventional mortgage market serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market; and

''(G) the need to maintain the sound financial condition of the enterprises.

''(d) NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.—

''(1) NOTICE.—Within 30 days of making a determination under subsection (b) regarding compliance of an enterprise for a year with the housing goals established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (c).

''(2) COMMENT PERIOD.—The Director shall provide each enterprise and the public an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

''(e) USE OF BORROWER INCOME.—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor's income to be the income of the mortgagor at the time of origination of the mortgage.

''SEC. 1334. MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish, by regulation, by unit, dollar volume, or percentage of multifamily activity, as determined by the Director, an annual goal for the purchase by each enterprise of—

''(A) mortgages that finance dwelling units affordable to very low-income families; and

''(B) mortgages that finance dwelling units assisted by the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986.

''(2) ADDITIONAL REQUIREMENTS FOR SMALLER PROJECTS.—The Director shall establish, within the housing goal established under this section, additional requirements for the purchase by each enterprise of mortgages described in paragraph (1) for multifamily housing projects of a smaller or limited size, which may be based on the number of dwelling units in the project or the amount of the mortgage, or both, and shall include multifamily housing projects of 5 to 50 units (as adjusted by the Director), or with mortgages of up to $5,000,000 (as adjusted by the Director).

''(3) FACTORS.—The Director shall establish the goal and additional requirements under this section taking into consideration—

''(A) national multifamily mortgage credit needs;

''(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

''(C) the size of the multifamily mortgage market, including the size of the small multifamily mortgage market;

''(D) the most recent information available for the Residential Survey published by the Census Bureau, and such other reliable data as may be available regarding multifamily mortgages;

''(E) the ability of the enterprise to lead the industry in expanding mortgage credit availability at favorable terms, especially for underserved markets, such as for—

''(i) small multifamily projects;

''(ii) multifamily properties in need of preservation and rehabilitation; and

''(iii) multifamily properties located in rural areas; and

''(F) the need to maintain the sound financial condition of the enterprise.

''(b) UNITS FINANCED BY HOUSING FINANCE AGENCY BONDS.—The Director may give credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 1336) to dwelling units in multifamily housing projects that otherwise qualify under such goal and that are financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, but only if such bonds—

''(1) are secured by a guarantee of the enterprise; or

''(2) are not investment grade and are purchased by the enterprise.

''(c) USE OF TENANT RENT LEVEL.—

''(1) IN GENERAL.—The Director shall monitor the performance of each enterprise in meeting the goal established under this section and shall evaluate such performance (for purposes of section 1336) based on whether the rent levels are affordable to low-income and very low-income families.

''(2) RENT LEVEL.—A rent level shall be considered to be affordable for purposes of this subsection for an income category referred to in this subsection if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

''(d) DETERMINATION OF COMPLIANCE.—

''(1) IN GENERAL.—The Director shall, for each year that the housing goal under this section is in effect pursuant to section 1331(a), determine whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

''(2) COMPLIANCE.—An enterprise shall be considered to be in compliance with the goal described under subsection (a) for a year only if the multifamily mortgage purchases of the enterprise meet or exceed the goal for the year established under subsection (a).

''(e) CONSIDERATION OF UNITS IN SINGLE-FAMILY RENTAL HOUSING.—In establishing the goal under this section, the Director may take into consideration the number of housing units financed by any mortgage purchased by an enterprise on single-family rental housing that is not owner-occupied.

''(f) REMOVING CREDIT.—The Director shall subtract from the units or mortgages counted toward the goal established under this section in a current year any units or mortgages credited toward such goal in a prior year if an enterprise requires a lender to repurchase, or reimburse for losses, or indemnify the enterprise against potential losses on such units or mortgages.

''(g) NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.—

''(1) NOTICE.—Within 30 days of making a determination under subsection (d) regarding compliance of an enterprise for a year with the housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the goal for the year under subsection (a).

''(2) COMMENT PERIOD.—The Director shall provide each enterprise and the public an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.''.

(c) CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended—

(1) in section 1335(a) (12 U.S.C. 4565(a)), in the matter preceding paragraph (1), by striking ''low- and moderate-income housing goal'' and all that follows through ''section 1334'' and inserting ''housing goals established under this subpart''; and

(2) in section 1336(a)(1) (12 U.S.C. 4566(a)(1)), by striking ''sections 1332, 1333, and 1334,'' and inserting ''this subpart''.

(d) DEFINITIONS.—Section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502) is amended—

(1) by striking paragraph (24), as so designated by section 1002 of this Act, and inserting the following:

''(24) VERY LOW-INCOME.—

''(A) IN GENERAL.—The term 'very low-income' means—

''(i) in the case of owner-occupied units, families having incomes not greater than 50 percent of the area median income; and

''(ii) in the case of rental units, families having incomes not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

''(B) RULE OF CONSTRUCTION.—For purposes of section 1338 and 1339, the term 'very low-income' means—

''(i) in the case of owner-occupied units, income in excess of 30 percent but not greater than 50 percent of the area median income; and

''(ii) in the case of rental units, income in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.''; and

(2) by adding at the end the following:

''(26) CONFORMING MORTGAGE.—The term 'conforming mortgage' means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the applicable dollar limitation, in effect at the time of such origination, under—

''(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act; or

''(B) section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act.

''(27) EXTREMELY LOW-INCOME.—The term 'extremely low-income' means—

''(A) in the case of owner-occupied units, income not in excess of 30 percent of the area median income; and

''(B) in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

''(28) LOW-INCOME AREA.—The term 'low-income area' means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 1332(a)(2), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts.

''(29) MINORITY CENSUS TRACT.—The term 'minority census tract' means a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.

''(30) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY LOW-INCOME RENTER HOUSEHOLDS.—

''(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to extremely low-income renter households' means the gap between—

''(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Director that are occupied by extremely low-income renter households or are vacant for rent; and

''(ii) the number of extremely low-income renter households.

''(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

''(31) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-INCOME RENTER HOUSEHOLDS.—

''(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to very low-income renter households' means the gap between—

''(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Director that are occupied by either extremely low- or very low-income renter households or are vacant for rent; and

''(ii) the number of extremely low- and very low-income renter households.

''(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low- and very low-income households as described in subparagraph (A)(ii), there is no shortage.''.

SEC. 1129. DUTY TO SERVE UNDERSERVED MARKETS.

(a) ESTABLISHMENT AND EVALUATION OF PERFORMANCE.—Section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4565) is amended—

(1) in the section heading, by inserting ''**duty to serve underserved markets and**'' before ''**other**'';

(2) by striking subsection (b);

(3) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting ''and to carry out the duty under subsection (a) of this section'' before '', each enterprise shall'';

(B) in paragraph (3), by inserting ''and'' after the semicolon at the end;

(C) in paragraph (4), by striking ''; and'' and inserting a period;

(D) by striking paragraph (5); and

(E) by redesignating such subsection as subsection (b);

(4) by inserting before subsection (b) (as so redesignated by paragraph (3)(E) of this subsection) the following new subsection:

''(a) DUTY TO SERVE UNDERSERVED MARKETS.—

''(1) DUTY.—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets by purchasing or securitizing mortgage investments.

''(2) UNDERSERVED MARKETS.—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:

''(A) MANUFACTURED HOUSING.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

''(B) AFFORDABLE HOUSING PRESERVATION.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

''(i) the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937;

''(ii) the program under section 236 of the National Housing Act;

''(iii) the below-market interest rate mortgage program under section 221(d)(4) of the National Housing Act;

''(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;

''(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act;

''(vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), but only permanent supportive housing projects subsidized under such programs; and

''(vii) the rural rental housing program under section 515 of the Housing Act of 1949.

''(C) RURAL AND OTHER UNDERSERVED MARKETS.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Director identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.''; and

(5) by adding at the end the following new subsection:

''(c) EVALUATION AND REPORTING OF COMPLIANCE.—

''(1) IN GENERAL.—Not later than 6 months after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

''(2) SEPARATE EVALUATIONS.—In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—

''(A) the development of loan products and more flexible underwriting guidelines;

''(B) the extent of outreach to qualified loan sellers in each of such underserved markets; and

''(C) the volume of loans purchased in each of such underserved markets.

''(3) MANUFACTURED HOUSING MARKET.—In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(2), the Director may consider loans secured by both real and personal property.''.

(b) ENFORCEMENT.—Subsection (a) of section 1336 of the Housing and Community Development Act of 1992 (12 U.S.C. 4566(a)) is amended—

(1) in paragraph (1), by inserting ''and with the duty under section 1335(a) of each enterprise with respect to underserved markets,'' before ''as provided in this section''; and

(2) by adding at the end of such subsection, as amended by the preceding provisions of this subtitle, the following new paragraph:

''(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.''.

SEC. 1130. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

(a) IN GENERAL.—Section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4566) is amended by striking subsections (b) and (c) and inserting the following:

''(b) NOTICE AND PRELIMINARY DETERMINATION OF FAILURE TO MEET GOALS.—

''(1) NOTICE.—If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.

''(2) RESPONSE PERIOD.—

''(A) IN GENERAL.—During the 30-day period beginning on the date on which an enterprise is provided notice under paragraph (1), the enterprise may submit to the Director any written information that the enterprise considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

''(B) EXTENDED PERIOD.—The Director may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

''(C) SHORTENED PERIOD.—The Director may shorten the period under subparagraph (A) for good cause.

''(D) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the Director.

''(3) CONSIDERATION OF INFORMATION AND FINAL DETERMINATION.—

''(A) IN GENERAL.—After the expiration of the response period under paragraph (2), or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall issue a final determination on—

''(i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal; and

''(ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

''(B) CONSIDERATIONS.—In making a final determination under subparagraph (A), the Director shall take into consideration any relevant information submitted by the enterprise during the response period.

''(C) NOTICE.—The Director shall provide written notice, including a response to any

information submitted during the response period, to the enterprise, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, of—

''(i) each final determination under this paragraph that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;

''(ii) each final determination that the achievement of a housing goal was or is feasible; and

''(iii) the reasons for each such final determination.

''(c) CEASE AND DESIST, CIVIL MONEY PENALTIES, AND REMEDIES INCLUDING HOUSING PLANS.—

''(1) REQUIREMENT.—If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan, or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7).

''(2) HOUSING PLAN.—If the Director requires a housing plan under this subsection, such a plan shall be—

''(A) a feasible plan describing the specific actions the enterprise will take—

''(i) to achieve the goal for the next calendar year; and

''(ii) if the Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of such year; and

''(B) sufficiently specific to enable the Director to monitor compliance periodically.

''(3) DEADLINE FOR SUBMISSION.—The Director shall establish a deadline for an enterprise to comply with any remedial action or submit a housing plan to the Director, which may not be more than 45 days after the enterprise is provided notice. The Director may extend the deadline to the extent that the Director determines necessary. Any extension of the deadline shall be in writing and for a time certain.

''(4) APPROVAL.—The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act (as applicable), this title, and any other applicable provision of law.

''(5) NOTICE OF APPROVAL AND DISAPPROVAL.—The Director shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

''(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise under this section is disapproved, the enterprise shall submit an amended plan acceptable to the Director not later than 15 days after such disapproval, or such longer period that the Director determines is in the public interest.

''(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—In addition to ordering a housing plan under this section, issuing cease and desist orders under section 1341, and ordering civil money penalties under section 1345, the Director may—

''(A) seek other actions when an enterprise fails to meet a goal; and

''(B) exercise appropriate enforcement authority available to the Director under this Act.''.

(b) CONFORMING AMENDMENT.—The heading for subpart C of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended to read as follows:

"Subpart C—Enforcement".

(c) CEASE AND DESIST PROCEEDINGS .—

(1) REPEAL.—Section 1341 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4581) is hereby repealed.

(2) CEASE AND DESIST PROCEEDINGS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting before section 1342 the following:

"SEC. 1341. CEASE AND DESIST PROCEEDINGS.

''(a) GROUNDS FOR ISSUANCE.—The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines that—

''(1) the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;

''(2) the enterprise has failed to submit a report under section 1327, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

''(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

''(4) the enterprise has violated any provision of part 2 of this title or any order, rule, or regulation under part 2;

''(5) the enterprise has failed to submit a housing plan or perform its responsibilities under a remedial order that substantially complies with section 1336(c) within the applicable period; or

''(6) the enterprise has failed to comply with a housing plan under section 1336(c).

''(b) PROCEDURE.—

''(1) NOTICE OF CHARGES.—Each notice of charges issued under this section shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

''(2) ISSUANCE OF ORDER.—If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

''(A) comply with the goals;

''(B) submit a report under section 1327;

''(C) comply with any provision of part 2 of this title or any order, rule, or regulation under part 2;

''(D) submit a housing plan in compliance with section 1336(c);

''(E) comply with the housing plan in compliance with section 1336(c); or

''(F) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act.

''(c) EFFECTIVE DATE.—An order under this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subpart.''.

(d) CIVIL MONEY PENALTIES.—

(1) REPEAL.—Section 1345 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4585) is hereby repealed.

(2) CIVIL MONEY PENALTIES.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting after section 1344 the following:

"SEC. 1345. CIVIL MONEY PENALTIES.

''(a) AUTHORITY.—The Director may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed to—

''(1) meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);

''(2) submit a report under section 1327, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

''(3) submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

''(4) comply with any provision of part 2 of this title or any order, rule, or regulation under part 2;

''(5) submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 1336(c) within the required period; or

''(6) comply with a housing plan for the enterprise under section 1336(c).

''(b) AMOUNT OF PENALTY.—The amount of a penalty under this section, as determined by the Director, may not exceed—

''(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), $100,000 for each day that the failure occurs; and

''(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), $50,000 for each day that the failure occurs.

''(c) PROCEDURES.—

''(1) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

''(A) shall provide for the Director to notify the enterprise in writing of the determination of the Director to impose the penalty, which shall be made on the record;

''(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 1342; and

''(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

''(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

''(A) the gravity of the offense;

''(B) any history of prior offenses;

''(C) ability to pay the penalty;

''(D) injury to the public;

''(E) benefits received;

''(F) deterrence of future violations;

''(G) the length of time that the enterprise should reasonably take to achieve the goal; and

''(H) such other factors as the Director may determine, by regulation, to be appropriate.

''(d) ACTION TO COLLECT PENALTY.—If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 1342 and 1343, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

''(e) SETTLEMENT BY DIRECTOR.—The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

''(f) DEPOSIT OF PENALTIES.—The Director shall use any civil money penalties collected under this section to help fund the Housing Trust Fund established under section 1338.''.

(e) DIRECTOR AUTHORITY.—

(1) AUTHORITY TO BRING A CIVIL ACTION.—Section 1344(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4584) is amended by striking ''The Secretary may request the Attorney General of the United States to bring a civil action'' and inserting ''The Director may bring a civil action''.

(2) SUBPOENA ENFORCEMENT.—Section 1348(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4588(c)) is amended by inserting ''may bring an action or'' before ''may request''.

(3) CONFORMING AMENDMENTS.—Subpart C of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4581 et seq.) is amended by striking ''Secretary'' each place that term appears and inserting ''Director'' in each of—

(A) section 1342 (12 U.S.C. 4582);

(B) section 1343 (12 U.S.C. 4583);

(C) section 1346 (12 U.S.C. 4586);

(D) section 1347 (12 U.S.C. 4587); and

(E) section 1348 (12 U.S.C. 4588).

SEC. 1131. AFFORDABLE HOUSING PROGRAMS.

(a) REPEAL.—Section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4567) is hereby repealed.

(b) HOUSING TRUST FUNDS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 1301 et seq.) is amended by inserting after section 1336 the following:

''SEC. 1337. AFFORDABLE HOUSING APPROPRIATIONS.

''(a) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out the provisions of sections 1338 and 1339.

''(2) ALLOCATION.—Of the amounts authorized to be appropriated under paragraph (1)—

''(A) 65 percent of such amounts shall be allocated to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 1338; and

''(B) 35 percent of such amounts shall be allocated to fund the Capital Magnet Fund established pursuant to section 1339.

''(b) REQUIRED AMOUNT FOR HOPE RESERVE FUND.—Of the aggregate amount allocated under subsection (a), 25 percent shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

''(c) LIMITATION.—No funds under this title may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, for purposes of this section, public use shall not be construed to include economic development that primarily benefits any private entity.

''SEC. 1338. HOUSING TRUST FUND.

''(a) ESTABLISHMENT AND PURPOSE.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall establish and manage a Housing Trust Fund, which shall be funded with amounts appropriated under section 1337 and any amounts as are or may be transferred or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States for use—

''(1) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and

''(2) to increase homeownership for extremely low- and very low-income families.

''(b) ALLOCATIONS FOR HOPE BOND PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts appropriated under section 1337(a) in excess of amounts described in section 1337(b)—

''(A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 257(w)(1)(C) of the National Housing Act in calendar year 2009;

''(B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and

''(C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

''(2) EXCESS FUNDS.—At the termination of the HOPE for Homeowners Program established under section 257 of the National Housing Act, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in subparagraphs (A) and (B) of section 1337(a)(2).

''(3) TREASURY FUND.—The amounts referred to in subparagraphs (A) through (C) of paragraph (1) shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

''(c) ALLOCATION FOR HOUSING TRUST FUND IN FISCAL YEAR 2010 AND SUBSEQUENT YEARS.—

''(1) IN GENERAL.—Except as provided in subsection (b), the Secretary shall distribute the amounts appropriated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

''(2) PERMISSIBLE DESIGNEES.—A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)), or any other qualified instrumentality of the State to receive such grant amounts.

''(3) DISTRIBUTION TO STATES BY NEEDS-BASED FORMULA.—

''(A) IN GENERAL.—The Secretary shall, by regulation, establish a formula within 12 months of the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

''(B) BASIS FOR FORMULA.—The formula required under subparagraph (A) shall include the following:

''(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

''(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

''(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

''(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

''(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause, the term 'cost of construction'—

''(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

''(II) shall be calculated such that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

''(C) PRIORITY.—The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

''(4) ALLOCATION OF GRANT AMOUNTS.—

''(A) NOTICE.—Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused to be published in the Federal Register a notice that such amounts shall be so available.

''(B) GRANT AMOUNT.—In each fiscal year other than fiscal year 2009, the Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

''(C) MINIMUM STATE ALLOCATIONS.—If the formula amount determined under paragraph (3) for a fiscal year would allocate less than $3,000,000 to any State, the allocation for such State shall be $3,000,000, and the increase shall be deducted pro rata from the allocations made to all other States.

''(5) ALLOCATION PLANS REQUIRED.—

''(A) IN GENERAL.—For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

''(i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

''(ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(C);

''(iii) comply with paragraph (6); and

''(iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

''(B) ESTABLISHMENT.—In establishing an allocation plan under this paragraph, a State or State designated entity shall—

''(i) notify the public of the establishment of the plan;

''(ii) provide an opportunity for public comments regarding the plan;

''(iii) consider any public comments received regarding the plan; and

''(iv) make the completed plan available to the public.

''(C) CONTENTS.—An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

''(i) a description of the eligible activities to be conducted using such assistance; and

''(ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

''(6) SELECTION OF ACTIVITIES FUNDED USING HOUSING TRUST FUND GRANT AMOUNTS.—Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

''(A) are eligible under paragraph (7) for such use;

''(B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and

''(C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(C).

''(7) ELIGIBLE ACTIVITIES.—Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

''(A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B) and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families and not more than 25 percent for the benefit only of very low-income families; and

''(B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that—

''(i) is available for purchase only for use as a principal residence by families that qualify both as—

''(I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

''(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

''(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act;

''(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

''(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.

''(8) ELIGIBLE RECIPIENTS.—Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

''(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

''(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

''(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

''(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

''(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

''(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

''(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

''(9) LIMITATIONS ON USE.—

''(A) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES.—Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

''(B) DEADLINE FOR COMMITMENT OR USE.—Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

''(C) USE OF RETURNS.—The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

''(D) PROHIBITED USES.—The Secretary shall, by regulation—

''(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

''(I) political activities;

''(II) advocacy;

''(III) lobbying, whether directly or through other parties;

''(IV) counseling services;

''(V) travel expenses; and

''(VI) preparing or providing advice on tax returns;

''(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

''(I) the State or State designated entity; or

''(II) any other recipient of such grant amounts; and

''(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

''(E) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

''(d) REDUCTION FOR FAILURE TO OBTAIN RETURN OF MISUSED FUNDS.—If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

''(1) except as provided in paragraph (2)—

''(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

''(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

''(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

''(e) ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.—

''(1) RECIPIENTS.—

''(A) TRACKING OF FUNDS.—The Secretary shall—

''(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

''(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

''(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

''(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

''(B) MISUSE OF FUNDS.—

''(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

''(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

''(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

''(II) the Secretary does not subsequently reverse the determination.

''(2) GRANTEES.—

''(A) REPORT.—

''(i) IN GENERAL.—The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

''(I) describes the activities funded under this section during such year with such grant amounts; and

''(II) the manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

''(ii) PUBLIC AVAILABILITY.—The Secretary shall make such reports pursuant to this subparagraph publicly available.

''(B) MISUSE OF FUNDS.—If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

''(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

''(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

''(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

''(iv) terminate any assistance under this section to the State or State designated entity.

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

''(1) EXTREMELY LOW-INCOME RENTER HOUSEHOLD.—The term 'extremely low-income renter household' means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

''(2) RECIPIENT.—The term 'recipient' means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

''(3) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY LOW-INCOME RENTER HOUSEHOLDS.—

''(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to extremely low-income renter households' means for any State or other geographical area the gap between—

''(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Secretary that are occupied by extremely low-income renter households or are vacant for rent; and

''(ii) the number of extremely low-income renter households.

''(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

''(4) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-INCOME RENTER HOUSEHOLDS.—

''(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to very low-income renter households' means for any State or other geographical area the gap between—

''(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Secretary that are occupied by very low-income renter households or are vacant for rent; and

''(ii) the number of very low-income renter households.

''(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

''(5) VERY LOW-INCOME FAMILY.—The term 'very low-income family' has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section) applicable to a family of the size involved.

''(6) VERY LOW-INCOME RENTER HOUSEHOLDS.—The term 'very low-income renter households' means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

''(g) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall issue regulations to carry out this section.

''(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

''(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

''(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

''(C) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

''(i) geographic diversity;

''(ii) ability to obligate amounts and undertake activities so funded in a timely manner;

''(iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

''(iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;

''(v) the extent to which the application makes use of other funding sources; and

''(vi) the merits of an applicant's proposed eligible activity;

''(D) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

''(E) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

''(h) AFFORDABLE HOUSING TRUST FUND.—If, after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

''(i) FUNDING ACCOUNTABILITY AND TRANSPARENCY.—Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such

grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

"SEC. 1339. CAPITAL MAGNET FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

''(b) DEPOSITS TO TRUST FUND.—The Capital Magnet Fund shall consist of—

''(1) any amounts appropriated to the Fund pursuant to section 1337(a); and

''(2) any amounts as are or may be transferred or credited to such Fund under any other provisions of law.''.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in—

''(1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and

''(2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

''(d) FEDERAL ASSISTANCE.—All assistance provided using amounts in the Capital Magnet Fund shall be considered to be Federal financial assistance.

''(e) ELIGIBLE GRANTEES.—A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to—

''(1) a Treasury certified community development financial institution; or

''(2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

''(f) ELIGIBLE USES.—Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

''(1) To provide loan loss reserves.

''(2) To capitalize a revolving loan fund.

''(3) To capitalize an affordable housing fund.

''(4) To capitalize a fund to support activities described in subsection (c)(2).

''(5) For risk-sharing loans.

''(g) APPLICATIONS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

''(2) CONTENT OF APPLICATION.—The application required under paragraph (1) shall include a detailed description of—

''(A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;

''(B) the types, sources, and amounts of other funding for such projects; and

''(C) the expected time frame of any grant used for such project.

''(h) GRANT LIMITATION.—

''(1) IN GENERAL.—Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

''(2) GEOGRAPHIC DIVERSITY.—

''(A) GOAL.—The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State.

''(B) DIVERSITY DEFINED.—For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

''(i) the percentage of low-income families or the extent of poverty;

''(ii) the rate of unemployment or underemployment;

''(iii) extent of blight and disinvestment;

''(iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or

''(v) any other criteria designated by the Secretary of the Treasury.

''(3) LEVERAGE OF FUNDS.—Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

''(4) COMMITMENT FOR USE DEADLINE.—Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

''(5) LOBBYING RESTRICTIONS.—No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31, United States Code.

''(6) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 1335, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

''(7) ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.—

''(A) TRACKING OF FUNDS.—The Secretary of the Treasury shall—

''(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

''(ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—

''(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

''(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

''(B) MISUSE OF FUNDS.—If the Secretary of the Treasury determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

''(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;

''(ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;

''(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

''(iv) terminate any assistance under this section to the grantee.

''(i) PERIODIC REPORTS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

''(2) REPORTS AVAILABLE TO PUBLIC.—The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

''(j) REGULATIONS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall issue regulations to carry out this section.

''(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

''(A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;

''(B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section; and

''(C) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—

''(i) funds be fairly distributed to urban, suburban, and rural areas; and

''(ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—

''(I) the ability to use such funds to generate additional investments;

''(II) affordable housing need (taking into account the distinct needs of different regions of the country); and

''(III) ability to obligate amounts and undertake activities so funded in a timely manner.''.

SEC. 1132. FINANCIAL EDUCATION AND COUNSELING.

(a) GOALS.—Financial education and counseling under this section shall have the goal of—

(1) increasing the financial knowledge and decision making capabilities of prospective homebuyers;

(2) assisting prospective homebuyers to develop monthly budgets, build personal savings, finance or plan for major purchases, reduce their debt, improve their financial stability, and set and reach their financial goals;

(3) helping prospective homebuyers to improve their credit scores by understanding the relationship between their credit histories and their credit scores; and

(4) educating prospective homebuyers about the options available to build savings for short- and long-term goals.

(b) GRANTS.—

(1) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall make grants to eligible organizations to enable such organizations to provide a range of financial education and counseling services to prospective homebuyers.

(2) SELECTION.—The Secretary shall select eligible organizations to receive assistance under this section based on their experience and ability to provide financial education and counseling services that result in documented positive behavioral changes.

(c) ELIGIBLE ORGANIZATIONS.—

(1) IN GENERAL.—For purposes of this section, the term ''eligible organization'' means an organization that is—

(A) certified in accordance with section 106(e)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)); or

(B) certified by the Office of Financial Education of the Department of the Treasury for purposes of this section, in accordance with paragraph (2).

(2) OFE CERTIFICATION.—To be certified by the Office of Financial Education for purposes of this section, an eligible organization shall be—

(A) a housing counseling agency certified by the Secretary of Housing and Urban Development under section 106(e) of the Housing and Urban Development Act of 1968;

(B) a State, local, or tribal government agency;

(C) a community development financial institution (as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) or a credit union; or

(D) any collaborative effort of entities described in any of subparagraphs (A) through (C).

(d) AUTHORITY FOR PILOT PROJECTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall authorize not more than 5 pilot project grants to eligible organizations under subsection (c) in order to—

(A) carry out the services under this section; and

(B) provide such other services that will improve the financial stability and economic condition of low- and moderate-income and low-wealth individuals.

(2) GOAL.—The goal of the pilot project grants under this subsection is to—

(A) identify successful methods resulting in positive behavioral change for financial empowerment; and

(B) establish program models for organizations to carry out effective counseling services.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section and for the provision of additional financial educational services.

(f) STUDY AND REPORT ON EFFECTIVENESS AND IMPACT.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the effectiveness and impact of the grant program established under this section. Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit a report on the results of such study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENT OF STUDY.—The study required under paragraph (1) shall include an evaluation of the following:

(A) The effectiveness of the grant program established under this section in improving the financial situation of homeowners and prospective homebuyers served by the grant program.

(B) The extent to which financial education and counseling services have resulted in positive behavioral changes.

(C) The effectiveness and quality of the eligible organizations providing financial education and counseling services under the grant program.

(g) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to implement and administer the grant program authorized by this section.

SEC. 1133. TRANSFER AND RIGHTS OF CERTAIN HUD EMPLOYEES.

(a) TRANSFER.—Each employee of the Department of Housing and Urban Development whose position responsibilities primarily involve the establishment and enforcement of the housing goals under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.) shall be transferred to the Federal Housing Finance Agency for employment, not later than the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee described under subsection (a) accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on such effective date, if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Department of Housing and Urban Development and those provided by this section shall be paid by the Director.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

Subtitle C—Prompt Corrective Action

SEC. 1141. CRITICAL CAPITAL LEVELS.

(a) IN GENERAL.—Section 1363 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4613) is amended—

(1) by striking ''For'' and inserting ''(a) ENTERPRISES.—FOR''; and

(2) by adding at the end the following new subsection:

''(b) FEDERAL HOME LOAN BANKS.—

''(1) IN GENERAL.—For purposes of this subtitle, the critical capital level for each Federal Home Loan Bank shall be such amount of capital as the Director shall, by regulation, require.

''(2) CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.—In establishing the critical capital level under paragraph (1) for the Federal Home Loan Banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.''.

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the date of enactment of this Act, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as added by this section) establishing the critical capital level under such section.

SEC. 1142. CAPITAL CLASSIFICATIONS.

(a) IN GENERAL.—Section 1364 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4614) is amended—

(1) in the heading for subsection (a) by striking ''In General'' and inserting ''Enterprises'';

(2) in subsection (c)—

(A) by striking ''subsection (b)'' and inserting ''subsection (c)'';

(B) by striking ''enterprises'' and inserting ''regulated entities''; and

(C) by striking the last sentence;

(3) by redesignating subsections (c) (as so amended by paragraph (2) of this subsection) and (d) as subsections (d) and (f), respectively;

(4) by striking subsection (b) and inserting the following:

''(b) FEDERAL HOME LOAN BANKS.—

''(1) ESTABLISHMENT AND CRITERIA.—For purposes of this subtitle, the Director shall, by regulation—

''(A) establish the capital classifications specified under paragraph (2) for the Federal Home Loan Banks;

''(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

''(C) shall classify the Federal Home Loan Banks according to such capital classifications.

''(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—

''(A) adequately capitalized;

''(B) undercapitalized;

''(C) significantly undercapitalized; and

''(D) critically undercapitalized.

''(c) DISCRETIONARY CLASSIFICATION.—

''(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify a regulated entity under paragraph (2) if—

''(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or the value of collateral pledged as security has decreased significantly or that the value of the property subject to any mortgage held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

''(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

''(C) pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

''(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify a regulated entity—

''(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

''(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

''(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.''; and

(5) by inserting after subsection (d) (as so redesignated by paragraph (3) of this subsection), the following new subsection:

''(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

''(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

''(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

''(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.''.

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the date of enactment of this Act, the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as added by this section), relating to capital classifications for the Federal Home Loan Banks.

SEC. 1143. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.

Section 1365 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4615) is amended—

(1) by striking ''the enterprise'' each place that term appears and inserting ''the regulated entity'';

(2) by striking ''An enterprise'' each place that term appears and inserting ''A regulated entity'';

(3) by striking ''an enterprise'' each place that term appears and inserting ''a regulated entity'';

(4) in subsection (a)—

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

''(1) REQUIRED MONITORING.—The Director shall—

''(A) closely monitor the condition of any undercapitalized regulated entity;

''(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and

''(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.''; and

(C) by adding at the end the following:

''(4) RESTRICTION OF ASSET GROWTH.—An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

''(A) the Director has accepted the capital restoration plan of the regulated entity;

''(B) any increase in total assets is consistent with the capital restoration plan; and

''(C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

''(5) PRIOR APPROVAL OF ACQUISITIONS AND NEW ACTIVITIES.—An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

''(A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

''(B) the Director determines that the proposed action will further the purpose of this subtitle.'';

(5) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY'';

(B) in the matter preceding paragraph (1), by striking ''may'' and inserting ''shall''; and

(C) in paragraph (2)—

(i) by striking ''make, in good faith, reasonable efforts necessary to''; and

(ii) by striking the period at the end and inserting ''in any material respect.''; and

(6) by striking subsection (c) and inserting the following:

''(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.''.

SEC. 1144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.

Section 1366 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4616) is amended—

(1) in subsection (a)(2), by striking ''undercapitalized enterprise'' and inserting ''undercapitalized'';

(2) by striking ''the enterprise'' each place that term appears and inserting ''the regulated entity'';

(3) by striking ''An enterprise'' each place that term appears and inserting ''A regulated entity'';

(4) by striking ''an enterprise'' each place that term appears and inserting ''a regulated entity'';

(5) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY SUPERVISORY'' and inserting ''SPECIFIC'';

(B) in the matter preceding paragraph (1), by striking ''may, at any time, take any'' and inserting ''shall carry out this section by taking, at any time, 1 or more'';

(C) by striking paragraph (6);

(D) by redesignating paragraph (5) as paragraph (6);

(E) by inserting after paragraph (4) the following:

''(5) IMPROVEMENT OF MANAGEMENT.—Take 1 or more of the following actions:

''(A) NEW ELECTION OF BOARD.—Order a new election for the board of directors of the regulated entity.

''(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 1377.

''(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).''; and

(F) by adding at the end the following:

''(7) OTHER ACTION.—Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection.''; and

(6) by striking subsection (c) and inserting the following:

''(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—A regulated entity that is classified as significantly undercapitalized in accordance with section 1364 may not, without prior written approval by the Director—

''(1) pay any bonus to any executive officer; or

''(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the

calendar month in which the regulated entity became significantly undercapitalized.''.

SEC. 1145. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

(a) IN GENERAL.—Section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) is amended to read as follows:

''SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

''(a) APPOINTMENT OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Director may appoint the Agency as conservator or receiver for a regulated entity in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Agency acting as conservator or receiver.

''(2) DISCRETIONARY APPOINTMENT.—The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

''(3) GROUNDS FOR DISCRETIONARY APPOINTMENT OF CONSERVATOR OR RECEIVER.—The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

''(A) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

''(i) any violation of any provision of Federal or State law; or

''(ii) any unsafe or unsound practice.

''(B) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

''(C) CEASE AND DESIST ORDERS.—Any willful violation of a cease and desist order that has become final.

''(D) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

''(E) INABILITY TO MEET OBLIGATIONS.—The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

''(F) LOSSES.—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

''(G) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

''(i) cause insolvency or substantial dissipation of assets or earnings; or

''(ii) weaken the condition of the regulated entity.

''(H) CONSENT.—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

''(I) UNDERCAPITALIZATION.—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3)), and—

''(i) has no reasonable prospect of becoming adequately capitalized;

''(ii) fails to become adequately capitalized, as required by—

''(I) section 1365(a)(1) with respect to a regulated entity; or

''(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

''(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

''(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

''(J) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4).

''(K) MONEY LAUNDERING.—The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

''(4) MANDATORY RECEIVERSHIP.—

''(A) IN GENERAL.—The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

''(i) the assets of the regulated entity are, and during the preceding 60 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

''(ii) the regulated entity is not, and during the preceding 60 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

''(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDERCAPITALIZED REGULATED ENTITY.—If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

''(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

''(ii) at least once during each succeeding 30-calendar day period.

''(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) does not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

''(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment of the Agency as receiver of a regulated entity under this section shall immediately terminate any conservatorship established for the regulated entity under this title.

''(5) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States district court for the judicial district in which the home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

''(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

''(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

''(7) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

''(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

''(1) RULEMAKING AUTHORITY OF THE AGENCY.—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

''(2) GENERAL POWERS.—

''(A) SUCCESSOR TO REGULATED ENTITY.—The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

''(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

''(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

''(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

''(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

''(ii) collect all obligations and money due the regulated entity;

''(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver;

''(iv) preserve and conserve the assets and property of the regulated entity; and

''(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

''(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

''(D) POWERS AS CONSERVATOR.—The Agency may, as conservator, take such action as may be—

''(i) necessary to put the regulated entity in a sound and solvent condition; and

''(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

''(E) ADDITIONAL POWERS AS RECEIVER.—In any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity in such manner as the Agency deems appropriate, including through the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph.

''(F) ORGANIZATION OF NEW ENTERPRISE.—The Agency shall, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

''(G) TRANSFER OR SALE OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale.

''(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver, in accordance with the prescriptions and limitations of this section.

''(I) SUBPOENA AUTHORITY.—

''(i) IN GENERAL.—

''(I) AGENCY AUTHORITY.—The Agency may, as conservator or receiver, and for purposes

of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

''(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

''(ii) SUBPOENA.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

''(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379B.

''(J) INCIDENTAL POWERS.—The Agency may, as conservator or receiver—

''(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

''(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

''(K) OTHER PROVISIONS.—

''(i) SHAREHOLDERS AND CREDITORS OF FAILED REGULATED ENTITY.—Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

''(ii) ASSETS OF REGULATED ENTITY.—Notwithstanding any other provision of law, for purposes of this section, the charter of a regulated entity shall not be considered an asset of the regulated entity.

''(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

''(A) IN GENERAL.—The Agency may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

''(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

''(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the date of publication of such notice; and

''(ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

''(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

''(i) at the last address of the creditor appearing in such books; or

''(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity, within 30 days after the discovery of such name and address.

''(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

''(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

''(A) DETERMINATION PERIOD.—

''(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

''(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

''(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

''(I) on the books of the regulated entity;

''(II) in the claim filed by the claimant; or

''(III) in documents submitted in proof of the claim.

''(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

''(I) a statement of each reason for the disallowance; and

''(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

''(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

''(C) DISALLOWANCE OF CLAIMS FILED AFTER FILING PERIOD.—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

''(D) AUTHORITY TO DISALLOW CLAIMS.—

''(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

''(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

''(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

''(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

''(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

''(I) any extension of credit from any Federal Reserve Bank, Federal Home Loan Bank, or the United States Treasury; or

''(II) any security interest in the assets of the regulated entity securing any such extension of credit.

''(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

''(F) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

''(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

''(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

''(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

''(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

''(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

''(7) REVIEW OF CLAIMS.—

''(A) OTHER REVIEW PROCEDURES.—

''(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

''(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

''(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

''(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

''(8) EXPEDITED DETERMINATION OF CLAIMS.—

''(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

''(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

''(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

''(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date on which any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall—

''(i) determine—

''(I) whether to allow or disallow such claim; or

''(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

''(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

''(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

''(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

''(ii) the date on which the Agency denies the claim.

''(D) STATUTE OF LIMITATIONS.—If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

''(E) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

''(9) PAYMENT OF CLAIMS.—

''(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

''(i) allowed by the receiver;

''(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

''(iii) determined by the final judgment of any court of competent jurisdiction.

''(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing and executed by an authorized officer or representative of the regulated entity.

''(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

''(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of the regulated entity, following satisfaction by the receiver of the principal amount of all creditor claims.

''(10) SUSPENSION OF LEGAL ACTIONS.—

''(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

''(i) 45 days, in the case of any conservator; and

''(ii) 90 days, in the case of any receiver.

''(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

''(11) ADDITIONAL RIGHTS AND DUTIES.—

''(A) PRIOR FINAL ADJUDICATION.—The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

''(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver—

''(i) shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

''(ii) shall not be required to post any bond in order to pursue such remedies.

''(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver, or upon the charter, of a regulated entity for which the Agency has been appointed receiver.

''(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

''(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any regulated entity for which the Agency has been appointed receiver; or

''(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

''(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which—

''(i) maximizes the net present value return from the sale or disposition of such assets;

''(ii) minimizes the amount of any loss realized in the resolution of cases; and

''(iii) ensures adequate competition and fair and consistent treatment of offerors.

''(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

''(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

''(i) in the case of any contract claim, the longer of—

''(I) the 6-year period beginning on the date on which the claim accrues; or

''(II) the period applicable under State law; and

''(ii) in the case of any tort claim, the longer of—

''(I) the 3-year period beginning on the date on which the claim accrues; or

''(II) the period applicable under State law.

''(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

''(i) the date of the appointment of the Agency as conservator or receiver; or

''(ii) the date on which the cause of action accrues.

''(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

''(A) IN GENERAL.—In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

''(B) CLAIMS DESCRIBED.—A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

''(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

''(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

''(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

''(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

''(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

''(15) FRAUDULENT TRANSFERS.—

''(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

''(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

''(i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or

''(ii) any immediate or mediate transferee of any such initial transferee.

''(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

''(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

''(ii) any immediate or mediate good faith transferee of such transferee.

''(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

''(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

''(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

''(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CONSERVATOR OR RECEIVER.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

''(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of the conservator or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

''(19) GENERAL EXCEPTIONS.—

''(A) LIMITATIONS.—The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

''(B) MORTGAGES HELD IN TRUST.—

''(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.

''(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

''(iii) LIABILITY OF CONSERVATOR OR RECEIVER.—The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

''(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

''(1) IN GENERAL.—Unsecured claims against a regulated entity, or the receiver therefor, that are proven to the satisfaction of the receiver shall have priority in the following order:

''(A) Administrative expenses of the receiver.

''(B) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (C) or (D).

''(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

''(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

''(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

''(A) the Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

''(B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

''(3) DEFINITION.—As used in this subsection, the term 'administrative expenses of the receiver' includes—

''(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed regulated entity or liquidating or otherwise resolving the affairs of a failed regulated entity; and

''(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

''(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

''(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

''(A) to which such regulated entity is a party;

''(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

''(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

''(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

''(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

''(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

''(i) limited to actual direct compensatory damages; and

''(ii) determined as of—

''(I) the date of the appointment of the conservator or receiver; or

''(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

''(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' shall not include—

''(i) punitive or exemplary damages;

''(ii) damages for lost profits or opportunity; or

''(iii) damages for pain and suffering.

''(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

''(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

''(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

''(4) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.—

''(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

''(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

''(i) be entitled to the contractual rent accruing before the later of the date on which—

''(I) the notice of disaffirmance or repudiation is mailed; or

''(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

''(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

''(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

''(5) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.—

''(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

''(i) treat the lease as terminated by such repudiation; or

''(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

''(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

''(i) the lessee—

''(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

''(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

''(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

''(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

''(A) IN GENERAL.—If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

''(i) treat the contract as terminated by such repudiation; or

''(ii) remain in possession of such real property.

''(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

''(i) the purchaser—

''(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

''(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

''(ii) the conservator or receiver shall—

''(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

''(II) deliver title to the purchaser in accordance with the provisions of the contract; and

''(III) have no obligation under the contract other than the performance required under subclause (II).

''(C) ASSIGNMENT AND SALE ALLOWED.—

''(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

''(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

''(7) SERVICE CONTRACTS.—

''(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

''(i) a claim to be paid in accordance with subsections (b) and (e); and

''(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

''(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

''(i) the other party shall be paid under the terms of the contract for the services performed; and

''(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

''(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

''(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

''(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10), and notwithstanding any other provision of this title (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

''(i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or

''(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

''(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

''(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

''(i) IN GENERAL.—Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

''(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

''(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection the following definitions shall apply:

''(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard

to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (including a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

''(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

''(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or

''(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a

payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

''(A) transfer to 1 person—

''(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

''(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

''(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

''(iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

''(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

''(10) NOTIFICATION OF TRANSFER.—

''(A) IN GENERAL.—The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

''(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity; and

''(ii) such transfer includes any qualified financial contract.

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

''(I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the conservator or receiver of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the regulated entity in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

''(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

''(13) AUTHORITY TO ENFORCE CONTRACTS.—

''(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or a regulated entity bond, entered into by the regulated entity.

''(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or regulated entity bond under other applicable law.

''(C) CONSENT REQUIREMENT.—

''(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

''(I) 45 days after the date of appointment of a conservator; or

''(II) 90 days after the date of appointment of a receiver.

''(ii) EXCEPTIONS.—This subparagraph shall not—

''(I) apply to a contract for liability insurance for an officer or director;

''(II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and

''(III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

''(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

''(15) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

''(A) any extension of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity; or

''(B) any security interest in the assets of the regulated entity securing any such extension of credit.

''(e) VALUATION OF CLAIMS IN DEFAULT.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

''(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity without exercising the authority of the Agency under subsection (i).

''(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

''(g) LIABILITY OF DIRECTORS AND OFFICERS.—

''(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Agency, and prosecuted wholly or partially for the benefit of the Agency—

''(A) acting as conservator or receiver of such regulated entity; or

''(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

''(2) ACTIONS ADDRESSED.—Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law.

''(3) NO LIMITATION.—Nothing in this subsection shall impair or affect any right of the Agency under other applicable law.

''(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

''(i) LIMITED-LIFE REGULATED ENTITIES.—

''(1) ORGANIZATION.—

''(A) PURPOSE.—The Agency, as receiver appointed pursuant to subsection (a)—

''(i) may, in the case of a Federal Home Loan Bank, organize a limited-life regulated entity with those powers and attributes of the Federal Home Loan Bank in default or in danger of default as the Director determines necessary, subject to the provisions of this

subsection, and the Director shall grant a temporary charter to that limited-life regulated entity, and that limited-life regulated entity shall operate subject to that charter; and

''(ii) shall, in the case of an enterprise, organize a limited-life regulated entity with respect to that enterprise in accordance with this subsection.

''(B) AUTHORITIES.—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

''(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;

''(ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and

''(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

''(2) CHARTER AND ESTABLISHMENT.—

''(A) TRANSFER OF CHARTER.—

''(i) FANNIE MAE.—If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

''(I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act; and

''(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

''(ii) FREDDIE MAC.—If the Agency is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

''(I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act; and

''(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in this subsection.

''(B) INTERESTS IN AND ASSETS AND OBLIGATIONS OF REGULATED ENTITY IN DEFAULT.—Notwithstanding subparagraph (A) or any other provision of law—

''(i) a limited-life regulated entity shall assume, acquire, or succeed to the assets or liabilities of a regulated entity only to the extent that such assets or liabilities are transferred by the Agency to the limited-life regulated entity in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);

''(ii) a limited-life regulated entity shall not assume, acquire, or succeed to any obligation that a regulated entity for which a receiver has been appointed may have to any shareholder of the regulated entity that arises as a result of the status of that person as a shareholder of the regulated entity; and

''(iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).

''(C) LIMITED-LIFE REGULATED ENTITY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

''(D) MANAGEMENT.—Upon its establishment, a limited-life regulated entity shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

''(E) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

''(3) CAPITAL STOCK.—

''(A) NO AGENCY REQUIREMENT.—The Agency is not required to pay capital stock into a limited-life regulated entity or to issue any capital stock on behalf of a limited-life regulated entity established under this subsection.

''(B) AUTHORITY.—If the Director determines that such action is advisable, the Agency may cause capital stock or other securities of a limited-life regulated entity established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

''(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal reserve bank.

''(5) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

''(6) WINDING UP.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Agency shall wind up the affairs of a limited-life regulated entity.

''(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of a limited-life regulated entity for 3 additional 1-year periods.

''(C) TERMINATION OF STATUS AS LIMITED-LIFE REGULATED ENTITY.—

''(i) IN GENERAL.—Upon the sale by the Agency of 80 percent or more of the capital stock of a limited-life regulated entity, as defined in clause (iv), to 1 or more persons (other than the Agency)—

''(I) the status of the limited-life regulated entity as such shall terminate; and

''(II) the entity shall cease to be a limited-life regulated entity for purposes of this subsection.

''(ii) DIVESTITURE OF REMAINING STOCK, IF ANY.—

''(I) IN GENERAL.—Not later than 1 year after the date on which the status of a limited-life regulated entity is terminated pursuant to clause (i), the Agency shall sell to 1 or more persons (other than the Agency) any remaining capital stock of the former limited-life regulated entity.

''(II) EXTENSION AUTHORIZED.—The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

''(iii) SAVINGS CLAUSE.—Notwithstanding any provision of law, other than clause (ii), the Agency shall not be required to sell the capital stock of an enterprise or a limited-life regulated entity established with respect to an enterprise.

''(iv) APPLICABILITY.—This subparagraph applies only with respect to a limited-life regulated entity that is established with respect to an enterprise.

''(7) TRANSFER OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—

''(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with and subject to the restrictions of paragraph (1).

''(ii) SUBSEQUENT TRANSFERS.—At any time after the establishment of a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of the regulated entity in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

''(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of a regulated entity in default or in danger of default to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

''(iv) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Agency shall treat all creditors of a regulated entity in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Agency under this subsection to transfer any assets or liabilities of the regulated entity to the limited-life regulated entity established with respect to such regulated entity, except that the Agency may take actions (including making payments) that do not comply with this clause, if—

''(I) the Director determines that such actions are necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

''(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

''(v) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a regulated entity that are transferred to, or assumed by, a limited-life regulated entity may not exceed the aggregate amount of assets of the regulated entity that are transferred to, or purchased by, the limited-life regulated entity.

''(8) REGULATIONS.—The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this subsection.

''(9) POWERS OF LIMITED-LIFE REGULATED ENTITIES.—

''(A) IN GENERAL.—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

''(i) the Agency may—

''(I) remove the directors of a limited-life regulated entity;

''(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity; and

''(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

''(ii) the board of directors of a limited-life regulated entity—

''(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

''(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

''(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of not longer than 45 days, at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

''(10) NO FEDERAL STATUS.—

''(A) AGENCY STATUS.—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

''(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

''(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

''(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

''(11) AUTHORITY TO OBTAIN CREDIT.—

''(A) IN GENERAL.—A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

''(B) INABILITY TO OBTAIN CREDIT.—If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity—

''(i) with priority over any or all of the obligations of the limited-life regulated entity;

''(ii) secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien; or

''(iii) secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life regulated entity that is secured by a senior or equal lien on property of the limited-life regulated entity that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

''(I) the limited-life regulated entity is unable to otherwise obtain such credit or issue such debt; and

''(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

''(D) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

''(12) AFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

''(j) OTHER AGENCY EXEMPTIONS.—

''(1) APPLICABILITY.—The provisions of this subsection shall apply with respect to the Agency in any case in which the Agency is acting as a conservator or a receiver.

''(2) TAXATION.—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

''(3) PROPERTY PROTECTION.—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

''(4) PENALTIES AND FINES.—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

''(k) PROHIBITION OF CHARTER REVOCATION.—In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1368 (12 U.S.C. 4618)—

(A) by striking ''an enterprise'' each place that term appears and inserting ''a regulated entity''; and

(B) by striking ''the enterprise'' each place that term appears and inserting ''the regulated entity'';

(2) in section 1369C (12 U.S.C. 4622), by striking ''enterprise'' each place that term appears and inserting ''regulated entity'';

(3) in section 1369D (12 U.S.C. 4623)—

(A) by striking ''an enterprise'' each place that term appears and inserting ''a regulated entity''; and

(B) in subsection (a)(1), by striking ''An enterprise'' and inserting ''A regulated entity''; and

(4) by striking sections 1369, 1369A, and 1369B (12 U.S.C. 4619, 4620, and 4621).

Subtitle D—Enforcement Actions

SEC. 1151. CEASE AND DESIST PROCEEDINGS.

Section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS.—

''(1) AUTHORITY OF DIRECTOR.—If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

''(2) LIMITATION.—The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

''(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting before the period at the end the following: '', unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order''; and

(B) in paragraph (2)—

(i) by striking ''or director'' and inserting ''director, or entity-affiliated party''; and

(ii) by inserting ''or entity-affiliated party'' before ''consents'';

(3) in each of subsections (c), (d), and (e)—

(A) by striking ''the enterprise'' each place that term appears and inserting ''the regulated entity'';

(B) by striking ''an enterprise'' each place that term appears and inserting ''a regulated entity''; and

(C) by striking ''conduct'' each place that term appears and inserting ''practice'';

(4) in subsection (d)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''or director'' and inserting ''director, or entity-affiliated party''; and

(ii) by inserting ''to require a regulated entity or entity-affiliated party'' after ''includes the authority'';

(B) in paragraph (1)—

(i) by striking ''to require an executive officer or a director to''; and

(ii) by striking ''loss'' and all that follows through ''person'' and inserting ''loss, if'';

(iii) in subparagraph (A), by inserting ''such entity or party or finance facility'' before ''was''; and

(iv) by striking subparagraph (B) and inserting the following:

''(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;''; and

(C) in paragraph (4), by inserting ''loan or'' before ''asset'';

(5) in subsection (e), by inserting ''or entity-affiliated party''—

(A) before ''or any executive''; and

(B) before the period at the end; and

(6) in subsection (f)—

(A) by striking ''enterprise'' and inserting ''regulated entity, finance facility,''; and

(B) by striking ''or director'' and inserting ''director, or entity-affiliated party''.

SEC. 1152. TEMPORARY CEASE AND DESIST PROCEEDINGS.

Section 1372 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4632) is amended—

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

''(a) GROUNDS FOR ISSUANCE.—

''(1) IN GENERAL.—If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may—

''(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

''(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

''(2) ADDITIONAL REQUIREMENTS.—An order issued under paragraph (1) may include any requirement authorized under subsection 1371(d).'';

(2) in subsection (b)—

(A) by striking ''or director'' and inserting ''director, or entity-affiliated party''; and

(B) by striking ''enterprise'' each place that term appears and inserting ''regulated entity'';

(3) in subsection (c), by striking ''enterprise'' each place that term appears and inserting ''regulated entity'';

(4) in subsection (d)—

(A) by striking ''or director'' each place that term appears and inserting ''director, or entity-affiliated party''; and

(B) by striking ''An enterprise'' and inserting ''A regulated entity''; and

(5) in subsection (e)—

(A) by striking ''request the Attorney General of the United States to''; and

(B) by striking ''or may, under the direction and control of the Attorney General, bring such action''.

SEC. 1153. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Part 1 of subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended—

(1) by redesignating sections 1377 through 1379B (12 U.S.C. 4637–4641) as sections 1379 through 1379D, respectively; and

(2) by inserting after section 1376 (12 U.S.C. 4636) the following:

''SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

''(a) AUTHORITY TO ISSUE ORDER.—

''(1) IN GENERAL.—The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

''(2) APPLICABILITY.—A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

''(A) that party, officer, or director has, directly or indirectly—

''(i) violated—

''(I) any law or regulation;

''(II) any cease and desist order which has become final;

''(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

''(IV) any written agreement between such regulated entity and the Director;

''(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

''(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

''(B) by reason of the violation, practice, or breach described in subparagraph (A)—

''(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

''(ii) such party has received financial gain or other benefit; and

''(C) the violation, practice, or breach described in subparagraph (A)—

''(i) involves personal dishonesty on the part of such party; or

''(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

''(b) SUSPENSION ORDER.—

''(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

''(A) determines that such action is necessary for the protection of the regulated entity; and

''(B) serves such party with written notice of the order.

''(2) EFFECTIVE PERIOD.—Any order issued under this subsection—

''(A) shall become effective upon service; and

''(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

''(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

''(ii) the effective date of an order issued under subsection (b).

''(3) COPY OF ORDER.—If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

''(c) NOTICE, HEARING, AND ORDER.—

''(1) NOTICE.—A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

''(2) TIMING OF HEARING.—A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

''(A) the party receiving such notice, and good cause is shown; or

''(B) the Attorney General of the United States.

''(3) CONSENT.—Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

''(4) ISSUANCE OF ORDER OF SUSPENSION.—The Director may issue an order under this section, as the Director may deem appropriate, if—

''(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

''(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

''(5) EFFECTIVENESS OF ORDER.—Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

''(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

''(1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;

''(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

''(3) violate any voting agreement previously approved by the Director; or

''(4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

''(e) INDUSTRY-WIDE PROHIBITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

''(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

''(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

''(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

''(g) STAY OF SUSPENSION AND PROHIBITION OF ENTITY-AFFILIATED PARTY.—Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity

under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

''(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.—

''(1) SUSPENSION OR PROHIBITION.—

''(A) IN GENERAL.—Whenever any entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

''(B) PROVISIONS APPLICABLE TO NOTICE.—

''(i) COPY.—A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

''(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

''(2) REMOVAL OR PROHIBITION.—

''(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

''(B) PROVISIONS APPLICABLE TO ORDER.—

''(i) COPY.—A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

''(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

''(iii) EFFECTIVE PERIOD.—Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

''(3) AUTHORITY OF REMAINING BOARD MEMBERS.—

''(A) IN GENERAL.—If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

''(B) APPOINTMENT OF TEMPORARY DIRECTORS.—If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

''(4) HEARING REGARDING CONTINUED PARTICIPATION.—

''(A) IN GENERAL.—Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

''(B) TIMING AND FORM OF HEARING.—Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

''(C) DETERMINATION.—Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

''(5) RULES.—The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.''.

(b) CONFORMING AMENDMENTS.—

(1) SAFETY AND SOUNDNESS ACT.—Subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(A) in section 1317(f), by striking ''section 1379B'' and inserting ''section 1379D'';

(B) in section 1373(a)—

(i) in paragraph (1), by striking ''or 1376(c)'' and inserting '', 1376(c), or 1377'';

(ii) in paragraph (2), by inserting ''or 1377'' after''1371''; and

(iii) in paragraph (4), by inserting ''or removal or prohibition'' after ''cease and desist''; and

(C) in section 1374(a)—

(i) by striking ''or 1376'' and inserting ''1313B , 1376, or 1377''; and

(ii) by striking ''such section'' and inserting ''this title''.

(2) FANNIE MAE CHARTER ACT.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the second sentence, by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the''.

(3) FREDDIE MAC CHARTER ACT.—Section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended, in the second sentence, by striking ''The'' and inserting ''Except to the extent action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the''.

SEC. 1154. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4635) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.''; and

(2) in subsection (b), by striking ''or 1376'' and inserting ''1313B, 1376, or 1377''.

SEC. 1155. CIVIL MONEY PENALTIES.

Section 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4636) is amended—

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

''(a) IN GENERAL.—The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 1345(a).'';

(2) by striking subsection (b) and inserting the following:

''(b) AMOUNT OF PENALTY.—

''(1) FIRST TIER.—A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $10,000 for each day during which a violation continues, if such regulated entity or party—

''(A) violates any provision of this title, the authorizing statutes, or any order, condition, rule, or regulation under this title or any authorizing statute;

''(B) violates any final or temporary order or notice issued pursuant to this title;

''(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

''(D) violates any written agreement between the regulated entity and the Director.

''(2) SECOND TIER.—Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which a violation, practice, or breach continues, if—

''(A) the regulated entity or entity-affiliated party, respectively—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

''(iii) breaches any fiduciary duty; and

''(B) the violation, practice, or breach—

''(i) is part of a pattern of misconduct;

''(ii) causes or is likely to cause more than a minimal loss to the regulated entity; or

''(iii) results in pecuniary gain or other benefit to such party.

''(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the

applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

''(A) knowingly—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

''(iii) breaches any fiduciary duty; and

''(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

''(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

''(A) in the case of any entity-affiliated party, an amount not to exceed $2,000,000; and

''(B) in the case of any regulated entity, $2,000,000.'';

(3) in subsection (c)—

(A) by striking ''enterprise'' each place that term appears and inserting ''regulated entity'';

(B) by inserting ''or entity-affiliated party'' before ''in writing''; and

(C) by inserting ''or entity-affiliated party'' before ''has been given'';

(4) in subsection (d)—

(A) by striking ''or director'' each place such term appears and inserting ''director, or entity-affiliated party'';

(B) by striking ''an enterprise'' and inserting ''a regulated entity'';

(C) by striking ''the enterprise'' and inserting ''the regulated entity'';

(D) by striking ''request the Attorney General of the United States to'';

(E) by inserting '', or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located,'' after ''District of Columbia'';

(F) by striking '', or may, under the direction and control of the Attorney General of the United States, bring such an action''; and

(G) by striking ''and section 1374''; and

(5) in subsection (g), by striking ''An enterprise'' and inserting ''A regulated entity''.

SEC. 1156. CRIMINAL PENALTY.

(a) IN GENERAL.—Subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377, as added by this Act, the following:

''SEC. 1378. CRIMINAL PENALTY.

''Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1379 (as so designated by this Act)—

(A) by striking ''an enterprise'' and inserting ''a regulated entity''; and

(B) by striking ''the enterprise'' and inserting ''the regulated entity'';

(2) in section 1379A (as so designated by this Act), by striking ''an enterprise'' and inserting ''a regulated entity'';

(3) in section 1379B(c) (as so designated by this Act), by striking ''enterprise'' and inserting ''regulated entity''; and

(4) in section 1379D (as so designated by this Act), by striking ''enterprise'' and inserting ''regulated entity''.

SEC. 1157. NOTICE AFTER SEPARATION FROM SERVICE.

Section 1379 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4637), as so designated by this Act, is amended—

(1) by striking ''2-year'' and inserting ''6-year'';

(2) by striking ''a director or executive officer of an enterprise'' and inserting ''an entity-affiliated party'';

(3) by striking ''director or officer'' each place that term appears and inserting ''entity-affiliated party''; and

(4) by striking ''enterprise.'' and inserting ''regulated entity.''.

SEC. 1158. SUBPOENA AUTHORITY.

(a) IN GENERAL.—Section 1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''administrative'';

(ii) by inserting '', examination, or investigation'' after ''proceeding'';

(iii) by striking ''subtitle'' and inserting ''title''; and

(iv) by inserting ''or any designated representative thereof, including any person designated to conduct any hearing under this subtitle'' after ''Director''; and

(B) in paragraph (4), by striking ''issued by the Director'';

(2) in subsection (b), by inserting ''or in any territory or other place subject to the jurisdiction of the United States'' after ''State'';

(3) by striking subsection (c) and inserting the following:

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—The Director, or any party to proceedings under this subtitle, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

''(2) POWER OF COURT.—The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).'';

(4) in subsection (d), by inserting ''enterprise-affiliated party'' before ''may allow''; and

(5) by adding at the end the following:

''(e) PENALTIES.—A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

''(1) attend court;

''(2) testify in court;

''(3) answer any lawful inquiry; or

''(4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.''.

Subtitle E—General Provisions

SEC. 1161. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO 1992 ACT.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is amended—

(1) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) by striking ''(a) OFFICE PERSONNEL.—The'' and inserting ''(a) IN GENERAL.—Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the''; and

(ii) by striking ''the Office'' each place that term appears and inserting ''the Agency'';

(B) in subsection (c), by striking ''the Office'' and inserting ''the Agency'';

(C) in subsection (e), by striking ''the Office'' and inserting ''the Agency'';

(D) by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(E) by striking subsection (f);

(2) in section 1319A (12 U.S.C. 4520)—

(A) by striking ''(a) IN GENERAL.—''; and

(B) by striking subsection (b);

(3) in section 1364(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(4) by striking section 1383 (12 U.S.C. 1451 note);

(5) in each of sections 1319D, 1319E, and 1319F (12 U.S.C. 4523, 4524, 4525) by striking ''the Office'' each place that term appears and inserting ''the Agency''; and

(6) in each of sections 1319B and 1369(a)(3) (12 U.S.C. 4521, 4619(a)(3)), by striking ''Committee on Banking, Finance and Urban Affairs'' each place such term appears and inserting ''Committee on Financial Services''.

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended—

(1) in each of sections 303(c)(2) (12 U.S.C. 1718(c)(2)), 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C. 1723a(k)(1)), by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place that term appears, and inserting ''Director of the Federal Housing Finance Agency''; and

(2) in section 309—

(A) in subsection (m) (12 U.S.C. 1723a(m))—

(i) in paragraph (1), by striking ''to the Secretary, in a form determined by the Secretary'' and inserting ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director''; and

(ii) in paragraph (2), by striking ''to the Secretary, in a form determined by the Secretary'' and inserting ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director'';

(B) in subsection (n) (12 U.S.C. 1723a(n))—

(i) in paragraph (1), by striking ''and the Secretary'' and inserting ''and the Director of the Federal Housing Finance Agency''; and

(ii) in paragraph (2), by striking ''Secretary'' each place that term appears and inserting ''Director of the Federal Housing Finance Agency''; and

(C) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Federal Housing Finance Agency''.

(c) AMENDMENTS TO FREDDIE MAC CHARTER ACT.—The Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.) is amended—

(1) in each of sections 303(b)(2) (12 U.S.C. 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and section 307(c)(1) (12 U.S.C. 1456(c)(1)), by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place that term appears, and inserting ''Director of the Federal Housing Finance Agency'';

(2) in section 306 (12 U.S.C. 1455)—

(A) in subsection (c)(2), by inserting ''the'' after ''Secretary of'';

(B) in subsection (i)—

(i) by striking ''section 1316(c)'' and inserting ''section 306(c)''; and

(ii) by striking ''section 106'' and inserting ''section 1316''; and

(C) in subsection (j)(2), by striking ''of substantially'' and inserting ''or substantially''; and

(3) in section 307 (12 U.S.C. 1456)—

(A) in subsection (e)—

(i) in paragraph (1), by striking ''to the Secretary, in a form determined by the Secretary'' and inserting ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director''; and

(ii) in paragraph (2), by striking ''to the Secretary, in a form determined by the Secretary'' and inserting ''to the Director of the Federal Housing Finance Agency, in a form determined by the Director''; and

(B) in subsection (f)—

(i) in paragraph (1), by striking ''and the Secretary'' and inserting ''and the Director of the Federal Housing Finance Agency'';

(ii) in paragraph (2), by striking ''the Secretary'' each place that term appears and inserting ''the Director of the Federal Housing Finance Agency''; and

(iii) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Federal Housing Finance Agency''.

(d) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking ''Office of Federal Housing Enterprise Oversight'' and inserting ''Federal Housing Finance Agency''.

(e) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Director of the Federal Housing Finance Agency''.

(f) AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(g) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(1) in section 5313, by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

''Director of the Federal Housing Finance Agency.''; and

(2) in section 3132(a)(1)—

(A) in subparagraph (B), by striking '',, and'' and inserting '', and'';

(B) in subparagraph (D)—

(i) by striking ''the Federal Housing Finance Board'';

(ii) by striking ''the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''the Federal Housing Finance Agency''; and

(iii) by striking ''or or'' at the end;

(C) in subparagraph (E), as added by section 8(d)(1)(B)(iii) of Public Law 107-123, by adding ''or'' at the end; and

(D) by redesignating subparagraph (E), as added by section 10702(c)(1)(C) of Public Law 107-171, as subparagraph (F).

(h) AMENDMENT TO SARBANES-OXLEY ACT.—Section 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by inserting ''and the Director of the Federal Housing Finance Agency,'' after ''Commission,''.

(i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 11(t)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding at the end the following:

''(vii) Federal Housing Finance Agency.''.

SEC. 1162. PRESIDENTIALLY-APPOINTED DIRECTORS OF ENTERPRISES.

(a) FANNIE MAE.—

(1) IN GENERAL.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended—

(A) in the first sentence, by striking ''eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom'' and inserting ''13 persons, or such other number that the Director determines appropriate, who'';

(B) in the second sentence, by striking ''appointed by the President'';

(C) in the third sentence—

(i) by striking ''appointed or''; and

(ii) by striking '', except that any such appointed member may be removed from office by the President for good cause'';

(D) in the fourth sentence, by striking ''elective''; and

(E) by striking the fifth sentence.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 1163 occurs.

(b) FREDDIE MAC.—

(1) IN GENERAL.—Section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended—

(A) in subparagraph (A)—

(i) in the first sentence, by striking ''18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom'' and inserting ''13 persons, or such other number as the Director determines appropriate, who''; and

(ii) in the second sentence, by striking ''appointed by the President of the United States'';

(B) in subparagraph (B)—

(i) by striking ''such or''; and

(ii) by striking '', except that any appointed member may be removed from office by the President for good cause''; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) by striking ''elective''.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under section 1163 occurs.

SEC. 1163. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act.

TITLE II—FEDERAL HOME LOAN BANKS

SEC. 1201. RECOGNITION OF DISTINCTIONS BETWEEN THE ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.

Section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4513) is amended by adding at the end the following:

''(f) RECOGNITION OF DISTINCTIONS BETWEEN THE ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—Prior to promulgating any regulation or taking any other formal or informal agency action of general applicability relating to the Federal Home Loan Banks, including the issuance of an advisory document or examination guidance, the Director shall consider the differences between the Federal Home Loan Banks and the enterprises with respect to—

''(1) the Banks'—

''(A) cooperative ownership structure;

''(B) the mission of providing liquidity to members;

''(C) affordable housing and community development mission;

''(D) capital structure; and

''(E) joint and several liability; and

''(2) any other differences that the Director considers appropriate.''.

SEC. 1202. DIRECTORS.

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

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

''(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

''(1) IN GENERAL.—Subject to paragraphs (2) through (4), the management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate.

''(2) BOARD MAKEUP.—The board of directors of each Bank shall be comprised of—

''(A) member directors, who shall comprise at least the majority of the members of the board of directors; and

''(B) independent directors, who shall comprise not fewer than ⅖ of the members of the board of directors.

''(3) SELECTION CRITERIA.—

''(A) IN GENERAL.—Each member of the board of directors shall be—

''(i) elected by plurality vote of the members, in accordance with procedures established under this section; and

''(ii) a citizen of the United States.

''(B) INDEPENDENT DIRECTOR CRITERIA.—

''(i) IN GENERAL.—Each independent director that is not a public interest director under clause (ii) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

''(ii) PUBLIC INTEREST.—Not fewer than 2 of the independent directors shall have more than 4 years of experience in representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

''(iii) CONFLICTS OF INTEREST.—No independent director may, during the term of service on the board of directors, serve as an officer of any Federal Home Loan Bank or as a director, officer, or employee of any member of a Bank, or of any person that receives advances from a Bank.

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

''(A) INDEPENDENT DIRECTOR.—The terms 'independent director' and 'independent directorship' mean a member of the board of directors of a Federal Home Loan Bank who is a bona fide resident of the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.

''(B) MEMBER DIRECTOR.—The terms 'member director' and 'member directorship' mean a member of the board of directors of a Federal Home Loan Bank who is an officer or director of a member institution that is located in the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.'';

(2) by striking ''elective'' each place that term appears, other than in subsections (d), (e), and (f), and inserting ''member'';

(3) in subsection (b)—

(A) by striking the subsection heading and all that follows through ''Each elective directorship'' and inserting the following:

''(b) DIRECTORSHIPS.—

''(1) MEMBER DIRECTORSHIPS.—Each member directorship''; and

(B) by adding at the end the following:

''(2) INDEPENDENT DIRECTORSHIPS.—

''(A) ELECTIONS.—Each independent director—

''(i) shall be elected by the members entitled to vote, from among eligible persons nominated, after consultation with the Advisory Council of the Bank, by the board of directors of the Bank; and

''(ii) shall be elected by a plurality of the votes of the members of the Bank at large, with each member having the number of votes for each such directorship as it has under paragraph (1) in an election to fill member directorships.

''(B) CRITERIA.—Nominees shall meet all applicable requirements prescribed in this section.

''(C) NOMINATION AND ELECTION PROCEDURES.—Procedures for nomination and election of independent directors shall be prescribed by the bylaws of each Federal Home Loan Bank, in a manner consistent with the rules and regulations of the Agency.'';

(4) in subsection (c)—

(A) by striking ''elective'' each place that term appears and inserting ''member'', except—

(i) in the second sentence, the second place that term appears; and

(ii) each place that term appears in the fifth sentence; and

(B) in the second sentence—

(i) by inserting ''(A) except as provided in clause (B) of this sentence,'' before ''if at any time''; and

(ii) by inserting before the period at the end the following: '', and (B) clause (A) of this sentence shall not apply to the directorships of any Federal Home Loan Bank resulting from the merger of any 2 or more such Banks'';

(5) in subsection (d)—

(A) in the first sentence—

(i) by striking '', whether elected or appointed,''; and

(ii) by striking ''3 years'' and inserting ''4 years'';

(B) in the second sentence—

(i) by striking ''Federal Home Loan Bank System Modernization Act of 1999'' and inserting ''Federal Housing Finance Regulatory Reform Act of 2008'';

(ii) by striking ''⅓'' and inserting ''¼''; and

(iii) by striking ''or appointed''; and

(C) in the third sentence—

(i) by striking ''an elective'' each place that term appears and inserting ''a''; and

(ii) by striking ''in any elective directorship or elective directorships'';

(6) in subsection (f)—

(A) by striking paragraph (2);

(B) by striking ''appointed or'' each place that term appears; and

(C) in paragraph (3)—

(i) by striking ''(3) ELECTED BANK DIRECTORS.—'' and inserting ''(2) ELECTION PROCESS.—''; and

(ii) by striking ''elective'' each place that term appears;

(7) in subsection (i)—

(A) in paragraph (1), by striking ''Subject to paragraph (2), each'' and inserting ''Each''; and

(B) by striking paragraph (2) and inserting the following:

''(2) ANNUAL REPORT.—The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal Home Loan Banks to the directors on the boards of directors of the Banks.''; and

(8) by adding at the end the following:

''(1) TRANSITION RULE.—Any member of the board of directors of a Bank elected or appointed in accordance with this section prior to the date of enactment of this subsection may continue to serve as a member of that board of directors for the remainder of the existing term of service.''.

SEC. 1203. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1), (10), and (11);

(2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;

(3) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10), respectively; and

(4) by adding at the end the following:

''(11) DIRECTOR.—The term 'Director' means the Director of the Federal Housing Finance Agency.

''(12) AGENCY.—The term 'Agency' means the Federal Housing Finance Agency, established under section 1311 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.''.

SEC. 1204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Act, is amended—

(1) by striking sections 2A and 2B (12 U.S.C. 1422a, 1422b);

(2) by striking section 18 (12 U.S.C. 1438) and inserting the following:

''SEC. 18. ADMINISTRATIVE PROVISIONS.

''(a) ACQUISITION AUTHORITY.—The Director of the Office of Thrift Supervision, utilizing the services of the Administrator of General Services (hereinafter referred to as the 'Administrator'), and subject to any limitation hereon which may hereafter be imposed in appropriation Acts, is hereby authorized—

''(1) to acquire, in the name of the United States, real property in the District of Columbia, for the purposes set forth in this section;

''(2) to construct, develop, furnish, and equip such buildings thereon and such facilities as in its judgment may be appropriate to provide, to such extent as the Director of the Office of Thrift Supervision may deem advisable, suitable and adequate quarters and facilities for the Director of the Office of Thrift Supervision and the agencies under its administration or supervision;

''(3) to enlarge, remodel, or reconstruct any of the same; and

''(4) to make or enter into contracts for any of the foregoing.

''(b) ADVANCES.—The Director of the Office of Thrift Supervision may require of the respective banks, and they shall make to the Director of the Office of Thrift Supervision, such advances of funds for the purposes set out in subsection (a) as in the sole judgment of the Director of the Office of Thrift Supervision may from time to time be advisable. Such advances shall be apportioned by the Director of the Office of Thrift Supervision among the banks in proportion to the total assets of the respective banks, determined in such manner and as of such times as the Director of the Office of Thrift Supervision may prescribe. Each such advance shall bear interest at the rate of 4 ½ per centum per annum from the date of the advance and shall be repaid by the Director of the Office of Thrift Supervision in such installments and over such period, not longer than twenty-five years from the making of the advance, as the Director of the Office of Thrift Supervision may determine. Payments of interest and principal upon such advances shall be made from receipts of the Director of the Office of Thrift Supervision or from other sources which may from time to time be available to the Director of the Office of Thrift Supervision. The obligation of the Director of the Office of Thrift Supervision to make any such payment shall not be regarded as an obligation of the United States. To such extent as the Director of the Office of Thrift Supervision may prescribe any such obligation shall be regarded as a legal investment for the purposes of subsections (g) and (h) of section 11 and for the purposes of section 16.

''(c) PLANS AND DESIGNS.—The plans and designs for such buildings and facilities and for any such enlargement, remodeling, or reconstruction shall, to such extent as the chairperson of the Director of the Office of Thrift Supervision may request, be subject to the approval of the Director.

''(d) CUSTODY, MANAGEMENT AND CONTROL.—Upon the making of arrangements mutually agreeable to the Director of the Office of Thrift Supervision and the Administrator, which arrangements may be modified from time to time by mutual agreement between them and may include but shall not be limited to the making of payments by the Director of the Office of Thrift Supervision and such agencies to the Administrator and by the Administrator to the Director of the Office of Thrift Supervision, the custody, management, and control of such buildings and facilities and of such real property shall be vested in the Administrator in accordance therewith. Until the making of such arrangements, such custody, management, and control, including the assignment and allotment and the reassignment and reallotment of building and other space, shall be vested in the Director of the Office of Thrift Supervision.

''(e) PROCEEDS.—Any proceeds (including advances) received by the Director of the Office of Thrift Supervision in connection with this subsection, and any proceeds from the sale or other disposition of real or other property acquired by the Director of the Office of Thrift Supervision under this section, shall be considered as receipts of the Director of the Office of Thrift Supervision, and obligations and expenditures of the Director of the Office of Thrift Supervision and such agencies in connection with this section shall not be considered as administrative expenses. As used in this section, the term 'property' shall include interests in property.

''(f) BUDGET PROGRAM.—

''(1) IN GENERAL.—With respect to its functions under this section, the Director of the Office of Thrift Supervision shall—

''(A) annually prepare and submit a budget program as provided in title I of the Government Corporation Control Act with regard to wholly owned Government corporations, and for purposes of this paragraph, the terms 'wholly owned Government corporations' and 'Government corporations', wherever used in such title, shall include the Director of the Office of Thrift Supervision; and

''(B) maintain an integral set of accounts which shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions, as provided in such title, and no other settlement or adjustment shall be required with respect to transactions under this section or with respect to claims, demands, or accounts by or against any person arising thereunder.

''(2) MISCELLANEOUS PROVISIONS.—The first budget program shall be for the first full fiscal year beginning on or after the date of enactment of this subsection. Except as otherwise provided in this section or by the Director of the Office of Thrift Supervision, the provisions of this section and the functions thereby or thereunder subsisting shall be applicable and exercisable notwithstanding and without regard to the Act of June 20, 1938 (D.C. Code, secs. 5–413—5–428), except that the proviso of section 16 thereof shall apply

to any building constructed under this section, and section 306 of the Act of July 30, 1947 (61 Stat. 584), or any other provision of law relating to the construction, alteration, repair, or furnishing of public or other buildings or structures or the obtaining of sites therefor, but any person or body in whom any such function is vested may provide for delegation or redelegation of the exercise of such function.

''(g) LIMITATION.—No obligation shall be incurred and no expenditure, except in liquidation of obligation, shall be made pursuant to paragraphs (1) and (2) of subsection (a), if the total amount of all obligations incurred pursuant thereto would thereupon exceed $13,200,000, or such greater amount as may be provided in an appropriations Act or other law.''.

(3) in section 11 (12 U.S.C. 1431)—

(A) in subsection (b)—

(i) in the first sentence—

(I) by striking ''The Board'' and inserting ''The Office of Finance, as agent for the Banks,''; and

(II) by striking ''the Board'' and inserting ''such Office''; and

(ii) in the second and fourth sentences, by striking ''the Board'' each place such term appears and inserting ''the Office of Finance'';

(B) in subsection (c)—

(i) by striking ''the Board'' the first place such term appears and inserting ''the Office of Finance, as agent for the Banks,''; and

(ii) by striking ''the Board'' the second place such term appears and inserting ''such Office''; and

(C) in subsection (f)—

(i) by striking the 2 commas after ''permit'' and inserting ''or''; and

(ii) by striking the comma after ''require'';

(4) in section 6 (12 U.S.C. 1426)—

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking ''Finance Board approval'' and inserting ''approval by the Director''; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking ''Finance Board regulations'' each place that term appears and inserting ''regulations of the Director'';

(5) in section 10(b) (12 U.S.C. 1430(b))—

(A) in the subsection heading, by striking ''FORMAL BOARD RESOLUTION'' and inserting ''APPROVAL OF DIRECTOR''; and

(B) by striking ''by formal resolution'';

(6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)), by striking ''Chairperson of the Federal Housing Finance Board'' and inserting ''Director'';

(7) in section 15 (12 U.S.C. 1435), by inserting ''or the Director'' after ''the Board'';

(8) by striking ''the Board'' each place that term appears and inserting ''the Director'';

(9) by striking ''The Board'' each place that term appears and inserting ''The Director'';

(10) by striking ''the Finance Board'' each place that term appears and inserting ''the Director'';

(11) by striking ''The Finance Board'' each place that term appears and inserting ''The Director''; and

(12) by striking ''Federal Housing Finance Board'' each place that term appears and inserting ''Director''.

SEC. 1205. HOUSING GOALS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 10b the following new section:

''SEC. 10C. HOUSING GOALS.

''(a) IN GENERAL.—The Director shall establish housing goals with respect to the purchase of mortgages, if any, by the Federal Home Loan Banks. Such goals shall be consistent with the goals established under sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

''(b) CONSIDERATIONS.—In establishing the goals required by subsection (a), the Director shall consider the unique mission and ownership structure of the Federal Home Loan Banks.

''(c) TRANSITION PERIOD.—To facilitate an orderly transition, the Director shall establish interim target goals for purposes of this section for each of the 2 calendar years following the date of enactment of this section.

''(d) MONITORING AND ENFORCEMENT OF GOALS.—The requirements of section 1336 of the Federal Housing Enterprises Safety and Soundness Act of 1992, shall apply to this section, in the same manner and to the same extent as that section applies to the Federal housing enterprises.

''(e) ANNUAL REPORT.—The Director shall annually report to Congress on the performance of the Banks in meeting the goals established under this section.''.

SEC. 1206. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS.

Section 4(a)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)(1)) is amended—

(1) by inserting after ''savings bank,'' the following: ''community development financial institution,''; and

(2) in subparagraph (B), by inserting after ''United States,'' the following: ''or, in the case of a community development financial institution, is certified as a community development financial institution under the Community Development Banking and Financial Institutions Act of 1994.''.

SEC. 1207. SHARING OF INFORMATION AMONG FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act is amended by inserting after section 20 (12 U.S.C. 1440) the following new section:

''SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL HOME LOAN BANKS.

''(a) INFORMATION ON FINANCIAL CONDITION.—In order to enable each Federal Home Loan Bank to evaluate the financial condition of one or more of the other Federal Home Loan Banks individually and the Federal Home Loan Bank System (including any risks associated with the issuance or repayment of consolidated Federal Home Loan Bank bonds and debentures or other borrowings and the joint and several liabilities of the Banks incurred due to such borrowings), as well as to comply with any of its obligations under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Director shall make available to the Banks such reports, records, or other information as may be available, relating to the condition of any Federal Home Loan Bank.

''(b) SHARING OF INFORMATION.—

''(1) IN GENERAL.—The Director shall promulgate regulations to facilitate the sharing of information made available under subsection (a) directly among the Federal Home Loan Banks.

''(2) LIMITATION.—Notwithstanding paragraph (1), a Federal Home Loan Bank responding to a request from another Bank or from the Director for information pursuant to this section may request that the Director determine that such information is proprietary and that the public interest requires that such information not be shared.

''(c) LIMITATION.—Nothing in this section shall affect the obligations of any Federal Home Loan Bank under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the regulations issued by the Securities and Exchange Commission thereunder.''.

SEC. 1208. EXCLUSION FROM CERTAIN REQUIREMENTS.

(a) IN GENERAL.—The Federal Home Loan Banks shall be exempt from compliance with—

(1) sections 13(e), 14(a), and 14(c) of the Securities Exchange Act of 1934, and related Commission regulations;

(2) section 15 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to transactions in the capital stock of a Federal Home Loan Bank;

(3) section 17A of the Securities Exchange Act of 1934, and related Commission regulations, with respect to the transfer of the securities of a Federal Home Loan Bank; and

(4) the Trust Indenture Act of 1939.

(b) MEMBER EXEMPTION.—The members of the Federal Home Loan Bank System shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to ownership of or transactions in the capital stock of the Federal Home Loan Banks by such members.

(c) EXEMPTED AND GOVERNMENT SECURITIES.—

(1) CAPITAL STOCK.—The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are—

(A) exempted securities, within the meaning of section 3(a)(2) of the Securities Act of 1933; and

(B) exempted securities, within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934, except to the extent provided in section 38 of that Act.

(2) OTHER OBLIGATIONS.—The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) are—

(A) exempted securities, within the meaning of section 3(a)(2) of the Securities Act of 1933;

(B) government securities, within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934; and

(C) government securities, within the meaning of section 2(a)(16) of the Investment Company Act of 1940.

(3) BROKERS AND DEALERS.—A person (other than a Federal Home Loan Bank effecting transactions for members of the Federal Home Loan Bank System) that effects transactions in the capital stock or other obligations of a Federal Home Loan Bank, for the account of others or for that person's own account, as applicable, is a broker or dealer, as those terms are defined in paragraphs (4) and (5), respectively, of section 3(a) of the Securities Exchange Act of 1934, but is excluded from the definition of—

(A) the term ''government securities broker'' under section 3(a)(43) of the Securities Exchange Act of 1934; and

(B) the term ''government securities dealer'' under section 3(a)(44) of the Securities Exchange Act of 1934.

(d) EXEMPTION FROM REPORTING REQUIREMENTS.—The Federal Home Loan Banks shall be exempt from periodic reporting requirements under the securities laws pertaining to the disclosure of—

(1) related party transactions that occur in the ordinary course of the business of the Banks with members; and

(2) the unregistered sales of equity securities.

(e) TENDER OFFERS.—Commission rules relating to tender offers shall not apply in connection with transactions in the capital stock of the Federal Home Loan Banks.

(f) REGULATIONS.—

(1) IN GENERAL.—The Commission shall promulgate such rules and regulations as may be necessary or appropriate in the public interest or in furtherance of this section and the exemptions provided in this section.

(2) CONSIDERATIONS.—In issuing regulations under this section, the Commission shall consider the distinctive characteristics of

the Federal Home Loan Banks when evaluating—

(A) the accounting treatment with respect to the payment to the Resolution Funding Corporation;

(B) the role of the combined financial statements of the Federal Home Loan Banks;

(C) the accounting classification of redeemable capital stock; and

(D) the accounting treatment related to the joint and several nature of the obligations of the Banks.

(g) DEFINITIONS.—As used in this section—

(1) the terms ''Bank'', ''Federal Home Loan Bank'', ''member'', and ''Federal Home Loan Bank System'' have the same meanings as in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(2) the term ''Commission'' means the Securities and Exchange Commission; and

(3) the term ''securities laws'' has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)).

SEC. 1209. VOLUNTARY MERGERS.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended—

(1) by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever''; and

(2) by adding at the end the following:

''(b) VOLUNTARY MERGERS AUTHORIZED.—

''(1) IN GENERAL.—Any Federal Home Loan Bank may, with the approval of the Director and of the boards of directors of the Banks involved, merge with another Bank.

''(2) REGULATIONS REQUIRED.—The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any voluntary merger described in paragraph (1), including the procedures for Bank member approval.''.

SEC. 1210. AUTHORITY TO REDUCE DISTRICTS.

Section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—

(1) by striking ''As soon'' and inserting ''(a) IN GENERAL.—As soon''; and

(2) by adding at the end the following:

''(b) AUTHORITY TO REDUCE DISTRICTS.—Notwithstanding subsection (a), the number of districts may be reduced to a number less than 8—

''(1) pursuant to a voluntary merger between Banks, as approved pursuant to section 26(b); or

''(2) pursuant to a decision by the Director to liquidate a Bank pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.''.

SEC. 1211. COMMUNITY FINANCIAL INSTITUTION MEMBERS.

(a) TOTAL ASSET REQUIREMENT.—Paragraph (10) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)), as so redesignated by section 201(3) of this Act, is amended by striking ''$500,000,000'' each place such term appears and inserting ''$1,000,000,000''.

(b) USE OF ADVANCES FOR COMMUNITY DEVELOPMENT ACTIVITIES.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) in paragraph (2)(B)—

(A) by striking ''and''; and

(B) by inserting '', and community development activities'' before the period at the end;

(2) in paragraph (3)(E), by inserting ''or community development activities'' after ''agriculture,''; and

(3) in paragraph (6)—

(A) by striking ''and''; and

(B) by inserting '', and 'community development activities' '' before ''shall''.

SEC. 1212. PUBLIC USE DATA BASE; REPORTS TO CONGRESS.

Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(1) in subsection (j)(12)—

(A) by striking subparagraph (C) and inserting the following:

''(C) REPORTS.—The Director shall annually report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the collateral pledged to the Banks, including an analysis of collateral by type and by Bank district.''; and

(B) by adding at the end the following:

''(D) SUBMISSION TO CONGRESS.—The Director shall submit the reports under subparagraphs (A) and (C) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 180 days after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008.''; and

(2) by adding at the end the following:

''(k) PUBLIC USE DATABASE.—

''(1) DATA.—Each Federal Home Loan Bank shall provide to the Director, in a form determined by the Director, census tract level data relating to mortgages purchased, if any, including—

''(A) data consistent with that reported under section 1323 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

''(B) data elements required to be reported under the Home Mortgage Disclosure Act of 1975; and

''(C) any other data elements that the Director considers appropriate.

''(2) PUBLIC USE DATABASE.—

''(A) IN GENERAL.—The Director shall make available to the public, in a form that is useful to the public (including forms accessible electronically), and to the extent practicable, the data provided to the Director under paragraph (1).

''(B) PROPRIETARY INFORMATION.—Not withstanding subparagraph (A), the Director may not provide public access to, or disclose to the public, any information required to be submitted under this subsection that the Director determines is proprietary or that would provide personally identifiable information and that is not otherwise publicly accessible through other forms, unless the Director determines that it is in the public interest to provide such information.''.

SEC. 1213. SEMIANNUAL REPORTS.

Section 21B of the Federal Home Loan Bank Act is amended in subsection (f)(2)(C), by adding at the end the following:

''(v) SEMIANNUAL REPORTS.—The Director shall report semiannually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the projected date for the completion of contributions required by this section.''.

SEC. 1214. LIQUIDATION OR REORGANIZATION OF A FEDERAL HOME LOAN BANK.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended by adding at the end the following: ''At least 30 days prior to liquidating or reorganizing any Bank under this section, the Director shall notify the Bank of its determination and the facts and circumstances upon which such determination is based. The Bank may contest that determination in a hearing before the Director, in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code.''.

SEC. 1215. STUDY AND REPORT TO CONGRESS ON SECURITIZATION OF ACQUIRED MEMBER ASSETS.

(a) STUDY.—The Director shall conduct a study on securitization of home mortgage loans purchased or to be purchased from member financial institutions under the Acquired Member Assets programs. In conducting the study, the Director shall establish a process for the formal submission of comments.

(b) ELEMENTS.—The study shall encompass—

(1) the benefits and risks associated with securitization of Acquired Member Assets;

(2) the potential impact of securitization upon liquidity in the mortgage and broader credit markets;

(3) the ability of the Federal Home Loan Bank or Banks in question to manage the risks associated with such a program;

(4) the impact of such a program on the existing activities of the Banks, including their mortgage portfolios and advances; and

(5) the joint and several liability of the Banks and the cooperative structure of the Federal Home Loan Bank System.

(c) CONSULTATIONS.—In conducting the study under this section, the Director shall consult with the Federal Home Loan Banks, the Banks' fiscal agent, representatives of the mortgage lending industry, practitioners in the structured finance field, and other experts as needed.

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director shall submit a report to Congress on the results of the study conducted under subsection (a), including policy recommendations based on the analysis of the Director of the feasibility of mortgage-backed securities issuance by a Federal Home Loan Bank or Banks and the risks and benefits associated with such program or programs.

(e) DEFINITIONS.—As used in this section, the terms ''member'', ''Bank'', and ''Federal Home Loan Bank'' have the same meanings as in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422).

SEC. 1216. TECHNICAL AND CONFORMING AMENDMENTS.

(a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1113(o) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(o)) is amended—

(1) by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''; and

(2) by striking ''Federal Housing Finance Board's'' and inserting ''Federal Housing Finance Agency's''.

(b) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(c) TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by striking ''Federal Housing Finance Board'' each place such term appears in each of sections 212, 657, 1006, and 1014, and inserting ''Federal Housing Finance Agency''.

(d) MAHRA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking ''Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(g) FIRREA.—Section 1216 of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) the Federal Housing Finance Agency;'';

(2) in subsection (b), by striking ''Federal National Mortgage Association'' and inserting ''Federal Home Loan Banks, the Federal National Mortgage Association,''; and

(3) in subsection (c), by striking ''Finance Board'' and inserting ''Finance Agency''.

SEC. 1217. STUDY ON FEDERAL HOME LOAN BANK ADVANCES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House or Representatives on the extent to which loans and securities used as collateral to support Federal Home Loan Bank advances are consistent with the interagency guidance on nontraditional mortgage products.

(b) REQUIRED CONTENT.—The study required under subsection (a) shall—

(1) consider and recommend any additional regulations, guidance, advisory bulletins, or other administrative actions necessary to ensure that the Federal Home Loan Banks are not supporting loans with predatory characteristics; and

(2) include an opportunity for the public to comment on any recommendations made under paragraph (1).

SEC. 1218. FEDERAL HOME LOAN BANK REFINANCING AUTHORITY FOR CERTAIN RESIDENTIAL MORTGAGE LOANS.

Section 10(j)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)(2)) is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) during the 2-year period beginning on the date of enactment of this subparagraph, refinance loans that are secured by a first mortgage on a primary residence of any family having an income at or below 80 percent of the median income for the area.''.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Subtitle A—OFHEO

SEC. 1301. ABOLISHMENT OF OFHEO.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) shall manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1303.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Office of Federal Housing Enterprise Oversight, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under—

(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

(ii) the Federal National Mortgage Association Charter Act;

(iii) the Federal Home Loan Mortgage Corporation Act; or

(iv) any other provision of law applicable with respect to such Office; and

(B) existed on the day before the date of abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 1302. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, and determinations, and shall be enforceable by or against the Director or the Secretary of Housing and Urban Development, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director or the Secretary, as the case may be, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, or determination is described in this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight;

(B) the Secretary of Housing and Urban Development, and relates to the authority of the Secretary under—

(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

(ii) the Federal National Mortgage Association Charter Act, with respect to the Federal National Mortgage Association; or

(iii) the Federal Home Loan Mortgage Corporation Act, with respect to the Federal Home Loan Mortgage Corporation; or

(C) a court of competent jurisdiction, and relates to functions transferred by this Act; and

(2) is in effect on the effective date of the abolishment under section 1301(a).

SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1301(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1301(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the

Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 1301(a), if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Office of Federal Housing Enterprise Oversight and those provided by this section shall be paid by the Director.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of its abolishment under section 1301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Agency.

Subtitle B—Federal Housing Finance Board

SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this subtitle referred to as the ''Board'') is abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Board, solely for the purpose of winding up the affairs of the Board—

(1) shall manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1313; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of the Board as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1313.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director may use the property of the Board to perform functions which have been transferred to the Director, for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Board, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

(A) arises under the Federal Home Loan Bank Act, or any other provision of law applicable with respect to the Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred under this Act to the Director shall abate by reason of the enactment of this Act, except that the Director shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

SEC. 1312. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Board; or

(B) a court of competent jurisdiction, and relates to functions transferred by this Act; and

(2) is in effect on the effective date of the abolishment under section 1311(a).

SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

(a) TRANSFER.—Each employee of the Board shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1311(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, if the employee is a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1), to the extent that such authority relates to a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character.

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1311(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Board accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 1311(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director.

(2) COST DIFFERENTIAL.—

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of the abolishment under section 1311(a), all property of the Board shall transfer to the Agency.

TITLE IV—HOPE FOR HOMEOWNERS

SEC. 1401. SHORT TITLE.

This title may be cited as the ''HOPE for Homeowners Act of 2008''.

SEC. 1402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS PROGRAM.

(a) ESTABLISHMENT.—Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following:

''SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.

''(a) ESTABLISHMENT.—There is established in the Federal Housing Administration a HOPE for Homeowners Program.

''(b) PURPOSE.—The purpose of the HOPE for Homeowners Program is—

''(1) to create an FHA program, participation in which is voluntary on the part of homeowners and existing loan holders to insure refinanced loans for distressed borrowers to support long-term, sustainable homeownership;

''(2) to allow homeowners to avoid foreclosure by reducing the principle balance outstanding, and interest rate charged, on their mortgages;

''(3) to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets;

''(4) to target mortgage assistance under this section to homeowners for their principal residence;

''(5) to enhance the administrative capacity of the FHA to carry out its expanded role under the HOPE for Homeowners Program;

''(6) to ensure the HOPE for Homeowners Program remains in effect only for as long as is necessary to provide stability to the housing market; and

''(7) to provide servicers of delinquent mortgages with additional methods and approaches to avoid foreclosure.

''(c) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM REQUIREMENTS.—

''(1) DUTIES OF THE BOARD.—In order to carry out the purposes of the HOPE for Homeowners Program, the Board shall—

''(A) establish requirements and standards for the program; and

''(B) prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.

''(2) DUTIES OF THE SECRETARY.—In carrying out any of the program requirements or standards established under paragraph (1), the Secretary may issue such interim guidance and mortgagee letters as the Secretary determines necessary or appropriate.

''(d) INSURANCE OF MORTGAGES.—The Secretary is authorized upon application of a mortgagee to make commitments to insure or to insure any eligible mortgage that has been refinanced in a manner meeting the requirements under subsection (e).

''(e) REQUIREMENTS OF INSURED MORTGAGES.—To be eligible for insurance under this section, a refinanced eligible mortgage shall comply with all of the following requirements:

''(1) LACK OF CAPACITY TO PAY EXISTING MORTGAGE.—

''(A) BORROWER CERTIFICATION.—

''(i) IN GENERAL.—The mortgagor shall provide certification to the Secretary that the mortgagor has not intentionally defaulted on the mortgage or any other debt, and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining any eligible mortgage.

''(ii) PENALTIES.—

''(I) FALSE STATEMENT.—Any certification filed pursuant to clause (i) shall contain an acknowledgment that any willful false statement made in such certification is punishable under section 1001, of title 18, United States Code, by fine or imprisonment of not more than 5 years, or both.

''(II) LIABILITY FOR REPAYMENT.—The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Federal Housing Administration any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made in the certifications and documentation required under this subparagraph, subject to the discretion of the Secretary.

''(B) CURRENT BORROWER DEBT-TO-INCOME RATIO.—As of March 1, 2008, the mortgagor shall have had a ratio of mortgage debt to income, taking into consideration all existing mortgages of that mortgagor at such time, greater than 31 percent (or such higher amount as the Board determines appropriate).

''(2) DETERMINATION OF PRINCIPAL OBLIGATION AMOUNT.—The principal obligation amount of the refinanced eligible mortgage to be insured shall—

''(A) be determined by the reasonable ability of the mortgagor to make his or her mortgage payments, as such ability is determined by the Secretary pursuant to section 203(b)(4) or by any other underwriting standards established by the Board; and

''(B) not exceed 90 percent of the appraised value of the property to which such mortgage relates.

''(3) REQUIRED WAIVER OF PREPAYMENT PENALTIES AND FEES.—All penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven.

''(4) EXTINGUISHMENT OF SUBORDINATE LIENS.—

''(A) REQUIRED AGREEMENT.—All holders of outstanding mortgage liens on the property to which the eligible mortgage relates shall agree to accept the proceeds of the insured loan as payment in full of all indebtedness under the eligible mortgage, and all encumbrances related to such eligible mortgage shall be removed. The Secretary may take such actions, subject to standards established by the Board under subparagraph (B), as may be necessary and appropriate to facilitate coordination and agreement between the holders of the existing senior mortgage and any existing subordinate mortgages, taking into consideration the subordinate lien status of such subordinate mortgages.

''(B) SHARED APPRECIATION.—

''(i) IN GENERAL.—The Board shall establish standards and policies that will allow for the payment to the holder of any existing subordinate mortgage of a portion of any future appreciation in the property secured by such eligible mortgage that is owed to the Secretary pursuant to subsection (k).

''(ii) FACTORS.—In establishing the standards and policies required under clause (i), the Board shall take into consideration—

''(I) the status of any subordinate mortgage;

''(II) the outstanding principal balance of and accrued interest on the existing senior mortgage and any outstanding subordinate mortgages;

''(III) the extent to which the current appraised value of the property securing a subordinate mortgage is less than the outstanding principal balance and accrued interest on any other liens that are senior to such subordinate mortgage; and

''(IV) such other factors as the Board determines to be appropriate.

''(C) VOLUNTARY PROGRAM.—This paragraph may not be construed to require any holder of any existing mortgage to participate in the program under this section generally, or with respect to any particular loan.

''(5) TERM OF MORTGAGE.—The refinanced eligible mortgage to be insured shall—

''(A) bear interest at a single rate that is fixed for the entire term of the mortgage; and

''(B) have a maturity of not less than 30 years from the date of the beginning of amortization of such refinanced eligible mortgage.

''(6) MAXIMUM LOAN AMOUNT.—The principal obligation amount of the eligible mortgage to be insured shall not exceed 132 percent of the dollar amount limitation in effect for 2007 under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a property of the applicable size.

''(7) PROHIBITION ON SECOND LIENS.—A mortgagor may not grant a new second lien on the mortgaged property during the first 5 years of the term of the mortgage insured under this section.

''(8) APPRAISALS.—Any appraisal conducted in connection with a mortgage insured under this section shall—

''(A) be based on the current value of the property;

''(B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.);

''(C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice;

''(D) be wholly consistent with the appraisal standards, practices, and procedures under section 202(e) of this Act that apply to all loans insured under this Act; and

''(E) comply with the requirements of subsection (g) of this section (relating to appraisal independence).

''(9) DOCUMENTATION AND VERIFICATION OF INCOME.—In complying with the FHA underwriting requirements under the HOPE for Homeowners Program under this section, the mortgagee under the mortgage shall document and verify the income of the mortgagor by procuring an Internal Revenue Service transcript of the income tax returns of the mortgagor for the 2 most recent years for which the filing deadline for such years has passed and by any other method, in accordance with procedures and standards that the Board or the Secretary shall establish.

''(10) MORTGAGE FRAUD.—The mortgagor shall not have been convicted under any provision of Federal or State law for fraud, including mortgage fraud.

''(11) PRIMARY RESIDENCE.—The mortgagor shall provide documentation satisfactory in the determination of the Secretary to prove that the residence covered by the mortgage to be insured under this section is occupied by the mortgagor as the primary residence of the mortgagor, and that such residence is the only residence in which the mortgagor has any present ownership interest.

''(f) STUDY OF AUCTION OR BULK REFINANCE PROGRAM.—

''(1) STUDY.—The Board shall conduct a study of the need for and efficacy of an auction or bulk refinancing mechanism to facilitate refinancing of existing residential mortgages that are at risk for foreclosure into mortgages insured under this section. The study shall identify and examine various options for mechanisms under which lenders and servicers of such mortgages may make bids for forward commitments for such insurance in an expedited manner.

''(2) CONTENT.—

''(A) ANALYSIS.—The study required under paragraph (1) shall analyze—

''(i) the feasibility of establishing a mechanism that would facilitate the more rapid refinancing of borrowers at risk of foreclosure into performing mortgages insured under this section;

''(ii) whether such a mechanism would provide an effective and efficient mechanism to reduce foreclosures on qualified existing mortgages;

''(iii) whether the use of an auction or bulk refinance program is necessary to stabilize the housing market and reduce the impact of turmoil in that market on the economy of the United States;

''(iv) whether there are other mechanisms or authority that would be useful to reduce foreclosure; and

''(v) and any other factors that the Board considers relevant.

''(B) DETERMINATIONS.—To the extent that the Board finds that a facility of the type described in subparagraph (A) is feasible and useful, the study shall—

''(i) determine and identify any additional authority or resources needed to establish and operate such a mechanism;

''(ii) determine whether there is a need for additional authority with respect to the loan underwriting criteria established in this section or with respect to eligibility of participating borrowers, lenders, or holders of liens;

''(iii) determine whether such underwriting criteria should be established on the basis of individual loans, in the aggregate, or otherwise to facilitate the goal of refinancing borrowers at risk of foreclosure into viable loans insured under this section.

''(3) REPORT.—Not later than the expiration of the 60-day period beginning on the

date of the enactment of this section, the Board shall submit a report regarding the results of the study conducted under this subsection to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include a detailed description of the analysis required under paragraph (2)(A) and of the determinations made pursuant to paragraph (2)(B), and shall include any other findings and recommendations of the Board pursuant to the study, including identifying various options for mechanisms described in paragraph (1).

''(g) APPRAISAL INDEPENDENCE.—

''(1) PROHIBITIONS ON INTERESTED PARTIES IN A REAL ESTATE TRANSACTION.—No mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, nor any other person with an interest in a real estate transaction involving an appraisal in connection with a mortgage insured under this section shall improperly influence, or attempt to improperly influence, through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the mortgage.

''(2) CIVIL MONETARY PENALTIES.—The Secretary may impose a civil money penalty for any knowing and material violation of paragraph (1) under the same terms and conditions as are authorized in section 536(a) of this Act.

''(h) STANDARDS TO PROTECT AGAINST ADVERSE SELECTION.—

''(1) IN GENERAL.—The Board shall, by rule or order, establish standards and policies to require the underwriter of the insured loan to provide such representations and warranties as the Board considers necessary or appropriate to enforce compliance with all underwriting and appraisal standards of the HOPE for Homeowners Program.

''(2) EXCLUSION FOR VIOLATIONS.—The Board shall prohibit the Secretary from paying insurance benefits to a mortgagee who violates the representations and warranties, as established under paragraph (1), or in any case in which a mortgagor fails to make the first payment on a refinanced eligible mortgage.

''(3) OTHER AUTHORITY.—The Board may establish such other standards or policies as necessary to protect against adverse selection, including requiring loans identified by the Secretary as higher risk loans to demonstrate payment performance for a reasonable period of time prior to being insured under the program.

''(i) PREMIUMS.—For each refinanced eligible mortgage insured under this section, the Secretary shall establish and collect—

''(1) at the time of insurance, a single premium payment in an amount equal to 3 percent of the amount of the original insured principal obligation of the refinanced eligible mortgage, which shall be paid from the proceeds of the mortgage being insured under this section, through the reduction of the amount of indebtedness that existed on the eligible mortgage prior to refinancing; and

''(2) in addition to the premium required under paragraph (1), an annual premium in an amount equal to 1.5 percent of the amount of the remaining insured principal balance of the mortgage.

''(j) ORIGINATION FEES AND INTEREST RATE.—The Board shall establish—

''(1) a reasonable limitation on origination fees for refinanced eligible mortgages insured under this section; and

''(2) procedures to ensure that interest rates on such mortgages shall be commensurate with market rate interest rates on such types of loans.

''(k) EQUITY AND APPRECIATION.—

''(1) FIVE-YEAR PHASE-IN FOR EQUITY AS A RESULT OF SALE OR REFINANCING.—For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, or upon the subsequent refinancing of such mortgage, be entitled to the following with respect to any equity created as a direct result of such sale or refinancing:

''(A) If such sale or refinancing occurs during the period that begins on the date that such mortgage is insured and ends 1 year after such date of insurance, the Secretary shall be entitled to 100 percent of such equity.

''(B) If such sale or refinancing occurs during the period that begins 1 year after such date of insurance and ends 2 years after such date of insurance, the Secretary shall be entitled to 90 percent of such equity and the mortgagor shall be entitled to 10 percent of such equity.

''(C) If such sale or refinancing occurs during the period that begins 2 years after such date of insurance and ends 3 years after such date of insurance, the Secretary shall be entitled to 80 percent of such equity and the mortgagor shall be entitled to 20 percent of such equity.

''(D) If such sale or refinancing occurs during the period that begins 3 years after such date of insurance and ends 4 years after such date of insurance, the Secretary shall be entitled to 70 percent of such equity and the mortgagor shall be entitled to 30 percent of such equity.

''(E) If such sale or refinancing occurs during the period that begins 4 years after such date of insurance and ends 5 years after such date of insurance, the Secretary shall be entitled to 60 percent of such equity and the mortgagor shall be entitled to 40 percent of such equity.

''(F) If such sale or refinancing occurs during any period that begins 5 years after such date of insurance, the Secretary shall be entitled to 50 percent of such equity and the mortgagor shall be entitled to 50 percent of such equity.

''(2) APPRECIATION IN VALUE.—For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, each be entitled to 50 percent of any appreciation in value of the appraised value of such property that has occurred since the date that such mortgage was insured under this section.

''(l) ESTABLISHMENT OF HOPE FUND.—

''(1) IN GENERAL.—There is established in the Federal Housing Administration a revolving fund to be known as the Home Ownership Preservation Entity Fund, which shall be used by the Board for carrying out the mortgage insurance obligations under this section.

''(2) MANAGEMENT OF FUND.—The HOPE Fund shall be administered and managed by the Secretary, who shall establish reasonable and prudent criteria for the management and operation of any amounts in the HOPE Fund.

''(m) LIMITATION ON AGGREGATE INSURANCE AUTHORITY.—The aggregate original principal obligation of all mortgages insured under this section may not exceed $300,000,000,000.

''(n) REPORTS BY THE BOARD.—The Board shall submit monthly reports to the Congress identifying the progress of the HOPE for Homeowners Program, which shall contain the following information for each month:

''(1) The number of new mortgages insured under this section, including the location of the properties subject to such mortgages by census tract.

''(2) The aggregate principal obligation of new mortgages insured under this section.

''(3) The average amount by which the principle balance outstanding on mortgages insured this section was reduced.

''(4) The amount of premiums collected for insurance of mortgages under this section.

''(5) The claim and loss rates for mortgages insured under this section.

''(6) Any other information that the Board considers appropriate.

''(o) REQUIRED OUTREACH EFFORTS.—The Secretary shall carry out outreach efforts to ensure that homeowners, lenders, and the general public are aware of the opportunities for assistance available under this section.

''(p) ENHANCEMENT OF FHA CAPACITY.—Under the direction of the Board, the Secretary shall take such actions as may be necessary to—

''(1) contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this section;

''(2) contract for independent quality reviews of underwriting, including appraisal reviews and fraud detection, of mortgages insured under this section or pools of such mortgages; and

''(3) increase personnel of the Department as necessary to process or monitor the processing of mortgages insured under this section.

''(q) GNMA COMMITMENT AUTHORITY.—

''(1) GUARANTEES.—The Secretary shall take such actions as may be necessary to ensure that securities based on and backed by a trust or pool composed of mortgages insured under this section are available to be guaranteed by the Government National Mortgage Association as to the timely payment of principal and interest.

''(2) GUARANTEE AUTHORITY.—To carry out the purposes of section 306 of the National Housing Act (12 U.S.C. 1721), the Government National Mortgage Association may enter into new commitments to issue guarantees of securities based on or backed by mortgages insured under this section, not exceeding $300,000,000,000. The amount of authority provided under the preceding sentence to enter into new commitments to issue guarantees is in addition to any amount of authority to make new commitments to issue guarantees that is provided to the Association under any other provision of law.

''(r) SUNSET.—The Secretary may not enter into any new commitment to insure any refinanced eligible mortgage, or newly insure any refinanced eligible mortgage pursuant to this section before October 1, 2008 or after September 30, 2011.

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

''(1) APPROVED FINANCIAL INSTITUTION OR MORTGAGEE.—The term 'approved financial institution or mortgagee' means a financial institution or mortgagee approved by the Secretary under section 203 as responsible and able to service mortgages responsibly.

''(2) BOARD.—The term 'Board' means the Board of Directors of the HOPE for Homeowners Program. The Board shall be composed of the Secretary, the Secretary of the Treasury, the Chairperson of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

''(3) ELIGIBLE MORTGAGE.—The term 'eligible mortgage' means a mortgage—

''(A) the mortgagor of which—

''(i) occupies such property as his or her principal residence; and

''(ii) cannot, subject to subsection (e)(1)(B) and such other standards established by the Board, afford his or her mortgage payments; and

''(B) originated on or before January 1, 2008.

''(4) EXISTING SENIOR MORTGAGE.—The term 'existing senior mortgage' means, with respect to a mortgage insured under this section, the existing mortgage that has superior priority.

''(5) EXISTING SUBORDINATE MORTGAGE.—The term 'existing subordinate mortgage' means, with respect to a mortgage insured under this section, an existing mortgage that has subordinate priority to the existing senior mortgage.

''(6) HOPE FOR HOMEOWNERS PROGRAM.—The term 'HOPE for Homeowners Program' means the program established under this section.

''(7) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development, except where specifically provided otherwise.

''(t) REQUIREMENTS RELATED TO THE BOARD.—

''(1) COMPENSATION, ACTUAL, NECESSARY, AND TRANSPORTATION EXPENSES.—

''(A) FEDERAL EMPLOYEES.—A member of the Board who is an officer or employee of the Federal Government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Board.

''(B) TRAVEL EXPENSES.—Members of the Board shall be entitled to receive travel expenses, including per diem in lieu of subsistence, equivalent to those set forth in subchapter I of chapter 57 of title 5, United States Code.

''(2) BYLAWS.—The Board may prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board.

''(3) QUORUM.—A majority of the Board shall constitute a quorum.

''(4) STAFF; EXPERTS AND CONSULTANTS.—

''(A) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Board, any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(B) EXPERTS AND CONSULTANTS.—The Board shall procure the services of experts and consultants as the Board considers appropriate.

''(u) RULE OF CONSTRUCTION RELATED TO VOLUNTARY NATURE OF THE PROGRAM.—This section shall not be construed to require that any approved financial institution or mortgagee participate in any activity authorized under this section, including any activity related to the refinancing of an eligible mortgage.

''(v) RULE OF CONSTRUCTION RELATED TO INSURANCE OF MORTGAGES.—Except as otherwise provided for in this section or by action of the Board, the provisions and requirements of section 203(b) shall apply with respect to the insurance of any eligible mortgage under this section.

''(w) HOPE BONDS.—

''(1) ISSUANCE AND REPAYMENT OF BONDS.—Notwithstanding section 504(b) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661d(b)), the Secretary of the Treasury shall—

''(A) subject to such terms and conditions as the Secretary of the Treasury deems necessary, issue Federal credit instruments, to be known as 'HOPE Bonds', that are callable at the discretion of the Secretary of the Treasury and do not, in the aggregate, exceed the amount specified in subsection (m);

''(B) provide the subsidy amounts necessary for loan guarantees under the HOPE for Homeowners Program, not to exceed the amount specified in subsection (m), in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), except as provided in this paragraph; and

''(C) use the proceeds from HOPE Bonds only to pay for the net costs to the Federal Government of the HOPE for Homeowners Program, including administrative costs.

''(2) REIMBURSEMENTS TO TREASURY.—Funds received pursuant to section 1338(b) of the Federal Housing Enterprises Regulatory Reform Act of 1992 shall be used to reimburse the Secretary of the Treasury for amounts borrowed under paragraph (1).

''(3) USE OF RESERVE FUND.—If the net cost to the Federal Government for the HOPE for Homeowners Program exceeds the amount of funds received under paragraph (2), remaining debts of the HOPE for Homeowners Program shall be paid from amounts deposited into the fund established by the Secretary under section 1337(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, remaining amounts in such fund to be used to reduce the National debt.''.

SA 5048. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 133, between lines 9 and 10, insert the following:

''(g) ADDITIONAL LIMITATIONS ON DISTRIBUTION OF FUNDS.—

''(1) IN GENERAL.—None of the funds allocated under this section shall be distributed out of either the Housing Trust Fund or the Capital Magnet Fund to—

''(A) an organization which has been indicted for a violation under Federal law relating to an election for Federal office; or

''(B) an organization which employs applicable individuals.

''(2) APPLICABLE INDIVIDUALS DEFINED.—In this subsection, the term 'applicable individual' means an individual who—

''(A) is—

''(i) employed by the organization in a permanent or temporary capacity;

''(ii) contracted or retained by the organization; or

''(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

''(B) has been indicted for a violation under Federal law relating to an election for Federal office.''.

SA 5049. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 401, line 10, after the first period insert the following:

''(x) NO BENEFIT FOR DELINQUENCY WITHIN FIRST SIX MONTHS.—No insurance benefits shall be paid by the Secretary pursuant to this section if a mortgagor fails to timely make any of his or her first six payments on a refinanced eligible mortgage insured under this section.''.

SA 5050. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 510, between lines 5 and 6, insert the following:

(4) SALE REQUIREMENT.—If a State or unit of general local government purchases or otherwise acquires an abandoned or foreclosed upon home or residential property with funds received pursuant to this section or with any amounts derived or generated from activities authorized under this section, that State or unit of general local government shall sell such home or property by a date that is not later than 5 years after the date of enactment of this Act.

SA 5051. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 575, strike lines 3 through 13 and insert the following:

''(A) INCREASE FOR 2008.—

''(i) IN GENERAL.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $11,000,000,000 multiplied by the State share for such State.

''(ii) STATE SHARE.—For purposes of this paragraph, the State share for any state

shall be the amount, expressed as a percentage, determined with respect to such State under the formula established under clause (iii).

''(iii) FORMULA.—The formula established under this clause shall be established by the Secretary, in consultation with the Secretary of Housing and Urban Development, and shall be based on need, as such need is determined in the discretion of the Secretary, taking into account—

''(I) the number and percentage of home foreclosures in each State;

''(II) the number and percentage of homes financed by a subprime mortgage related loan in each State; and

''(III) the number and percentage of homes in default or delinquency in each State.

''(iv) FORMULA TO BE DEVISED SWIFTLY.—The formula under clause (iii) shall be established not later than 30 days after the date of enactment of this paragraph.

SA 5052. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 518, line 3, strike the period and insert '': *Provided*, further that none of the funds appropriated by this section for section 2401 or funds appropriated by section 2401 shall be for political activities, lobbying, whether directly or through other parties, or travel expenses.''.

SA 5053 Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

Strike Title III of Division B.

SA 5054. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of division C, add the following:

TITLE ____—CLEAN ENERGY TAX STIMULUS

SEC. ____01. SHORT TITLE.

This title may be cited as the ''Clean Energy Tax Stimulus Act of 2008''.

Subtitle A—Extension of Clean Energy Production Incentives

SEC. ____11. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY PRODUCTION TAX CREDIT.

(a) EXTENSION OF CREDIT.—Each of the following provisions of section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010'':

(1) Paragraph (1).

(2) Clauses (i) and (ii) of paragraph (2)(A).

(3) Clauses (i)(I) and (ii) of paragraph (3)(A).

(4) Paragraph (4).

(5) Paragraph (5).

(6) Paragraph (6).

(7) Paragraph (7).

(8) Paragraph (8).

(9) Subparagraphs (A) and (B) of paragraph (9).

(b) PRODUCTION CREDIT FOR ELECTRICITY PRODUCED FROM MARINE RENEWABLES.—

(1) IN GENERAL.—Paragraph (1) of section 45(c) (relating to resources) is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', and'', and by adding at the end the following new subparagraph:

''(I) marine and hydrokinetic renewable energy.''.

(2) MARINE RENEWABLES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraph:

''(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

''(A) IN GENERAL.—The term 'marine and hydrokinetic renewable energy' means energy derived from—

''(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

''(ii) free flowing water in rivers, lakes, and streams,

''(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

''(iv) differentials in ocean temperature (ocean thermal energy conversion).

''(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.''.

(3) DEFINITION OF FACILITY.—Subsection (d) of section 45 is amended by adding at the end the following new paragraph:

''(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term 'qualified facility' means any facility owned by the taxpayer—

''(A) which has a nameplate capacity rating of at least 150 kilowatts, and

''(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2010.''.

(4) CREDIT RATE.—Subparagraph (A) of section 45(b)(4) is amended by striking ''or (9)'' and inserting ''(9), or (11)''.

(5) COORDINATION WITH SMALL IRRIGATION POWER.—Paragraph (5) of section 45(d), as amended by subsection (a), is amended by striking ''January 1, 2010'' and inserting ''the date of the enactment of paragraph (11)''.

(c) SALES OF ELECTRICITY TO REGULATED PUBLIC UTILITIES TREATED AS SALES TO UNRELATED PERSONS.—Section 45(e)(4) (relating to related persons) is amended by adding at the end the following new sentence: ''A taxpayer shall be treated as selling electricity to an unrelated person if such electricity is sold to a regulated public utility (as defined in section 7701(a)(33).''.

(d) TRASH FACILITY CLARIFICATION.—Paragraph (7) of section 45(d) is amended—

(1) by striking ''facility which burns'' and inserting ''facility (other than a facility described in paragraph (6)) which uses'', and

(2) by striking ''COMBUSTION''.

(e) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to property originally placed in service after December 31, 2008.

(2) MODIFICATIONS.—The amendments made by subsections (b) and (c) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (d) shall apply to electricity produced and sold before, on, or after December 31, 2007.

SEC. ____12. EXTENSION AND MODIFICATION OF SOLAR ENERGY AND FUEL CELL INVESTMENT TAX CREDIT.

(a) EXTENSION OF CREDIT.—

(1) SOLAR ENERGY PROPERTY.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) (relating to energy credit) are each amended by striking ''January 1, 2009'' and inserting ''January 1, 2017''.

(2) FUEL CELL PROPERTY.—Subparagraph (E) of section 48(c)(1) (relating to qualified fuel cell property) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2017''.

(3) QUALIFIED MICROTURBINE PROPERTY.—Subparagraph (E) of section 48(c)(2) (relating to qualified microturbine property) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2017''.

(b) ALLOWANCE OF ENERGY CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48.''.

(c) REPEAL OF DOLLAR PER KILOWATT LIMITATION FOR FUEL CELL PROPERTY.—

(1) IN GENERAL.—Section 48(c)(1) (relating to qualified fuel cell), as amended by subsection (a)(2), is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(2) CONFORMING AMENDMENT.—Section 48(a)(1) is amended by striking ''paragraphs (1)(B) and (2)(B) of subsection (c)'' and inserting ''subsection (c)(2)(B)''.

(d) PUBLIC ELECTRIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 48(c), as amended by this section, is amended by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C).

(B) Paragraph (2) of section 48(c), as amended by subsection (a)(3), is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(e) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

(3) FUEL CELL PROPERTY AND PUBLIC ELECTRIC UTILITY PROPERTY.—The amendments made by subsections (c) and (d) shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. ___13. EXTENSION AND MODIFICATION OF RESIDENTIAL ENERGY EFFICIENT PROPERTY CREDIT.

(a) EXTENSION.—Section 25D(g) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) NO DOLLAR LIMITATION FOR CREDIT FOR SOLAR ELECTRIC PROPERTY.—

(1) IN GENERAL.—Section 25D(b)(1) (relating to maximum credit) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(2) CONFORMING AMENDMENTS.—Section 25D(e)(4) is amended—

(A) by striking clause (i) in subparagraph (A),

(B) by redesignating clauses (ii) and (iii) in subparagraph (A) as clauses (i) and (ii), respectively, and

(C) by striking '', (2),'' in subparagraph (C).

(c) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 25D is amended to read as follows:

''(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

''(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

''(2) CARRYFORWARD OF UNUSED CREDIT.—

''(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 23(b)(4)(B) is amended by inserting ''and section 25D'' after ''this section''.

(B) Section 24(b)(3)(B) is amended by striking ''and 25B'' and inserting '', 25B, and 25D''.

(C) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25D''.

(D) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25D''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (c)(2) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendments relate.

SEC. ___14. EXTENSION AND MODIFICATION OF CREDIT FOR CLEAN RENEWABLE ENERGY BONDS.

(a) EXTENSION.—Section 54(m) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) INCREASE IN NATIONAL LIMITATION.—Section 54(f) (relating to limitation on amount of bonds designated) is amended—

(1) by inserting '', and for the period beginning after the date of the enactment of the Clean Energy Tax Stimulus Act of 2008 and ending before January 1, 2010, $400,000,000'' after ''$1,200,000,000'' in paragraph (1),

(2) by striking ''$750,000,000 of the'' in paragraph (2) and inserting ''$750,000,000 of the $1,200,000,000'', and

(3) by striking ''bodies'' in paragraph (2) and inserting ''bodies, and except that the Secretary may not allocate more than ⅓ of the $400,000,000 national clean renewable energy bond limitation to finance qualified projects of qualified borrowers which are public power providers nor more than ⅓ of such limitation to finance qualified projects of qualified borrowers which are mutual or cooperative electric companies described in section 501(c)(12) or section 1381(a)(2)(C)''.

(c) PUBLIC POWER PROVIDERS DEFINED.—Section 54(j) is amended—

(1) by adding at the end the following new paragraph:

''(6) PUBLIC POWER PROVIDER.—The term 'public power provider' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).'', and

(2) by inserting ''; PUBLIC POWER PROVIDER'' before the period at the end of the heading.

(d) TECHNICAL AMENDMENT.—The third sentence of section 54(e)(2) is amended by striking ''subsection (l)(6)'' and inserting ''subsection (l)(5)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. ___15. EXTENSION OF SPECIAL RULE TO IMPLEMENT FERC RESTRUCTURING POLICY.

(a) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—

(1) IN GENERAL.—Section 451(i)(3) (defining qualifying electric transmission transaction) is amended by striking ''January 1, 2008'' and inserting ''January 1, 2010''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to transactions after December 31, 2007.

(b) INDEPENDENT TRANSMISSION COMPANY.—

(1) IN GENERAL.—Section 451(i)(4)(B)(ii) (defining independent transmission company) is amended by striking ''December 31, 2007'' and inserting ''the date which is 2 years after the date of such transaction''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004.

Subtitle B—Extension of Incentives To Improve Energy Efficiency

SEC. ___21. EXTENSION AND MODIFICATION OF CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) EXTENSION OF CREDIT.—Section 25C(g) (relating to termination) is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(b) QUALIFIED BIOMASS FUEL PROPERTY.—

(1) IN GENERAL.—Section 25C(d)(3) is amended—

(A) by striking ''and'' at the end of subparagraph (D),

(B) by striking the period at the end of subparagraph (E) and inserting '', and'', and

(C) by adding at the end the following new subparagraph:

''(F) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.''.

(2) BIOMASS FUEL.—Section 25C(d) (relating to residential energy property expenditures) is amended by adding at the end the following new paragraph:

''(6) BIOMASS FUEL.—The term 'biomass fuel' means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.''.

(c) MODIFICATIONS OF STANDARDS FOR ENERGY-EFFICIENT BUILDING PROPERTY.—

(1) ELECTRIC HEAT PUMPS.—Subparagraph (B) of section 25C(d)(3) is amended to read as follows:

''(A) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2008.''.

(2) CENTRAL AIR CONDITIONERS.—Section 25C(d)(3)(D) is amended by striking ''2006'' and inserting ''2008''.

(3) WATER HEATERS.—Subparagraph (E) of section 25C(d) is amended to read as follows:

''(E) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent.''.

(4) OIL FURNACES AND HOT WATER BOILERS.—Paragraph (4) of section 25C(d) is amended to read as follows:

''(4) QUALIFIED NATURAL GAS, PROPANE, AND OIL FURNACES AND HOT WATER BOILERS.—

''(A) QUALIFIED NATURAL GAS FURNACE.—The term 'qualified natural gas furnace' means any natural gas furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

''(B) QUALIFIED NATURAL GAS HOT WATER BOILER.—The term 'qualified natural gas hot water boiler' means any natural gas hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

''(C) QUALIFIED PROPANE FURNACE.—The term 'qualified propane furnace' means any propane furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

''(D) QUALIFIED PROPANE HOT WATER BOILER.—The term 'qualified propane hot water boiler' means any propane hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

''(E) QUALIFIED OIL FURNACES.—The term 'qualified oil furnace' means any oil furnace which achieves an annual fuel utilization efficiency rate of not less than 90.

''(F) QUALIFIED OIL HOT WATER BOILER.—The term 'qualified oil hot water boiler' means any oil hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.''.

(d) EFFECTIVE DATE.—The amendments made this section shall apply to expenditures made after December 31, 2007.

SEC. ___22. EXTENSION AND MODIFICATION OF TAX CREDIT FOR ENERGY EFFICIENT NEW HOMES.

(a) EXTENSION OF CREDIT.—Subsection (g) of section 45L (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(b) ALLOWANCE FOR CONTRACTOR'S PERSONAL RESIDENCE.—Subparagraph (B) of section 45L(a)(1) is amended to read as follows:

''(B)(i) acquired by a person from such eligible contractor and used by any person as a residence during the taxable year, or

''(ii) used by such eligible contractor as a residence during the taxable year.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to homes acquired after December 31, 2008.

SEC. ___23. EXTENSION AND MODIFICATION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) EXTENSION.—Section 179D(h) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) ADJUSTMENT OF MAXIMUM DEDUCTION AMOUNT.—

(1) IN GENERAL.—Subparagraph (A) of section 179D(b)(1) (relating to maximum amount of deduction) is amended by striking ''$1.80'' and inserting ''$2.25''.

(2) PARTIAL ALLOWANCE.—Paragraph (1) of section 179D(d) is amended—

(A) by striking ''$.60'' and inserting ''$0.75'', and

(B) by striking ''$1.80'' and inserting ''$2.25''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. ___24. MODIFICATION AND EXTENSION OF ENERGY EFFICIENT APPLIANCE CREDIT FOR APPLIANCES PRODUCED AFTER 2007.

(a) IN GENERAL.—Subsection (b) of section 45M (relating to applicable amount) is amended to read as follows:

''(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

''(1) DISHWASHERS.—The applicable amount is—

''(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

''(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

''(2) CLOTHES WASHERS.—The applicable amount is—

''(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

''(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

''(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

''(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

''(3) REFRIGERATORS.—The applicable amount is—

''(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

''(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.''.

(b) ELIGIBLE PRODUCTION.—

(1) SIMILAR TREATMENT FOR ALL APPLIANCES.—Subsection (c) of section 45M (relating to eligible production) is amended—

(A) by striking paragraph (2),

(B) by striking ''(1) IN GENERAL'' and all that follows through ''the eligible'' and inserting ''The eligible'', and

(C) by moving the text of such subsection in line with the subsection heading and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(2) MODIFICATION OF BASE PERIOD.—Paragraph (2) of section 45M(c), as amended by paragraph (1) of this section, is amended by striking ''3-calendar year'' and inserting ''2-calendar year''.

(c) TYPES OF ENERGY EFFICIENT APPLIANCES.—Subsection (d) of section 45M (defining types of energy efficient appliances) is amended to read as follows:

''(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

''(1) dishwashers described in subsection (b)(1),

''(2) clothes washers described in subsection (b)(2), and

''(3) refrigerators described in subsection (b)(3).''.

(d) AGGREGATE CREDIT AMOUNT ALLOWED.—

(1) INCREASE IN LIMIT.—Paragraph (1) of section 45M(e) (relating to aggregate credit amount allowed) is amended to read as follows:

''(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.''.

(2) EXCEPTION FOR CERTAIN REFRIGERATOR AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended to read as follows:

''(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).''.

(e) QUALIFIED ENERGY EFFICIENT APPLIANCES.—

(1) IN GENERAL.—Paragraph (1) of section 45M(f) (defining qualified energy efficient appliance) is amended to read as follows:

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) any dishwasher described in subsection (b)(1),

''(B) any clothes washer described in subsection (b)(2), and

''(C) any refrigerator described in subsection (b)(3).''.

(2) CLOTHES WASHER.—Section 45M(f)(3) (defining clothes washer) is amended by inserting ''commercial'' before ''residential'' the second place it appears.

(3) TOP-LOADING CLOTHES WASHER.—Subsection (f) of section 45M (relating to definitions) is amended by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) TOP-LOADING CLOTHES WASHER.—The term 'top-loading clothes washer' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.''.

(4) REPLACEMENT OF ENERGY FACTOR.—Section 45M(f)(6), as redesignated by paragraph (3), is amended to read as follows:

''(6) MODIFIED ENERGY FACTOR.—The term 'modified energy factor' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.''.

(5) GALLONS PER CYCLE; WATER CONSUMPTION FACTOR.—Section 45M(f) (relating to definitions), as amended by paragraph (3), is amended by adding at the end the following:

''(9) GALLONS PER CYCLE.—The term 'gallons per cycle' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

''(10) WATER CONSUMPTION FACTOR.—The term 'water consumption factor' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007.

SA 5055. Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 4983 proposed by Mr. REID (for Mr. DODD (for himself and Mr. SHELBY)) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI of division A, add the following:

SEC. 1606. CLARIFICATION OF SCOPE OF APPLICABLE RATE PROVISION.

Section 44(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(f)) is amended by adding at the end the following new paragraphs:

''(3) OTHER PERSONS.—In the case of any other person or governmental or private entity in the State described in paragraph (1)—

''(A) any provision of the constitution of that State that establishes a maximum lawful annual interest rate, or otherwise or limits the amount of interest, discount points, finance charges, fees, or other charges that may be charged, taken, paid, received, or reserved from time to time, until judgment, thereby interfering in interstate commerce,

shall not apply to any loan, discount, or credit sale made, or upon any bond, note, obligation, bill of exchange, financing transaction, or other evidence of debt issued or acquired by any other person or governmental or private entity; and

''(B) such interest, discount points, finance charges, fees, or other charges that may be charged, taken, paid, received, or reserved from time to time, until judgment, in any loan, discount, or credit sale made, or upon any bond, note, obligation, bill of exchange, financing transaction, or other evidence of debt issued to or acquired by any other person or governmental or private entity may not exceed 17 percent per year.''.

SA 5056. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI of division A, add the following:

SEC. 1606. OIL AND NATURAL GAS LEASING IN NEW PRODUCING AREAS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE PRODUCING STATE.—The term ''eligible producing State'' means—

(A) a new producing State; and

(B) any other producing State that has, within the offshore administrative boundaries beyond the submerged land of a State, areas available for oil leasing, natural gas leasing, or both.

(2) NEW PRODUCING AREA.—The term ''new producing area'' means an area that is—

(A) within the offshore administrative boundaries beyond the submerged land of a State; and

(B) not available for oil or natural gas leasing as of the date of enactment of this Act.

(3) NEW PRODUCING STATE.—The term ''new producing State'' means a State with respect to which a petition has been approved by the Secretary under subsection (b).

(4) QUALIFIED REVENUES.—The term ''qualified revenues'' means all rentals, royalties, bonus bids, and other sums due and payable to the United States from leases entered into on or after the date of enactment of this Act for new producing areas.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(b) PETITION FOR LEASING NEW PRODUCING AREAS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Governor of a State, with the concurrence of the State legislature, may submit to the Secretary a petition requesting that the Secretary make a new producing area of the State eligible for oil leasing, gas leasing, or both, as determined by the State, in accordance with the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(2) ACTION BY SECRETARY.—As soon as practicable after the date on which the Secretary receives a petition under paragraph (1), the Secretary shall approve or disapprove the petition.

(c) DISPOSITION OF QUALIFIED OUTER CONTINENTAL SHELF REVENUES FROM ELIGIBLE PRODUCING STATES.—Notwithstanding section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338), for each applicable fiscal year, the Secretary of the Treasury shall deposit—

(1) 50 percent of qualified revenues in the general fund of the Treasury; and

(2) 50 percent of qualified revenues in a special account in the Treasury, which the Secretary shall disburse to eligible producing States for new producing areas, to be allocated in accordance with subsection (d)(1).

(d) ALLOCATION TO ELIGIBLE PRODUCING STATES.—

(1) IN GENERAL.—The amount made available under subsection (c)(2)(A) shall be allocated to eligible producing States in amounts (based on a formula established by the Secretary by regulation) that are inversely proportional to the respective distances between the point on the coastline of each eligible producing State that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract, as determined by the Secretary.

(2) USE.—Amounts allocated to an eligible producing State under paragraph (1) shall be used to address the impacts of any oil and natural gas exploration and production activities under this section.

(e) EFFECT.—Nothing in this section affects—

(1) the amount of funds otherwise dedicated to the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–5); or

(2) any authority that permits energy production under any other provision of law.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public of an addition to a previously announced hearing before the Committee on Energy and Natural Resources, Subcommittee on Public Lands and Forests.

The hearing will be held on July 9, 2008, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

In addition to the other measures previously announced, the Subcommittee will also consider S. 3179, a bill to authorize the conveyance of certain public land in the State of New Mexico owned or leased by the Department of Energy, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to rachel_pasternack@energy.senate.gov.

For further information, please contact David Brooks at (202) 224–9863 or Rachel Pasternack at (202) 224–0883.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, June 24, 2008, at 10:30 a.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, June 24, 2008, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, June 24, 2008, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 24, 2008, at 2:15 p.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled ''Emergence of the Superbug: Antimicrobial Resistance in the U.S.'' on Tuesday, June 24, 2008. The hearing will commence at 10:30 a.m. in room 430 of the Dirksen Senate Office Building.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, June 24, 2008, at 10:30 a.m. to conduct a hearing entitled ''Ending Excessive Speculation in Commodity Markets: Legislative Options.''

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

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. DODD. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, to conduct a hearing entitled ''From Nuremberg to Darfur: Accountability for Crimes Against Humanity'' on Tuesday, June 24, 2008, at 10:30 a.m., in room SD–226 of the Dirksen Senate Office Building.

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

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Rick Houghton, who will graduate from the U.S. Military Academy at West Point next year and who now is an intern in my office, be accorded the privilege of the floor during today's session of the Senate.

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

Mr. SANDERS. I ask unanimous consent that Winoka Begay, Jessica Borchert, Jullian Carr, Kelley Fry, and Dane Lauritzen, from the office of Senator BINGAMAN, be granted the privileges of the floor for today, June 24, 2008.

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

Mr. DODD. Mr. President, I ask unanimous consent that Matthew Solomon, a detailee on Senator LEAHY's staff, be granted floor privileges for the remainder of the FISA debate.

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

Mr. DODD. Madam President, I ask unanimous consent that Ryan Kehmna and Ben Weingrod, both staff members from my office, be granted the privilege of the floor for the remainder of the debate on H.R. 6304.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that Dionne Thompson, a fellow in the office of Senator LANDRIEU, be given floor privileges during the current session.

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

DISCHARGE AND REFERRAL—S. 3145

Mr. DODD. Mr. President, I ask unanimous consent that the Homeland Security and Governmental Affairs Committee be discharged from further consideration of S. 3145, and that it then be referred to the Committee on Environment and Public Works.

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

CONRAD B. DUBERSTEIN UNITED STATES BANKRUPTCY COURTHOUSE

THEODORE L. NEWTON, JR. AND GEORGE F. AZRAK BORDER PATROL STATION

JAMES M. ASHLEY AND THOMAS W.L. ASHLEY UNITED STATES COURTHOUSE

TIMOTHY J. RUSSERT HIGHWAY

Mr. DODD. Mr. President, I further ask unanimous consent that the EPW Committee be discharged and the Senate immediately proceed to the following naming bills en bloc: H.R. 430, H.R. 2728, H.R. 3712, S. 3145.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senate proceeded to consider the bill (H.R. 430) to designate the United States Bankruptcy courthouse located at 271 Cadman Plaza East in Brooklyn, New York, as the ''Conrad B. Duberstein United States Bankruptcy Courthouse.''

The Senate proceeded to consider the bill (H.R. 2728) to designate the station of the United States Border Patrol located at 25762 Madison Avenue in Murrieta, California, as the ''Theodore L. Newton, Jr. and George F. Azrak Border Patrol Station.''

The Senate proceeded to consider the bill (H.R. 3712) to designate the United States courthouse located at 1716 Spielbusch Avenue in Toledo, Ohio, as the ''James M. Ashley and Thomas W.L. Ashley United States Courthouse.''

The Senate proceeded to consider the bill (S. 3145) to designate a portion of United States Route 20A, located in Orchard Park, New York, as the ''Timothy J. Russert Highway.''

Mr. DODD. Mr. President, I ask unanimous consent that the bills be read a third time and passed, all en bloc.

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

The bill (H.R. 430) was ordered to a third reading, was read the third time, and passed.

The bill (H.R. 2728) was ordered to a third reading, was read the third time, and passed.

The bill (H.R. 3712) was ordered to a third reading, was read the third time, and passed.

The bill (S. 3145) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3145

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds the following:

(1) Timothy ''Tim'' John Russert was born on May 7, 1950 in Buffalo, New York, to Elizabeth and Timothy Joseph Russert.

(2) Tim Russert graduated from Canisius High School in Buffalo, New York, earned his bachelor's degree in political science from John Carroll University in 1972, and his Juris Doctor from Cleveland State University—Marshall School of Law in 1976.

(3) Tim Russert embarked on a career in public service with United States Senator Daniel Patrick Moynihan and the Governor of New York, Mario Cuomo, from 1977 to 1984.

(4) After his career in public service and New York politics, Tim Russert began his career in journalism when he joined NBC in 1984.

(5) In 1991, Tim Russert became the host of the Sunday morning news program Meet the Press, the longest-running program in the history of television. He would go on to become the longest serving host of the show.

(6) Throughout his career, Tim Russert received 48 honorary doctorates and several awards for excellence in journalism, including—

(A) the Edward R. Murrow Award from the Radio-Television News Directors Association;

(B) the John Peter Zenger Freedom of the Press Award;

(C) the American Legion Journalism Award;

(D) the Veterans of Foreign Wars News Media Award;

(E) the Congressional Medal of Honor Society Journalism Award;

(F) the Allen H. Neuharth Award for Excellence in Journalism;

(G) the David Brinkley Award for Excellence in Communication;

(H) the Catholic Academy for Communication's Gabriel Award; and

(I) an Emmy Award from the National Academy of Television Arts and Sciences.

(7) In 2004, Tim Russert authored the best-selling autobiography, Big Russ and Me, which chronicled his life growing up in South Buffalo and his education at Canisius High School. He is also the author of Wisdom of our Fathers.

(8) Tim Russert advocated on behalf of abused children and voiced the need to protect our Nation's young people, serving on the board of directors of the Greater Washington Boys and Girls Club and America's Promise—Alliance for Youth.

(9) Tim Russert sat in the front seat of history, chronicling the political and societal events that have defined our time, and serving as a trusted source of information and analysis for millions of Americans.

(10) Tim Russert was a tireless booster of Buffalo, a famous fan of his beloved Buffalo Bills, and was always proud of his South Buffalo roots, a source of civic pride in the Western New York community.

(11) Tim Russert passed away on June 13, 2008. He is survived by his wife, Maureen Orth and their son, Luke Russert.

SEC. 2. DESIGNATION.

The portion of United States Route 20A located in Orchard Park, New York, between Abbot Road and California Road shall be known and designated as the ''Timothy J. Russert Highway''.

SEC. 3. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the portion of United States Route 20A referred to in section 2 shall be deemed to be a reference to the Timothy J. Russert Highway.

THE CALENDAR

Mr. DODD. Mr. President, I further ask unanimous consent that the Senate now proceed to the consideration of the following named bills on the calendar, all en bloc: Calendar No. 760, S. 2403; Calendar No. 761, S. 2837; Calendar No. 762, S. 3009; Calendar No. 763, H.R. 781; Calendar No. 764, H.R. 1019; Calendar No. 766, H.R. 4140.

I further ask unanimous consent that the bills be read a third time and passed en bloc, and the motions to reconsider be laid upon the table.

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

SPOTTSWOOD W. ROBINSON III AND ROBERT R. MERHIGE, JR. FEDERAL COURTHOUSE

The bill (S. 2403) to designate the new Federal Courthouse, located in the 700 block of East Broad Street, Richmond,

Virginia, as the ''Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse,'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SPOTTSWOOD W. ROBINSON III AND ROBERT R. MERHIGE, JR. FEDERAL COURTHOUSE.

(a) DESIGNATION.—The new Federal Courthouse, located in the 700 block of East Broad Street, Richmond, Virginia, shall be known and designated as the ''Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal Courthouse referred to in subsection (a) shall be deemed to be a reference to the ''Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse''.

THEODORE ROOSEVELT UNITED STATES COURTHOUSE

The bill (S. 2837) to designate the United States courthouse located at 225 Cadman Plaza East, Brooklyn, New York, as the ''Theodore Roosevelt United States Courthouse'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. THEODORE ROOSEVELT UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The United States courthouse located at 225 Cadman Plaza East, Brooklyn, New York, shall be known and designated as the ''Theodore Roosevelt United States Courthouse''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the ''Theodore Roosevelt United States Courthouse''.

J. JAMES EXON FEDERAL BUREAU OF INVESTIGATION BUILDING

The bill (S. 3009) to designate the Federal Bureau of Investigation building under construction in Omaha, Nebraska, as the ''J. James Exon Federal Bureau of Investigation Building,'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3009

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. J. JAMES EXON FEDERAL BUREAU OF INVESTIGATION BUILDING.

(a) DESIGNATION.—The Federal Bureau of Investigation building under construction at the intersection of 120th and L Streets in Omaha, Nebraska, shall be known and designated as the ''J. James Exon Federal Bureau of Investigation Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in subsection (a) shall be deemed to be a reference to the J. James Exon Federal Bureau of Investigation Building.

COLONEL CHARLES D. MAYNARD LOCK AND DAM

The bill (H.R. 781) to redesignate Lock and Dam No. 5 of the McClellan-Kerr Arkansas River Navigation System near Redfield, Arkansas, authorized by the Rivers and Harbors Act approved July 24, 1946, as the ''Colonel Charles D. Maynard Lock and Dam,'' was considered, ordered to a third reading, read the third time, and passed.

RAFAEL MARTINEZ NADAL UNITED STATES CUSTOMHOUSE BUILDING

The bill (H.R. 1019) to designate the United States customhouse building located at 31 Gonzalez Clemente Avenue in Mayaguez, Puerto Rico, as the ''Rafael Martinez Nadal United States Customhouse Building,'' was considered, ordered to a third reading, read the third time, and passed.

RICHARD B. ANDERSON FEDERAL BUILDING

The bill (H.R. 4140) to designate the Port Angeles Federal Building in Port Angeles, Washington, as the ''Richard B. Anderson Federal Building,'' was considered, ordered to a third reading, read the third time, and passed.

EXPRESSING CONDOLENCES TO THE VICTIMS OF THE TORNADO IN LITTLE SIOUX, IOWA

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 599 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 599) expressing the condolences of the Senate to those affected by the tragic events following the tornado that hit Little Sioux Scout Ranch in Little Sioux, Iowa, on June 11, 2008.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GRASSLEY. Mr. President, I am pleased to be an original cosponsor of this Senate resolution to pay tribute to the four boy scouts who lost their lives almost 2 weeks ago when a tornado struck Little Sioux Scout Ranch in western Iowa: Aaron Eilerts of Eagle Grove, Iowa and Sam Thomsen, Josh Fennen, and Ben Petrizilka of Omaha, Nebraska. I would like also to recognize the bravery and dedication of all the other scouts affected by this tragedy and of the emergency crews who responded.

All of these remarkable young people had already established themselves as leaders in their community. The loss of four of them is a tragedy for Iowa and Nebraska.

I would like in particular to express my condolences to the four families who have suffered such a devastating loss. My thoughts and prayers are with them at this difficult time.

The Boy Scouts of America is an organization that never fails to exceed expectations. All the Scouts at Little Sioux Ranch that day kept their courage when all about them was chaos. Many of those who survived suffered considerable injuries. As the storm passed, the Boy Scouts immediately began to administer first aid to the injured and set to work to clear the roads, allowing the emergency crews to move in. In their bravery and resourcefulness, they did honor to Boy Scouts throughout the country. We are proud of them and humbled by their service.

I am saddened that we must be here today at all offering this resolution, but I am honored to pay tribute to these young leaders, and I extend my deepest sympathy to all those affected by this tragedy.

Mr. DODD. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 599) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 599

Whereas, on the evening of June 11, 2008, a tornado struck the Little Sioux Scout Ranch in Little Sioux, Iowa;

Whereas 4 lives were tragically lost, and many other people were injured;

Whereas Boy Scouts and Boy Scout leaders at the camp showed great heroism and courage in providing aid and assistance to their fellow Scouts;

Whereas the first responders, firefighters, and law enforcement, and medical personnel worked valiantly to help provide care and comfort to those who were injured;

Whereas the Boy Scouts of America will continue to feel the loss and remember the courage of the Boy Scouts who were at the Little Sioux Scout Ranch the evening of June 11, 2008;

Whereas the Boy Scouts of America will continue to develop young men who show the character, strength, and bravery that was demonstrated by the Boy Scouts at the Little Sioux Scout Ranch on the evening of June 11, 2008; and

Whereas the people of Nebraska and Iowa have embraced those affected and will continue to offer support to the families of those who were lost and injured; Now, therefore, be it:

Resolved, That the Senate—

(1) expresses its heartfelt condolences to the families and friends of those who lost their lives in the terrible events of June 11, 2008, at the Little Sioux Scout Ranch in Little Sioux, Iowa: Sam Thomsen, Josh Fennen, and Ben Petrzilka of Omaha, Nebraska, and Aaron Eilerts of Eagle Grove, Iowa;

(2) shares its thoughts and prayers for a full recovery for all those who were injured;

(3) commends the Boy Scouts of America for the support the organization has provided

to the families and friends of those who were lost and injured;

(4) extends its thanks to the first responders, firefighters, and law enforcement, and medical personnel who took quick action to provide aid and comfort to the victims; and

(5) stands with the people of Nebraska and Iowa as they begin the healing process following this terrible event.

HONORING MEMBERS OF THE U.S. AIR FORCE

Mr. DODD. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration and the Senate now proceed to H. Con. Res. 32.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the House concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 32) honoring the members of the U.S. Air Force who were killed in the June 25, 1996, terrorist bombing of the Khobar Towers United States military housing compound near Dhahran, Saudi Arabia.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 32) was agreed to.

The preamble was agreed to.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008—Continued

Mr. DODD. Mr. President, I ask unanimous consent that the Senate resume consideration of the House message to accompany H.R. 3221, the Housing reform legislation.

The PRESIDING OFFICER (Mr. SALAZAR). Without objection, it is so ordered.

Mr. DODD. Mr. President, as the chairman of the Senate Banking Committee, I express my gratitude to all the Members of this body. We began proceedings on the motion to invoke cloture earlier today, which passed by a vote of 83 to 9, another overwhelming vote in support of moving to the housing bill.

Regretfully, we were not able to deal with many amendments today because there was at least one objection to proceeding to the matter, pending the outcome of an extraneous matter that had little, if anything, to do with housing, regretfully—despite the strong bipartisan vote this morning—once again demonstrating that in this body one Senator can disrupt the efforts to achieve a larger result. Certainly, that is the Senator's right, and nothing was done illegally or unlawfully. It just dramatizes the difficulty in achieving even something as important as the housing legislation we are working on.

I would be remiss if I didn't observe that the Senator from Ohio, the occupant of the chair, is a worthwhile member of that committee. I am grateful to him and the other members of the committee for their work over the last year and a half since the majority began that work. We have had some 50 hearings on that committee. We adopted some 17 or 18 pieces of legislation out of the committee—maybe more—more than half of which have become the law of the land. A number of others, of course, have passed the Senate, or passed on out of committee, and we have not been able to resolve all of them.

No matter is as significant and as important as the housing reform legislation—to stop the hemorrhaging that is occurring, with more than 8,400 people a day filing for foreclosure in our country. People find those numbers alarming, and it is intended to be so, because it is large. Our efforts here are to try to keep people in their homes, and finding a floor, if we can, to this housing problem that continues to cascade downward will be a challenge for all of us.

Our legislation takes a major step in the direction of dealing with that, along with the reform of the government-sponsored enterprises and, of course, the permanent affordable housing program, not to mention the efforts we have made in community development block grants, counseling services, mortgage revenue bonds, and tax relief for those who wish to acquire a foreclosed property—all part of a larger piece of legislation to deal with the housing crisis. I am hopeful and confident we will get to it. It will take a little bit longer as a result of the objections some are raising.

This evening I rise to talk about another matter, which will be the subject of a debate, whether it is in the next few days or weeks. It is a subject matter which I care deeply and passionately about. It involves the rule of law, the Constitution of the United States, and the very basic principle that we are a nation of laws, not men; that even those in the most lofty of positions in our Government are not above the law; that individuals, corporations, and companies have an obligation to respect that law, and those of us charged with guarding it in an institution such as the Senate have an obligation to defend it and to remind ourselves and the country when there are efforts to undermine that rule of law.

As I did in December of last year, when the matter first came up, and again in February, when the effort came back to the Senate to change the Foreign Intelligence Surveillance Act, and particularly to grant retroactive immunity to a handful of telecom companies, which, over the past number of years, have gathered up information and private information of individual citizens in this country, which may have been the single largest breach or personal invasion in the history of our country, the issue of whether that was done legally ought to be determined by the courts of our country.

The bill that will come before us grants retroactive immunity without ever considering what happened, how it happened, who was responsible, why it was done, and why was no effort made to go before the Foreign Intelligence Surveillance Courts—the FISA courts—which have been in existence since the 1970s. All of those are important questions the American people deserve an answer to. Was the rule of law violated? Were there individuals who insisted that this invasion of privacy occur in this country? I don't think it is asking too much to want to get to the bottom of that. Americans, regardless of ideology or party persuasion, ought to be jointly offended when there is an effort here to grant retroactive immunity without determining what happened and why these events were allowed to go forward.

This evening I am going to take the time allowed to me under the rules of the Senate because we are in a postcloture environment. I am limited to the amount of time I am permitted to talk under the rules of the Senate. But I can do this because of the generosity of Senator JACK REED of Rhode Island, Senator MAX BAUCUS of Montana, and the willingness of the majority leader, to give me the maximum time allowed to talk about this FISA bill, the Foreign Intelligence Surveillance Act. I will speak about why I am so deeply concerned about it, and what I think the precedent-setting nature of this could mean for our country.

There are moments such as this when we are asked to do something because, we are told, if we don't, we will jeopardize our Nation. During such times, we have historically made some of the worst mistakes in our history. One only needs to go back to the period of World War II when, because of the fears people had, we incarcerated a lot of very good Americans of Japanese descent, because those who engaged in the fear mongering were able to convince even the Supreme Court of the United States—a majority—to allow for the virtual incarceration of literally thousands of human beings. We know now, today, what a great mistake that was, and how courageous it was that people like Robert Jackson, a Supreme Court Justice, a former Attorney General under Franklin Roosevelt, a solicitor general, chief prosecutor at Nuremberg, one of the sole voices on the Court who objected to that effort to require these American citizens to be deprived of their homes, personal belongings, and the virtual incarceration in camps in the western part of the country. Today, we know what a mistake that was. But because we acted out of fear, we made a dreadful error.

My concern about this FISA bill, while not of that magnitude at this

point, is that we are about to make another great error because of fear, because we fail to understand that balancing legitimate interests of our security and our rights ought not to be compromised. That is what the FISA courts were created to do—to balance rights and fears over legitimate concerns about our security being jeopardized.

So I rise once again to voice my strong opposition to the misguided FISA legislation before us, as it will come in the next day or so. I have strong reservations about the so-called improvements made to title I of the legislation. But more than that, this legislation includes provisions that would grant retroactive immunity to telecommunications companies that apparently have violated the privacy and the trust of millions of our fellow citizens by participating in the President's warrantless wiretapping program. If we pass this legislation, the Senate will ratify a domestic spying regime that has already concentrated far too much unaccountable power in the President's hands and will place the telecommunications companies above the law.

I am here this evening to implore my colleagues to vote against cloture when that vote occurs, as it will sometime in the next 24 to 48 hours.

Let me make it clear at the outset of the debate that this is not about domestic surveillance itself. We all recognize, here and elsewhere, the importance of domestic surveillance in an age of unprecedented threats. This is about illegal, unwarranted, unchecked domestic surveillance. The difference between surveillance that is lawful, warranted, and that which is not, is everything.

I had hoped I would not have to return to this floor again under these circumstances. I hoped, in truth, that in these negotiations that went on over the past number of weeks and months we would have been able to turn aside retroactive immunity on the grounds that it is bad policy and sets a terrible precedent.

As all of my colleagues know, I have long fought against retroactive immunity, because I believe it is simply an abandonment of the rule of law. I have fought this with everything I have in me, and I have not waged this fight alone.

In December, I opposed retroactive immunity on the floor of this body. I spent 10 hours on this floor then. In January and February, I came to the floor time and time again to discuss the dangers of granting retroactive immunity, along with my colleague and friend, RUSS FEINGOLD of Wisconsin, who has shown remarkable leadership on this issue. I offered an amendment that would have stripped retroactive immunity from the Senate bill. Unfortunately, our amendment failed and, to my extreme disappointment, the Senate adopted the underlying bill.

Since passage of the Senate bill, there have been extensive negotiations on how to move forward. Today we are being asked to pass the so-called compromise that was reached by some of our colleagues and approved by the other body, the House of Representatives.

I am here this evening to say I will not and can not support this legislation. This legislation goes against everything I have stood for—everything this body ought to stand for, in my view.

There is no question some improvements have been made over the previous versions of this legislation. Title I, which regulates the ability of Government to conduct electronic surveillance, has been improved, albeit modestly. I congratulate those who were involved with it. I say, very quickly, that it is my hope a new Congress and a new President will work together to fix the problems with title I should the Senate adopt this new legislation.

But in no way is this compromise acceptable. This legislation before us purports to give the courts more of a role in determining the legality of the telecommunications companies' actions. But in my view the title II provisions do little more than ensure without a doubt that the telecommunications companies will be granted retroactive immunity.

Allow me to quote the Senate Intelligence Committee report on this matter. It reads as follows:

> [B]eginning soon after September 11, 2001, the Executive branch provided written requests or directives to U.S. electronic communications service providers to obtain their assistance with communications intelligence activities that had been authorized by the President.
>
> . . . The letters were provided to electronic communication service providers at regular intervals. All of the letters stated that the activities had been authorized by the President. All of the letters also stated that the activities had been determined to be lawful by the Attorney General [of the United States], except for one letter that covered a period of less than 60 days. That letter, which like all the others, stated that the activities had been authorized by the President, stated that the activities had been determined to be lawful by the Counsel to the President.

This is all from the Intelligence Committee report.

Under the legislation before us, the district court would simply decide whether the telecommunication companies received documentation stating the President authorized the program and that there had been some sort of determination it was legal. But as the Intelligence Committee has already made clear, we already know this happened. We already know the companies received some form of documentation with some sort of legal determination.

But that is not the question. The question is not whether these companies received a document from the White House. The question is, Were their actions legal? Were they above the law or not?

It is a rather straightforward, surprisingly uncomplicated question. The documentation exists. Was it legal or not? Either the companies were presented with a warrant or they were not. Either the companies and the President acted outside the rule of law or they followed it. Either the underlying program was legal or it was not—not a complicated question. Was it legal or wasn't it?

The suggestion that they had documentation is then supposed to be a justification for the legality of it is not for us to decide. That is a matter for the courts, the coequal branch of Government called the judiciary. We are asked to determine that this was legal because documents were sent, not because some adjudication as to whether there had been a legal basis for these documents. Yet we are told that with the adoption of this legislation, accept it as a conclusion and move on. I don't believe we ought to do that. I believe it is a mistake and a mistake of significance.

Because of this legislation, none of the questions will be answered. Because of the so-called compromise, the judge's hands will be tied and the outcome of these cases will be predetermined by our votes. Because of this so-called compromise, retroactive immunity will be granted and, as they say, that will be that. Case closed.

No court will rule on the legality of the telecommunications companies' activities in participating in the President's warrantless wiretapping program. None of our fellow Americans will have their day in court. What they will have is a Government that has sanctioned lawlessness, at least as far as we know.

I refuse to accept that argument. I refuse to accept the argument that because the situation is too delicate, too complicated, this body is simply going to go ahead while sanctioning lawlessness. I think we can do better than that. I think we have an obligation to do better than that.

If I have needed any reminder of that fact, simply look to those who have joined this fight—my colleagues and the many Americans who have given me an awful lot of support and strength for this fight, strength that comes from the passion and eloquence of citizens who don't have to be involved but choose to be involved.

They see what I see in this debate—that by short-circuiting the judicial process, we are sending a dangerous signal to future generations. They see us as establishing a precedent that Congress can and will provide immunity to potential lawbreakers if they are important enough.

Some may be asking: Why is retroactive immunity too dangerous? What is the issue? Why should you care at all? Allow me to explain by providing, if I can, a bit of context. I remind my colleagues what I said about the bill months ago because the argument against providing retroactive immunity remains unchanged. Nothing has changed since last December, January or February.

Unwarranted domestic spying did not happen in a panic or short-term emergency, not for a week, a month or even for a year. If it had, quite candidly, I would not be standing here this evening. I understand, in the wake of 9/11, there were actions taken because of the legitimate fears we had, given the circumstances of that attack, that some actions such as this for a week, a month, a year, I think I would have accepted as normal, understandable behavior as a government overreacting in haste and in the emotions of the moment. But that is not the case. We now know this spying by the administration went on relentlessly for more than 5 years.

I might not be here as well if it had been the first offense of a new administration. Maybe not if it had been the second or third. Again, understanding mistakes can be made. No one is perfect. Again, in the haste of the moment, the emotions, these things can happen. But that is not the case either.

Indeed, I am here tonight because with one offense after another after another, I believe it is long past time to say enough is enough. I am here this evening because of a pattern—a pattern of abuse against civil liberties and the rule of law, against the Constitution of the United States, of which we are custodians, temporary though that status may be.

I would add that had these abuses been committed by a President of my own party, I would have opposed them as strongly as I am this evening. I am here this evening because warrantless wiretapping is merely the latest link in a long chain of abuses.

So why are we here? Because it is alleged that giant telecom corporations worked with our Government to compile Americans' private, domestic communications records into a database of enormous scale and scope.

Secretly, and without warrant, these corporations are alleged to have spied on their own customers, the American people. Here is only one of the most egregious examples, according to the Electronic Frontier Foundation:

> Clear, first-hand whistleblower documentary evidence [states] . . . that for year on end, every e-mail, every text message, every phone call carried over the massive fiber-optic links of 16 separate companies routed through AT&T's Internet hub in San Francisco—hundreds of millions of private, domestic communications—have been . . . copied in their entirety by AT&T and knowingly diverted wholesale by means of multiple ''splitters'' into a secret room controlled exclusively by the NSA.

The phone calls and the Internet traffic of millions of Americans diverted into a secret room controlled by the National Security Agency. That allegation still needs to be proven in a court of law. But it clearly needs to be determined in a court of law and not by a vote in the Senate.

I suppose if you only see cables and computers there, the whole thing seems almost harmless, certainly nothing to get worked up about; one might say a routine security sweep and a routine piece of legislation blessing it.

If that is all you imagine happened in the NSA secret room, I imagine you will vote for immunity. I imagine you would not see much harm in voting to allow the practice to continue either.

But if you see a vast dragnet for millions of Americans' private conversations conducted by a government agency that acted without a warrant, acted without the rule of law, then I believe you recognize what is at stake. You see that what is at stake is the sanctity of the law and the sanctity of our privacy. And you will probably come to a very different conclusion.

Maybe that sounds overdramatic to some. Perhaps they will ask: What does it matter at the end of the day if a few corporations are not sued? These people sue each other all the time.

Others may say: This seems a small issue. Maybe the administration went too far, but this seems like an isolated case.

Indeed, as long as this case seems isolated and technical, then those who are supporting this will win. As long as it appears to be about another lawsuit buried in our legal system and nothing more, then they will win as well. The administration is counting on the American people to see nothing bigger than that—nothing to see here.

But there is plenty to see here, and it is so much more than a few phone calls, a few companies, and a few lawsuits. What is at stake is nothing less than equal justice—justice that makes no exceptions. What is at stake is an open debate on security and liberty and an end to warrantless, groundless spying.

The bill does not say trust the American people, trust the courts and judges and juries to come to a just decision. Retroactive immunity sends a message that is crystal clear: Trust me. And that message comes straight from the mouth of an American President: Trust me.

What is the basis of that trust? Classified documents, we are told, that prove the case for retroactive immunity beyond a shadow of a doubt. But we are not allowed to see them, of course. I have served in this body for 27 years, and I am not allowed to see them. Neither are a majority of my colleagues. We are all left in the dark.

I cannot speak for my colleagues, but I would never take the ''trust me'' for an answer, not even in the best of times, not even from a President on Mount Rushmore. I cannot put it better than this:

> ''Trust me'' government is government that asks that we concentrate our hopes and dreams on one man; that we trust him to do what's best for us. My view of government places trust not in one person or one party, but in those values that transcend persons and parties.

Those words are not spoken by someone who took our national security lightly. They were spoken by Ronald Reagan in 1980. They are every bit as true today. President Reagan's words—let me repeat them:

> ''Trust me'' government is government that asks that we concentrate our hopes and dreams on one man; that we trust him to do what is best for us. My view of government places trust not in one person or one party, but in those values that transcend persons and parties.

Those words of Ronald Reagan, 28 years ago, were right and those words are right today in the year 2008. They are every bit as true today, even if times of threat and fear blur our concept of transcendent values, even if those who would exploit those times urge us to save our skins at any cost.

But again, why should any of us care, I suppose. The rule of law has rarely been in such a fragile state. Rarely has it seemed less compelling. What, after all, does the law give us, anyway? It has no parades, no slogans. It does not live in books or precedents. We are never failed to be reminded the world is a very dangerous place.

Indeed, that is precisely the advantage seized upon, not just by this administration but in all times, by those looking to disregard the rule of law. Listen to the words of James Madison, the father of our Constitution, words that he said more than two centuries ago:

> It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger . . . from abroad.

With the passage of this bill, the words of James Madison will be one step closer to coming true. So it has never been more essential that we lend our voices to the law and speak on its behalf.

What is this about? It is about answering the fundamental question: Do we support the rule of law or the rule of men? To me, this is our defining question as a nation and may be the defining question that confronts every generation, as it has throughout our history.

This is about far more than a few telecoms. It is about contempt for the law, large and small.

I have said that warrantless wiretapping is but the latest link in a long chain of abuses when it comes to the rule of law. This is about the Justice Department turning our Nation's highest law enforcement offices into patronage plums, turning the impartial work of indictments and trials into the pernicious machinations of politics. Contempt for the rule of law once again.

This is about Alberto Gonzales, the Nation's now-departed Attorney General, coming before Congress to give us testimony that was, at best wrong and at worst, outright perjury. Contempt for the rule of law by the Nation's foremost enforcer of the law.

This is about a Congress handing the President the power to designate any individual he wants as an unlawful enemy combatant, hold that individual indefinitely, take away his or her right to habeas corpus, the 700-year-old right to challenge anyone's detention.

If you think the Military Commissions Act struck at the heart of the Constitution, you would be understating this. It did a pretty good job on the Magna Carta while it was at it.

If you think this only threatens a few of us, you should understand that the writ of habeas corpus belongs to all of us. It allows anyone to challenge their detention.

Rolling back habeas corpus endangers us all. Without a day in court, how can you prove you are entitled to a trial? How can you prove you are innocent? In fact, without a day in court, how can you let anyone know you have been detained at all?

Thankfully, and to their great credit, the Supreme Court recently rebuked the President's lawlessness and ruled that detainees do have the right to challenge their detention.

Mr. President, the Military Commissions Act also gave President Bush the power some say he wanted most of all: the power to get information out of suspected terrorists by virtually any means, the power to use evidence gained from torture.

I don't think you could hold the rule of law in any greater contempt than sanctioning torture. Because of decisions made by the highest levels of our Government, America is making itself known to the world, unfortunately, for torture, with stories like this one:

A prisoner at Guantanamo—to take one example out of hundreds—was deprived of sleep for over 55 days, a month and 3 weeks. Some nights, he was doused with water or blasted with air-conditioning. After week after week of this delirious, shivering wakefulness, on the verge of death from hypothermia, doctors strapped him to a chair—doctors, healers who took the Hippocratic Oath to do no harm—pumped him full of three bags of medical saline, brought him back from death, and sent him back to his interrogators.

To the generation coming of age around the world in this decade, that is America—not Normandy, not the Marshall Plan, not Nuremberg, but Guantanamo. Think about it.

We have legal analysts so vaguely defining torture, so willfully blurring the lines during interrogations that we have CIA counterterrorism lawyers saying things like, ''If the detainee dies, you're doing it wrong.'' We have the CIA destroying tapes containing the evidence of harsh interrogations—about the administration covering its tracks in a way more suited to a banana republic than to the home of great freedoms. We have an administration actually defending waterboarding, a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between originally banned for excessive brutality—listen to this—by the Gestapo.

Still, some way waterboarding is not torture. Oh, really? Listen to the words of Malcolm Nance, a 26-year-old expert in intelligence and counterterrorism, a combat veteran, and former chief of training at the U.S. Navy Survival, Evasion, Resistance and Escape School. While training American soldiers to resist interrogation, he writes:

> I have personally led, witnessed, and supervised waterboarding of hundreds of people. Unless you have been strapped down to the board, have endured the agonizing feeling of water overpowering your gag reflex, and then feel your throat open and allow pint after pint of water to involuntarily fill your lungs, you will not know the meaning of the word. It does not simulate drowning, as the lungs are actually filling with water. The victim is drowning. How much the victim is to drown depends on the desired result and the obstinacy of the subject. Waterboarding is slow motion suffocation. Usually the person goes into hysterics on the board. When done right it is controlled death.

That is from a soldier, a combat veteran, testifying about what waterboarding was about—controlled death. That is not torture? Not according to President Bush's White House. They have said waterboarding is legal and that if it chooses, America will waterboard again.

Surely, then, our new Attorney General would condemn torture. Surely the Nation's highest law enforcement officer in the land, coming after Alberto Gonzales's chaotic tenure, would never come before the Congress and defend the President's power to openly break the law. Well, think again.

When he came to the Senate for his confirmation, Michael Mukasey was asked a simple question, bluntly and plainly: Is waterboarding constitutional? He replied: ''If waterboarding is torture, torture is not constitutional.''

One would hope for a little more insight from someone so famously well versed in national security law, but Mr. Mukasey pressed on with the obstinacy of a witness pleading the fifth: ''If it's torture, if it amounts to torture, it is not constitutional,'' he said. And that is the best this noted jurist, this legal scholar, longtime judge, an expert on national security law had to offer on the defining moral issue of this Presidency. Claims of ignorance. Word games.

Now-Attorney General Mukasey was asked the easiest question we have in a democracy: Can the President of the United States openly break the law? Can he, as we know he has already done, order warrantless wiretapping, ignore the will of Congress, and then hide behind nebulous powers he claims to find in the Constitution? The response of the nominee to become Attorney General: The President has ''the authority to defend the country.'' In one swoop, the Attorney General conceded to the President nearly unlimited power, just as long as he finds a lawyer willing to stuff his actions into the boundless rubric of ''defending the country''—unlimited power to defend the Nation, to protect us as one man sees fit, even if that means listening to our phone calls without a warrant, even if it means holding some of us indefinitely. That is contempt for the rule of law.

So this is very much about torture—about enhanced interrogation measures and waterboarding. It is also about extraordinary rendition—outsourced torture of men this administration would prefer we didn't even know exist.

But now we do know. One was a Syrian immigrant raising his family in Canada. He wrote computer code for a company called MathWorks and was planning to start his own tech business. On a trip through New York's JFK Airport, he was arrested by U.S. federal agents. They shackled him and bundled him onto a private CIA plane and flew him across the Atlantic Ocean to Syria. This man spent the next 10 months and 10 days in a Syrian prison. His cell was 3 feet wide—the size of a grave. Some 300 days passed alone in that cell, with a bowl for his toilet, another bowl for his water, and the door only opened so he could wash himself once a week—though it may have been more or less because the cell was dark and he lost all track of time. The door only opened for one reason: for interrogators who asked him again and again and again about al-Qaida.

Here is how it was described:

> The interrogator said, ''Do you know what this is?'' I said, ''Yes, it's a cable,'' and he told me, ''Open your right hand.'' I opened my right hand, and he hit me like crazy. It was so painful, and of course I started crying, and then he told me to open my left hand, and I opened it, and he missed, then hit my wrist. And then he asked me questions. If he does not think you are telling the truth, then he hits you again.

The jail and the torturers were Syrian, but America sent this man there with full knowledge of what would happen to him because it was part of a longstanding secret program of ''extraordinary rendition,'' as it is called. America was convinced that he was a terrorist and wanted the truth beaten out of him.

No charges were ever filed against him. His adopted nation's government, Canada, one of our strongest NATO allies, cleared him of all wrongdoing after a year-long official investigation and awarded him more than $10 million in government compensation for his immense pain and suffering—but not before he was tortured 10 months, 10 days in a 3-foot by 3-foot cell the size of a grave. Does his torture make us safer? Did his suffering improve our security? Of course not.

I would note that our own Government has shamefully refused to even acknowledge that his case exists.

We know about a German citizen as well, living in the city of Ulm with his wife and four children. On a bus trip through Eastern Europe, he was pulled off at a border crossing by armed guards and held for 3 weeks in a hotel room, where he was beaten regularly. At the end of 3 weeks, he was drugged and shipped on a cargo plane to Kabul, Afghanistan. For 5 months, he was held in the Salt Pit—a secret American prison staffed by Afghan guards. All he had to drink was stagnant water from a filthy bottle. Again and again,

masked men interrogated him about al-Qaida, and finally, he says, they raped him. He was released in May of 2004. Scientific testing confirmed his story of malnourishment, and the Chancellor of Germany publicly acknowledge he was wrongly held. What was his crime? Having the same name as a suspected terrorist.

Again, our own Government has shamefully refused to even acknowledge that this case exists.

So we do know, Mr. President. We know because there aren't enough words in the world to cover all the facts.

If you would like to define torture out of existence, be my guest. If you would rather use a Washington euphemism—''tough questioning,'' ''enhanced interrogation''—feel free. Feel free to talk about fraternity hazing, as Rush Limbaugh did, or to use a favorite term of Vice President CHENEY's, ''a dunk in the water.'' You can call it whatever you like. But when you are through, the facts will be waiting for you: controlled death, outsourced torture, secret prisons, month-long sleep deprivations, the President's personal power to hold whomever he likes for as long as he likes. It is as if you had awakened in the middle of some Kafkaesque nightmare.

Have I gone wildly off topic, Mr. President? Have I brought up a dozen unrelated issues? I wish I had. I wish that none of these stories were true. But we are deceiving ourselves when we talk about the U.S. attorneys issue, the habeas issue, the torture issue, the rendition issue, or the secrecy issue as if each were an isolated case, as if each were an accident. When we speak of them as isolated, we are keeping our politics cripplingly small. And as long as we keep this small, the rule of men is winning.

There is only one issue here; that is, the rule of law, the law issue. Does the President of the United States serve the law or does the law serve the President? Each insult to our Constitution comes from the same source. Each springs from the same mindset. If we attack this concept for the law at any point, we will wound it at all points.

That is why I am here this evening, Mr. President. Retroactive immunity is on the table for discussion over these next several days, but also at issue is the entire ideology that justifies it, the same ideology that defends torture and executive lawlessness. Immunity is a disgrace in itself, but it is far worse in what it represents. It tells us that some believe in the courts only so long as their verdict goes their way; that some only believe in the rule of law so long as exceptions are made at their desire. It puts secrecy above sunshine and fiat above the law.

Did the telecoms break the law? I don't know. I can't say so. But pass immunity, and we will never know. A handful of favored corporations will remain unchallenged. Their arguments will never be heard in a court of law. The truth behind this unprecedented domestic spying will never see the light of day, and the cases will be closed forever.

''Law'' is a word we barely hear from the supporters of immunity. They offer neither deliberation about America's difficult choices in the age of terrorism nor a shared attempt to set for our times the excruciating balance between security and liberty. They merely promise a false debate on a false choice: security or liberty but never, ever both.

I think differently, and I believe some of my colleagues do as well. I think America's founding truth is unambiguous: security and liberty, one and inseparable and never one without the other, no matter how difficult the situation, no matter what threats we face. Secure in that truth, I offer a challenge to immunity supporters: You want to put a handful of corporations above the law. Could you please explain how your immunity makes any one of us any safer at all?

The truth is that a working balance between security and liberty has already been struck. In fact, it has been settled for decades—for 30 years, in fact. FISA, the Foreign Intelligence Surveillance Act, has prevented executive lawbreaking and protected Americans, and that balance stands today.

In the wake of the Watergate scandal in the 1970s, the Senate convened the Church Committee, a panel of distinguished former Members of this body determined to investigate executive abuses of power. Not surprisingly, they found that when Congress and the courts substitute ''trust me'' ideas for real oversight, massive lawbreaking can result. The Church Committee found evidence of the U.S. Army spying on the civilian population, Federal dossiers on citizens' political activities, a CIA and FBI program that opened hundreds of thousands of Americans' letters without warning or warrant. In sum, Americans had sustained a severe blow to their fourth amendment rights ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'' At the same time, the Senators of the Church Committee understood surveillance was needed to go forward to protect our people.

Surveillance itself is not the problem. Unchecked, unregulated, unwarranted surveillance was. What surveillance needed, in a word, was legitimacy. And in America, the Founders understood power becomes legitimate when it is shared. Congress and the courts check that attitude which so often crops up in the executive branch—''if the President does it, it is not illegal.''

The Church Committee's final report, ''Intelligence Activities and the Rights of Americans,'' put the case very powerfully indeed.

> The critical question before the committee was to determine how the fundamental liberties of our people can be maintained in the course of the government's efforts to also protect our people. The delicate balance between these basic goals, two absolutely essential goals of our system of government, is often difficult to strike, and it is never perfect, but it can, and must, be achieved.

A sense of balance between liberty and security, security and liberty.

> We reject the view that the traditional principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom.

The Church Committee went on:

> We have seen segments of our government, in their attitudes and actions, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes. We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as ''vacuum cleaners,'' sweeping in information about lawful activities of American citizens.

The Church committee Senators concluded:

> Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our domestic society and fundamentally alter its nature.

What a strange echo from three decades ago we hear in those words. They could have been written yesterday; could have been written tonight.

Three decades ago, our predecessors in this Chamber, Republicans and Democrats, responding to an abuse of power, crafted a wonderfully balanced idea between security and liberty. They did it in this very Chamber, coming together. They understood that when domestic spying goes too far it threatens to kill just what it promises to protect—an America secure in her liberty. That lesson was crystal clear 30 years ago. Why is it so clouded today?

Before we entertain the argument that everything has changed since those words were written, remember: The men who wrote them had witnessed a World War, the Cold War, had seen Nazi and Soviet spying, and they were living every day under the cloud of a nuclear holocaust. It was indeed a dangerous time. Certainly, the argument that we have to take extraordinary measures to protect ourselves against those who would do us great injury—those were not easy times. Yet those Republicans and Democrats, our predecessors in this Chamber, struck that balance and reminded us that our security was important, but it needed to be tempered and understood in the context of our freedoms and our liberties.

So I ask this: Who will chair the commission investigating the secrets of warrantless spying years from today? Will it be a young Senator in the body today who maybe has just joined us in the last 2 years? Will it be someone not yet elected? What will that Senator say when he or she comes

to our actions, maybe three decades from now, as I just quoted from a report 30 years ago, which is so wonderfully written and captures exactly the essence of what I am arguing for this evening? What will that Senator say when he or she reads about the actions of a Senate here—reads in the records how we let outrage after outrage slide with nothing more than a promise to stop the next one? I imagine that Senator will ask of us: Why didn't they do anything? Why didn't they fight back? What happened between the 1970s and the year 2008, that two Senates in 30 years time could go from standing up for the rule of law and liberty in the face of executive abuses—what happened to that Congress that decided 30 years later that they would do just the opposite; in fact, retreat from that fight?

In June of 2008, when no one could doubt any more what this administration was doing, why did they sit on their hands and do almost nothing? In fact, go further. Why did they grant immunity to companies that had engaged in warrantless wiretapping?

Since the time of the Church Commission, the threats facing us have multiplied and grown in complexity, but the lesson has been immutable: warrantless spying threatens to undermine our democratic society unless legislation brings it under control. In other words, the power to invade privacy must be used sparingly, guarded jealously, and shared equally between the branches of our Government.

Or the case could be made pragmatically. As my friend, Harold Koh, dean of Yale Law School, recently argued:

> The engagement of all three branches tends to yield not just more thoughtful law but a more broadly supported public policy.

Three decades ago, our predecessors in this Chamber embodied that solution in the Foreign Intelligence Surveillance Act, the FISA law. FISA confirmed the President's power to conduct surveillance of international conversations involving anyone in the United States, provided that the Federal FISA Court issued warrants ensuring that wiretapping was aimed at safeguarding our security and nothing else. The President's own Director of National Intelligence, Mike McConnell, explained the rationale in an interview last summer:

> The United States did not want to allow [the intelligence community] to conduct . . . electronic surveillance of Americans for foreign intelligence unless you had a warrant, so that was required.

As originally written in 1978 and as amended numerous times, I might add, FISA has accomplished its mission. It has been a valuable—invaluable tool for conducting needed surveillance of those who would do us great harm and those who would harm our country. Every time Presidents have come to Congress openly to ask for more leeway under FISA, our Congresses have worked with them. Congress has negotiated, and together Congress and the executive branch have struck a balance that safeguards America while doing its utmost to protect our privacy.

Last summer, Congress made a technical correction to FISA enabling the President to wiretap without a warrant conversations between two foreign targets, even if those conversations are routed through American computers. For other reasons, I believed that this past summer's legislation went too far, and I opposed it. But the point is that Congress once again proved its willingness to work with the President on FISA.

Isn't that enough?

Just this past October and November, the Senate of the U.S. Intelligence and Judiciary Committees worked with the President to further refine FISA and ensure that, in a true emergency, the FISA Court would do nothing to slow down intelligence gathering.

Wasn't that enough?

And, as for the FISA Court, between 1978 and 2004, according to the Washington Post, the FISA Court approved—and listen to these numbers—18,748 warrants from 1978 to 2004—18,748 warrants. It rejected 5; 18,748 warrants were approved; 5 were rejected between 1978 and 2004. The FISA Court has sided with the executive branch 99.9 percent of the time. Wouldn't you think that would be enough? Is anything lacking? Have we forgotten something here? Isn't all of this enough to keep us safe? There were numerous amendments in 30 years to a piece of legislation to strike the balance between security and liberty.

Of course, we all know the answer we have received. This complex, finely tuned machinery, crafted over 3 decades by 3 branches of Government, 4 Presidents, and 12 Congresses, was ignored for 5 long years. It was totally ignored. It was a system primed to bless nearly any eavesdropping a President could conceive of, and spying still happened illegally—18,748 warrants approved from 1978 on; 5 were turned down. Yet this administration completely disregarded the FISA Court in seeking the warrantless wiretapping by the telecom industry.

If the shock of that decision has yet to sink in, think of it this way: President Bush ignored not just a Federal court but a secret Federal court; not just a secret Federal court but a secret Federal court prepared to sign off on his actions 99.9 percent of the time. A more compliant court has never been conceived. Yet still that wasn't good enough.

I ask my colleagues of this body candidly, and candidly it already knows the answer: Is this about security or is it about power? Why are some fighting so hard for retroactive immunity? The answer, I believe, is that immunity means secrecy, and secrecy means power. It is no coincidence that the man who proclaimed ''if the President does it, it is not illegal''—Richard Nixon—was the same man who raised executive secrecy to an art form. The Senators of the Church committee 30 years ago—bipartisan, by the way—expressed succinctly the deep flaw in the Nixonian executive: ''Abuse thrives on secrecy,'' they said, and in the exhaustive catalog of that report, they proved it.

In this push for immunity, secrecy, I believe, is at the center of it. We find proof in immunity's original version, a proposal to protect not just the telecoms, but everyone involved in the wiretapping program. Remember that in the original proposal of what is before us today, or will be before us, that is what they wanted to immunize—themselves. The administration asked that everyone be immunized. To their credit, the Intelligence Committee rejected that request, but it ought to be instructive that the Bush administration requested total blanket immunity for everyone involved in that program.

What does that tell you about their intentions or their motivations? Think about it. It speaks to their fear and perhaps their guilt, their guilt that they have broken the law and their fear that in the years to come they would be found liable or convicted.

They knew better than anyone else what they had done. They must have had good reason to be concerned.

Thankfully, immunity for the Executive is not part of this bill, and, again, I congratulate the committee. But don't ever forget it was asked for. That will tell you something about motivations.

The original proposal tells us something very important, that this is and always has been a self preservation bill. Otherwise, why not have the trial and get it over with? If the proponents of retroactive immunity are right, that the documentation alone is all you need to prove legality, the corporations will win in a walk. After all, in the official telling, the telecoms were ordered in documents to help the President spy without a warrant, and they patriotically complied. We have even heard on this floor the comparison between the telecom corporations to the men and women laying their lives on the line in Iraq and Afghanistan.

But ignore comparison which, frankly, I find deeply offensive. Ignore for a moment the fact that in America we obey the laws, not the President's orders. Ignore that not even the President has the right to scare or bully you into breaking the law, though it seems that tactic has proven surprisingly fruitful. Ignore that the telecoms were not unanimous. One of them, Qwest, wanted to see the legal basis for the order, never received it, and so refused to comply. Not everyone decided that documentation alone was a legal justification for 5 years of vacuuming up the private information of American citizens.

Ignore that a judge presiding over the case ruled:

> AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

Ignore all of that: If the order the telecoms received was legally binding then they have a easy case to prove. The corporations only need to show a judge the authority and the assurances they were given and they will be in and out of court in 5 minutes. If the telecoms are as defensible as the President says, why doesn't the President let them defend themselves? If the case is so easy to make, why doesn't he let them make it?

It can't be that they are afraid of leaks. Our Federal court system has dealt for decades with the most delicate national security matters, building up an expertise in protecting classified information behind closed doors, ex parte and in camera. We can expect no less in these cases. No intelligence sources need be compromised. No state secrets need to be exposed. After litigation at both the district court and circuit court levels, no state secrets have been exposed.

In fact, Federal district court judge Vaughn Walker—a Republican appointee, I might point out; the quotes are from him—has already ruled that the issue can go to trial without putting state secrets in jeopardy. Walker reasonably pointed out—Ronald Reagan's appointee to the bench, I point out—the existence of the terrorist surveillance program is hardly a secret at all.

> The Government has [already] disclosed the general contours of the ''terrorist surveillance program,'' which requires the assistance of a telecommunications provider.

As the state secrets privilege is invoked to stall these high-profile cases, it is useful to consider that privilege's history. In fact, the privilege was tainted at its birth by a President of my own party, Harry Truman. In 1952, President Truman successfully invoked the new privilege to prevent public exposure of a report on a plane crash that killed three Air Force contractors. When the report was finally declassified, 50 years later I might add, decades after anyone in the Truman administration was within reach, it contained no state secrets at all, only facts about the repeated maintenance failures that would have seriously embarrassed some important people. So the state secrets privilege began its career, not to protect our Nation, but to protect some powerful people.

In his opinion, Judge Walker argued, even when it is reasonably grounded—let me quote him:

> . . . the state secrets privilege still has its limits. While the court recognizes and respects the executive's constitutional duty to protect the nation from threats, the court also takes seriously its constitutional duty to adjudicate the disputes that come before it. To defer to a blanket assertion of secrecy here would be to abdicate that duty, particularly because the very subject matter of this litigation has been so publicly aired.

Again, that is not some wild-eyed liberal judge drawing the conclusion in this case. That is a sober conservative judge who reminds us of the balance that is necessary; why there is a co-equal branch called the judiciary, where that body, not elected representatives in a voting Chamber, should determine the legality of this action taken by these companies.

He went on to say—the judge's words:

> The compromise between liberty and security remains a difficult one. But dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security.

That is a judge reminding this body that to suggest somehow we grant blanket immunity to these companies is to dismiss this case at the outset, as he points out, sacrificing liberty with no apparent enhancement of our security.

And that ought to be the epitaph of this administration: ''sacrificing liberty for no apparent enhancement of our security.'' Worse than selling our soul, we are giving it away for free.

It is equally wrong to claim that failing to grant this retroactive immunity will make the telecoms less likely to cooperate with surveillance in the future. Baloney. I do not believe it. The truth is, after the 1970s, FISA has compelled telecommunications companies to cooperate with surveillance when it was warranted. What is more, it immunizes them. It has done that for more than a quarter of a century. So cooperation in warranted wiretapping is not at stake today, and despite the claims of supporters of immunity, it never has been. Collusion in warrantless illegal wiretapping is. And the warrant makes all the difference, because it is precisely the court's blessing that brings Presidential power under the rule of law, even when that warrant, as we permit, is granted after the surveillance has already begun, as you can under the FISA law.

In sum, we know that giving the telecoms their day in court, giving the American people their day in court, would not jeopardize an ounce of our security. It does jeopardize our liberty. And it would only expose one secret: the extent to which the rule of law has been trampled upon. Does documentation qualify as legal authority? Again, that is not a matter for a majority in this Chamber to decide by a vote. It is a matter for our courts to determine: Were these letters that were transmitted—was there a legal justification? Why didn't the administration go to the FISA Court, where 18,748 requests have been made since 1978 and granted, and only 5 rejected, a secret Federal court where a warrant could have been granted after the fact of the surveillance actually having begun? Why didn't they do that? Why did they send out letters? Why didn't they go before that court? I am not concluding they did it wrongfully, but I don't know they didn't do it wrongfully. That ought to be determined by the courts of law, not to be above the law.

That is the choice at stake today: Will the secrets of the last years remain closed in the dark, as they will once we grant this immunity, or will they be open for generations to come? What will they think of us? I revere what this Congress did in 1978, Democrats and Republicans, standing up to executive powers and abuses. They fashioned a law that granted us greater protection over those who would do us harm while simultaneously protecting our rights and liberties. What a great Senate. What a great Congress that had the courage to stand up and put aside partisan differences and stand up for 200 more years of this Nation's history of liberty, of freedom.

What will be said about this Congress? When a future generation looks back at this hour, what did we do when faced with a similar fact situation and were confronted with that choice? Or will we be open to the generations to come, as I said, to our successors in this Chamber so they can prepare themselves to defend against future outrages, as they will surely occur, of power and usurpations of law from future Presidents of either party? As I stand here this evening, I promise you it will happen. It has never not happened in the past; it will in the future. That is why we have these shared powers to maintain that balance. We are going to concede that by suggesting that in this most important of all cases we are going to grant retroactive immunity. For what? For what? Can anyone even begin to make the case that our security gets enhanced because we deprive Americans who feel they may have been wronged by determining whether the actions taken by these companies at the behest of an administration were legal?

Now, 30 years after the Church committee, history has repeated itself. If those who come after us are to prevent it from happening again, they need the full truth. That is why we must not allow these secrets to go quietly into the night. I am here this evening because the truth is no one's private property; it belongs to every one of us. It demands to be heard.

''State secrets,'' ''patriotic duty,'' those, as weak as they are, are the arguments the telecoms' advocates use when they are feeling high-minded. When their thoughts turn baser, they make their arguments as amateur economists.

Here is how Mike McConnell put it:

> If you play out the suits at the value they're claimed, it would bankrupt these companies. So we have to provide liability protection to these private sector entities.

To begin with, that is a clear exaggeration. We are talking about some of the wealthiest, most successful companies in America. Some of them have continued to earn record profits and sign up record numbers of subscribers at the same time as this very public litigation, totally undermining the argument that these lawsuits are doing the telecoms severe reputational damage, as Mike McConnell suggested. Companies of that size could not be completely wiped out by anything but the most exorbitant and unlikely judgment. To assume that the telecoms

would lose, and that their judges would then hand down such back-breaking penalties, is already to take several leaps.

Opponents of immunity, including myself, have stated that we would support a reasonable alternative to a blanket retroactive immunity. No one seriously wants to cripple the telecommunications industry. The point is to bring checks and balances back to domestic spying. Accepting that precedent would hardly require a crippling judgment. It is much more troubling, though, that the Director of National Intelligence would even suggest such an argument. I might understand if the Secretary of the Treasury made that case, or some economist at the World Blank or the IMF or the Federal Reserve. But to have the Intelligence Director of our country suggest liability protections for private sector entities, even to speak of that, is rather incredible. This is not the Secretary of Commerce we are talking about but the head of our Nation's intelligence efforts.

For that matter, how does that even begin to be relevant to letting this case go forward? Since when did we throw out entire suits because the defendants stood to lose too much? It astounds me that some can speak in the same breath about national security and bottom lines. Approve immunity, and Congress will state clearly: The richer you are, the more successful you are, the more lawless you are entitled to be. A suit against you is a danger to the Republic.

And so, at the rock bottom of its justifications, the telecoms' advocates are essentially arguing that immunity can be bought. The truth is, of course, exactly the opposite, or it should be. The larger the corporation, unfortunately, the greater the potential for abuse.

No one suggests that success should make a company suspect. Companies grow large and essential to our economy because they are excellent at what they do, and most of them are overwhelmingly well managed. But the size and wealth open the realm of possibility for abuse far beyond the scope of the individual.

After all, if the allegations are true, we are talking about one of the most massive violations of privacy in American history. Shouldn't there be some retribution or penalty? If reasonable search and seizure means opening a drug dealer's apartment, the telecoms' alleged actions would be the equivalent of strip-searching everyone in the building, ransacking their bedrooms, and prying up all of the floorboards.

The scale of these corporations opens unprecedented possibilities for abuse, possibilities far beyond the power of the individual. What the telecoms have been accused of could not be done by one man or even 10. It would be inconceivable without the size and resources of a large corporation, the same size that makes Mike McConnell fear the corporation's day in court. That is the massive scale we are talking about. And that massive scale is precisely why no corporation must be above the law.

On that scale, it is impossible to plead ignorance. As Judge Walker ruled:

> AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

Again, Ronald Reagan's appointee to the Federal bench. But the arguments of the President's allies sink even lower. Listen to words of a House Republican leader spoken on FOX News. They are shameful:

> I believe that they deserve immunity from lawsuits out there from typical trial lawyers trying to find a way to get into the pockets of American companies.

Of course, some of the ''typical greedy trial lawyers'' bringing these suits actually work for a nonprofit. And the telecoms that some want to portray as pitiful little Davids actually employ hundreds of attorneys, retain the best corporate law firms, and spend multimillion dollar legal budgets every year.

But if the facts actually mattered to immunity supporters, we would not be here. For some, the prewritten narrative takes precedence far above the mere facts; and here it is the perennial narrative of the greedy trial lawyers.

With that, some can rest content. They can conclude that we were not ever serious about law, or about privacy, or about checks and balances; it was all about money all along.

There can no longer be any doubt: One by one the arguments of the immunity supporters, of the telecoms' advocates, fail.

I wish to spend, if I could, a few minutes reviewing in detail those claims and their failures. I will put up some of these quotes here for you.

The first argument is: The President has the authority to decide whether the telecoms should be granted immunity.

The facts are the judiciary, not the executive branch, should be allowed to determine whether the President of the United States has exceeded his powers by obtaining from the telecoms wholesale access to domestic communications of millions of ordinary citizens. That is one of the arguments of those who argue that the granting of immunity is a Presidential prerogative. I argue quite the opposite. The court should not simply be in the business of certifying that the companies received some form of documentation, some letters that they received; rather, they should be allowed to evaluate the validity of the legal arguments attested to in the document. Was the request legal or not? Is a letter a legal document that requires you to cooperate?

Remember, the administration's original immunity proposal protected everyone, as I said a moment ago, involved in the wiretapping program, not just the companies. In their original proposal to the Congress, they wanted to immunize themselves as well. As I said, thankfully the committee disregarded that request. They made it. But, again, I think that is instructive.

The second argument: Immunity supporters claim that only foreign communications were targeted, not Americans' domestic calls.

And here, litigation against the telecom companies is based upon clear, firsthand evidence, authenticated by those corporations in court. Every e-mail, every text message, every phone call, foreign or domestic carried over the massive fiber optic links of 16 separate companies, routed through AT&T's Internet hub in San Francisco, have been knowingly diverted by AT&T by means of multiple splitters into a secret room controlled exclusively by the NSA. There may be other such rooms as well.

This was given to the courts by the individual who was involved directly in the program. So the argument was only conversations between foreign targets that they have argued is completely and factually wrong.

The third argument immunity supporters make is that: A lack of immunity will make the telecoms less likely to cooperate.

Again, I made this case a moment ago. But for more than 25 years the FISA legislation has compelled the telecommunications companies to cooperate. This is not a choice if, in fact, the FISA courts demanded it. In fact, when they have done that, what they do is they also immunize, so they can protect these companies against future litigation that can occur from people who claim they have done something wrong in the process.

But to argue somehow these companies might never again be helpful is to not understand existing law. For 25 years they have, in fact, been compelled to comply and, in fact, we provided the immunity when they have done so.

Why in this case, after 25 years, did the Bush administration completely disregard this? And instead of compelling their compliance, and providing the immunity they would have gotten immediately, they decided to send a letter instead, without any legal documentation, without any argument at all. But they are relying on that thin reed of a letter saying, ''You should do this.'' ''We want you to do this.''

Not all of them complied. Qwest said: Wait a minute, that is not legal. A letter is not enough. They did not comply, and obviously they did not get involved in the program and they were not asked to do so further. So I am rather mystified. Shouldn't we know the answer to that question? Is it wrong for us to say: I think you ought to explain why you think that was legal?

Why was a document legal? The fact that we are immunizing, in effect, through retroactive immunity, their actions, what sort of precedent are we setting? That we are in a sense, if you

will, almost sanctioning that action. While we are saying it should never happen again, I will almost guarantee you that someday someone will do something like it and will refer to this Congress's decision to, in effect, sanction the use of letters alone without documentation to determine the legality of their actions.

The fourth argument: Immunity supporters argue that telecoms can't defend themselves without exposing State secrets. This is highly offensive. Again, Judge Walker has already ruled the issue can go to trial. In fact, he was incensed, as I quoted earlier.

''The Government,'' he said, ''has [already] disclosed the general contours of the 'terrorist surveillance program,' which requires the assistance of a telecommunications provider.''

The suggestion that State secrets—I know the Presiding Officer is a former attorney general, and I am preaching to the choir on these matters, but I am confident he knows that for decades Federal courts meeting ex parte in camera have religiously guarded State secrets when they have been asked to make judicial decisions about matters involving information that could fall into the area of State secrets. I don't know of any example where leaks have occurred. So the suggestion that if you allow this to go into Federal court to determine the legality of this action, actions that now are publicly well known, that somehow we are going to have a leak of State secrets, there is not a scintilla of evidence that has ever been the case. It is a phony argument to suggest that somehow State secrets would be jeopardized.

Five: Immunity supporters claim they are already protected by common law principles. In this case, of course, the fact is that common law immunities do not trump specific legal duties imposed by statute, such as the specific duties Congress has long imposed on the telecommunications companies to protect customer privacy and records. In the pending case against AT&T, the judge already has ruled unequivocally that AT&T cannot seriously contend that a reasonable entity in its position could have believed the alleged domestic dragnet was legal. Even so, the telecommunications company defendants can and should have the opportunity to present these defenses to the courts, and the courts—not Congress preemptively—should decide whether they are sufficient. Again, common law does not trump specific legal duties imposed by statute.

The sixth argument immunity supporters claim is that leaks from the trial might damage national security. I have already talked about this. I said that the Federal courts over the years have handled matters very well, and this is a red herring. When, if ever, then, can we challenge the legality of actions in Federal courts? If the case is made in this case, if this is upheld and we buy into that argument on this matter, which is already publicly known but also, in a sense, siding, if you will, with this argument by granting retroactive immunity, then in cases where, in fact, national security information may, in fact, be at risk, I suspect the same argument will be made, and they will be relying on the actions taken by the Senate, in this case, involving the telecom companies. This is the kind of precedent-setting action that could occur by our vote to grant retroactive immunity, if we buy into this very argument, which is a dangerous argument, indeed, to suggest somehow that our Federal courts are incapable of providing the kind of security where national security leaks could occur. We can be increasingly confident that these cases will not expose State secrets based on history.

The seventh argument made by the supporters of this effort to grant retroactive immunity, they claim that litigation will harm the telecoms by causing them reputational damage. I hesitate to even make an argument against this, it is so offensive to me. The fact that the Director of the National Security Agency would suggest somehow there was a financial loss to the companies if we went further with this, that is not the kind of argument I expect to be made by someone who is in charge of intelligence. That is an economic argument. It doesn't hold up, in my view. We are talking about wealthy companies. But even so, I don't know if anyone is suggesting that these actions, if, in fact, they prove to be true, that, in fact, there was an illegal action taken here, would necessarily warrant an overexcessive judgment that would somehow cripple these 17 companies from their financial well-being.

There is plenty of evidence that they are doing tremendously well. But the idea somehow that a company ought not to be sued, that a plaintiff ought not to bring a case because you might win and there might be damage financially, that is a ludicrous argument on its face to make when we are talking about millions of people's rights of privacy being invaded for 5 years by 17 companies vacuuming up every bit of information, that you might be damaged because the plaintiffs might win. It is a foolish argument and a dangerous one to make as well.

The eighth argument, immunity supporters claim the lawsuits will bankrupt the companies. It is the same argument as I made about financial damage. The fact is, if we accept that premise about financial damage or reputational damage, if we could conceive of a corporation so wealthy, so integral to our economy that its riches place it outside the law altogether, that is a frightening concept, and I hope it will be rejected by our colleagues. Ensuring a day in court is not the same as ensuring a verdict. When that day comes, if it does—and I doubt it will, in light of the votes that have been cast in the past—I have absolutely no investment in a verdict either way. But I am bothered by it. I am bothered that the administration didn't go to the FISA Court, as others had 18,748 times since 1978, and on five occasions the warrants were rejected, and in 18,748 cases, the warrants were granted, that this administration decided not to go that route, I have my doubts. But nonetheless, what I am calling for is not a verdict by this body. All I am calling for is to allow a judgment to be rendered by a court of law, allow plaintiffs to make their case, allow a Federal judge in that coequal branch of government to determine whether what occurred was legal. If it was legal, case over. If it was not, then allow the plaintiffs to make their case and be rewarded accordingly.

But by a vote of 51 to 49 or whatever the vote may be here, we are going to superimpose our judgment for a legal argument. I think letting a political judgment replace a legal judgment is a dangerous precedent indeed. This is a big matter. We ought to have the courage to stand up to this administration, after a litany of abuses over the last 7 years. As I said some time ago, if this had been for a week, a month, a year, after 9/11, I would not be here tonight. I am a reasonable, practical person. The emotions were high; fears were great after we were attacked. The fact that someone might have rushed in and done something like this, I might not like it, I may worry about it, but I wouldn't prejudge it. Emotions could be such that one would take those actions. But this went on for 5 years and would still be going on if a whistleblower hadn't stood and said: This is what is happening. And it was reported widely in the national media. That is the only reason it stopped. If not, it would be still going on. So it wasn't one of these early events that can sometimes happen in which reasonable people ought to be able to step back and say: I understand why that happened.

If we were talking about an administration that had been upholding the rule of law over the last 7 years or had been defending it, I might also not be standing here. But how many lessons do we have to learn about an Attorney General politicizing U.S. attorneys, rendition, torture, walking away from habeas corpus, walking away from the Geneva Conventions? How many more examples do we have to have of how this administration regarded the rule of law? And yet at the end of all that, within months of this administration leaving town, this body is going to say: We are going to side with the administration, grant immunity, and we will never find out what went on here. Why did this crowd seek immunity for itself, if it wasn't fearful about a judgment or a court of law examining what happened here? When letters became the legal basis rather than going to the very court that had been around for 30 years, that had provided warrants over and over again in 99.9 percent of the cases, why did this administration decide not to go that route and seek that

kind of a warrant from the very secret court established to strike that balance between the needed security and surveillance we should have and balancing those rights so the judgments could be rendered?

Just as it would be absurd to declare the telecoms clearly guilty, it would be equally absurd to close the case in Congress without a decision. That is immunity.

Throughout this debate, telecoms' advocates have needed to show not just that they were right but that they are so right and that they are so far beyond the pale that we can shut down the argument right here and now with a vote, grant them immunity. That is a burden they have clearly not met, in my view, in any of the arguments, all eight of them, that they have made. They cannot expect to meet it when a large majority of our colleagues who will make that decision have not even seen the secret documents that are supposed to prove the case for retroactive immunity.

My trust is in the courts, in the cases argued openly, in the judges who preside over them, and in the juries of American citizens who decide them. They should be our pride, not our embarrassment. They deserve to do their jobs. That is what the Founders created. It has been a great system of checks and balances, coequal, three coequal branches of Government—an executive, a legislative, and a judicial branch. We have an executive branch that took action. We are going to have a legislative branch that is going to sanction it by granting immunity without ever allowing that coequal branch of Government to determine the legality of their actions. We are depriving what the very Founders of our country insisted upon.

This isn't about being a Democrat, a Republican, a liberal or a conservative. It is about whether you understand the rule of law, that no man, not even the President, is above it. Whether this President was of my party or anyone else's, I would stand here with the same degree of passion in making this case. A case I know I have lost in the past but I care so deeply about that I want my children and my grandchildren one day to know that their father and grandfather at this moment stood for the rule of law. And I believe my colleagues, if given the chance to think about this, will reach the same conclusion.

This is one of those moments. They don't happen very often, but they do happen here. We have learned about them only after the fact too often. But this one is before us as it has been over the last number of months. We owe it not only to ourselves but to future generations to stand for these timeless principles of the rule of law, liberty, and security. As complex, as diverse, as relentless as the assault on the rule of law has been, our answer to it is a simple one. Far more than any President's lawlessness, the American way of justice remains deeply rooted in our character that no President can disturb.

So on this evening, I am full of hope, on a dark day, when it may seem we are going to lose this case once again, I would like to have faith that we can unite security and justice because we have already done it. It is not a choice, one or the other. It can never be that. That is a false choice and a false dichotomy. Justice and security is what our forebears have given us, what our predecessors have struggled with, and which we now must wrestle with ourselves. It is never perfect. There is always one side maybe a bit more weighty than the other, but it is our responsibility to try and strike that balance, to keep us secure in the face of those who would do us great harm and to do so at a time without giving up our rights and liberties. To do so is to change the very nature of who we are as a people. To succumb to the fears of those who would suggest that you have to make choices about being more secure or being free, I don't believe that.

In fact, I think if we give up freedoms, we become far less secure and far less safe. That is the judgment we must now make, whether we can be secure and free and guarantee those liberties to go forward.

My father was the executive trial counsel at the Nuremberg trials in 1945 and 1946. I have never forgotten the example he set, as Justice Robert Jackson said in the opening statement at the Nuremberg trials, a statement, by the way, that my parents made us memorize as children because it captured the essence of the Nuremberg trials. The rule of law is what motivated those who insisted upon that trial. The overwhelming majority of people did not want a trial. Why should you spend the money giving these 21 defendants a lawyer? Fifty-five million people had died at the hands of the Nazis and their allies; 6 million Jews had been incinerated in the concentration camps; 5 million others had the same fate befall them because of their political affiliation, their ethnicity, their sexual orientation; 11 million people incinerated; 45 million died at their hands. Why in the world would you ever give them a trial?

Why not, as Winston Churchill suggested, just line them up and shoot them? Just line them up and shoot them. They did not deserve civility. But Robert Jackson; Henry Stimson, the Secretary of War under Franklin Roosevelt—a Republican, I might add; the only one in Roosevelt's Cabinet—Samuel Rosenman, a great speechwriter for Franklin Roosevelt; Robert Jackson, a Supreme Court Justice, and a handful of others stood up and said: No, that war was not about treasury or treasure or land, it was about values and principles, and the principle of the rule of law is something we stood for.

So despite all of the appetite for vengeance, we are not going to give these defendants that which they gave to their victims. We are going to prove the difference. We are going to give them that which they never gave their victims. They are going to get a day in court. They are going to live with the rule of law.

Robert Jackson, speaking to that Court, in the summer of 1945, said the following, which I memorized years ago. Speaking about the Soviet Union, the French, the British, and ourselves, he said the following:

> That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

It is a remarkable sentence, and it captured the essence of Nuremberg—the rule of law. From that experience, America led the way in creating the structures in architecture that gave us almost 70 years of global peace. The IMF, the World Bank, Bretton Woods, the expansion of the United Nations, NATO—all of those institutions occurred because of the moral high ground we achieved by insisting upon the rule of law.

It was Nuremberg, in many ways, that conjured up the image of who we were as a people. Compare that with the words ''Guantanamo,'' ''Abu Ghraib,'' ''renditions,'' ''torture,'' ''habeas corpus,'' ''walking away from the Geneva Conventions.'' This is not who we are. Nuremberg was who we are, not Guantanamo, not giving retroactive immunity where the rule of law is being abused, or potentially being abused. That is why we are here.

Each generation has been asked to defend these principles and values, and each generation in its own way has done that. I believe our generation can and must as well. Therefore, the challenge before us is not a simple one, but an easy one, in my view; that is, to stand up for this principle.

The world is not going to collapse, the sky is not going to fall if some companies have to face some plaintiffs and explain why they vacuumed up all their private information for more than 5 years. What was the legal justification for that action? To grant retroactive immunity would, in fact, do just that.

So what is the tribute that Power owes to Reason? That America stands for a transcendent idea, the idea that laws should rule, and not men, the idea that the Constitution does not get suspended for vengeance, the idea that this Nation should never tailor its eternal principles to the conflict of the moment, because if we did, we would be walking in the footsteps of the enemies we despised.

The tribute that Power owes to Reason is due today as well. I know we can find the strength to pay it. And if we cannot, we will have to answer for it, I fear.

There is a famous military recruiting poster that comes to mind. A man is sitting in an easy chair with his son

and daughter on his lap, after some future war has ended. His daughter is asking him, ''What did you do in the war?'' And his face is shocked and shamed because he knows he did nothing.

My little daughters, Grace and Christina, are 6 and 3. They are growing up—I hope sound asleep at this hour, as I speak in the late night hours here, but they are growing up in a time of two great conflicts: one between our Nation and its enemies, and another between what is best and worst in our American soul. And someday soon, I know I am going to hear that question: What did you do at the time when this conflict was emerging? What side did you take? I want more than anything else, when that day comes, to give the right answer, that I stood for the rule of law.

That question is coming to each and every one of us in our own way. Every single one of us will be judged by a jury from whom there is no hiding: our sons and daughters and grandchildren. Someday soon, they will read in their textbooks the stories of a great nation—one that threw down tyrants and oppressors for two centuries, one that rid the world of Nazism and Soviet communism, one that proved that great strength can serve great virtue, that right can truly make might.

And then they will read how, in the early years of the 21st century, that nation could have lost its way. We do not have the power to strike that chapter. But we cannot go back. We cannot un-destroy the CIA's interrogation tapes. We cannot un-pass the Military Commissions Act. We cannot un-speak Alberto Gonzales's testimony before the Congress. We cannot un-torture innocent people. We, perhaps, sadly and shamefully, cannot stop retroactive immunity. We cannot undo anything that has been done in the last 6 years for the cause of lawlessness and fear. We cannot block out that chapter. But we can begin the next chapter, even this evening, even in the days to come, as we debate this issue. And let its first words read: Finally, in the month of June of 2008, the Senate of the United States—Democrats and Republicans—said: Enough. Enough is enough.

I implore my colleagues to write it with me. I implore my colleagues to vote against retroactive immunity and vote against cloture when that opportunity arrives in the next day or so. I think it would be a mistake to grant it. I think we can do better. I think we can reform the law. But we ought not to have any decision be above the law, as is the danger here.

Mr. President, I want to, if I can, share with my colleagues, and those who may be listening to all this, some articles because their eloquence is far greater than mine when they talk about the importance of all of this, and they are worth noting and reading as we examine this question before us.

There have been editorials and others that have addressed this issue. There is an editorial in the New York Times from June 18, entitled: ''Mr. Bush v. the Bill of Rights.''

In the waning months of his tenure, President Bush and his allies are once again trying to scare Congress into expanding the president's powers to spy on Americans without a court order.

This week, the White House and Democratic and Republican leaders on Capitol Hill hope to announce a ''compromise'' on a domestic spying bill. If they do, it will be presented as an indispensable tool for protecting the nation's security that still safeguards our civil liberties. The White House will paint opponents as weak-kneed liberals who do not understand and cannot stand up to the threat of terrorism.

The bill is not a compromise. The final details are being worked out, but all indications are that many of its provisions are both unnecessary and a threat to the Bill of Rights. The White House and the Congressional Republicans who support the bill have two real aims. They want to undermine the power of the courts to review the legality of domestic spying programs. And they want to give a legal shield to the telecommunications companies that broke the law by helping Mr. Bush carry out his warrantless wiretapping operation.

The Foreign Intelligence Surveillance act, or FISA, requires that government to get a warrant to intercept communications between anyone in this country and anyone outside it. The 1978 law created a special court that has approved all but a handful of the government's many thousands of warrant requests.

Still, after Sept. 11, 2001, Mr. Bush bypassed the FISA court and authorized the interception of international calls and e-mail messages without a warrant. Then, when The Times disclosed the operation in late 2005, Mr. Bush claimed that FISA did not allow the United States to act quickly enough to stop terrorists. That was nonsense. FISA always gave the government the power to start listening and then get a warrant—a grace period that has been extended since Sept 11.

More fundamental, Mr. Bush's powers do not supersede laws passed by Congress or the constitution's protections against unreasonable searches and seizures.

The ensuing debate did turn up an Internet-age problem with FISA: It requires a warrant to eavesdrop on foreign communications that go through American computers. There was an easy fix, but when Congress made it last year, the White House muscled in amendments that seriously diluted the courts' ability to restrain the government from spying on its own citizens.

That law expires on Aug. 3, and Mr. Bush is demanding even more power to spy. He also wants immunity for the telecommunications companies that provided the government with Americans' private data without a warrant after Sept. 11.

Lawsuits against those companies are the best hope of finding out the extent of Mr. Bush's lawless spying. But Democratic leaders in Congress are reported to have agreed to a phony compromise drafted by [one of our colleagues], the Republican vice chairman of the Intelligence Committee.

Under the so-called compromise, the question of immunity would be decided by federal district court—a concession by Mr. Bond [our colleague from Missouri], who originally wanted the FISA court, which meets in secret and is unsuited to the task, to decide. What is unacceptable, though, is that the district court would be instructed to decide based solely on whether the Bush administration certifies that the companies were told the spying was legal. If the aim is to allow a court hearing on the president's spying, the lawsuits should be allowed to proceed—and the courts should be able to resolve them the way they resolve every other case. Republicans, who complain about judges making laws from the bench, should not be making judicial decision from Capitol Hill.

This week, House and Senate leaders were trying to allay the concerns of some lawmakers that approving the immunity would be tantamount to retroactively declaring the spying operation to have been legal. Those lawmakers are right. Granting the corporations immunity would send that exact message.

The new bill has other problems. It gives the government too much leeway to acquire communications in the United States without individual warrants or even a showing of probable cause. It greatly reduces judicial review, and it would remain in force for six years, which is too long.

If Congress cannot pass a clean bill that fixes the one real problem with FISA, it should simply extend the temporary authorization. At a minimum . . .

It talks about what other steps can be taken.

There are several other articles I want to share with colleagues, but let me also say to my colleagues, we are in a postcloture environment here on the housing bill. We will be in cloture until tomorrow evening on the 30 hours required under the housing bill, unless some intervening action is taken. I know we are supposed to consider voting on cloture on this bill sometime tomorrow morning. I reserve the right to use whatever vehicle is available to me. While I am upset we are not dealing with the housing bill—I believe that is a priority on which Americans expect something to be done. You have 8,400 people filing for foreclosure every day in this country. It is a massive economic issue that is crippling the livelihood and the future wealth and security of too many American families. I would object to any unanimous consent request to go to the FISA bill. If we do get to a cloture motion, I will be urging my colleagues to vote against cloture, to send this bill back to the Intelligence Committee, the Judiciary Committee, and craft some reforms of FISA, but stay away from this retroactive immunity. It is not needed. It is unnecessary. It is shameful it is even being requested in this bill for all the reasons I have identified earlier.

Let me read, if I can, from the New Jersey Star-Ledger. Again, this paper calls for rejecting the wiretap bill, as well. This editorial says:

The House of Representatives is to vote today on a wiretapping bill that would give some of America's biggest and richest companies a get-out-of-jail card for breaking the law and that also would help the government carry out unsupervised snooping for years in the future.

But Verizon and other telecommunications companies should not be rewarded with immunity against lawsuits for agreeing to perform President Bush's illegal eavesdropping. They should answer for their actions in court, just like any other citizen.

And Congress should not gut the current law that says a federal judge's review is essential to avoid the very abuses of power that Bush's White House embraced.

The House ''compromise'' wiretapping bill is not a compromise at all. It would give the telecommunications companies absolute immunity from the suits pending against them for wiretapping if they can simply show that the Bush administration told them at the time that the snooping was legal. Which everyone agrees the administration did indeed do.

It is not a debate. They sent letters. The question is, were the letters and the documentation a legal justification? We already know they sent the letters, so all they are providing for us in here is tantamount to acknowledging what we already know occurred. What we are not getting to is the legal conclusion that those documents not seeking the warrants of the FISA court was a legal justification for their actions. It does not take a legal scholar to see the danger in this approach. It means that the law becomes whatever the President wants it to be, never mind what the statutes or even the Constitution may say. That is why the courts exist. That is why you have Federal judges to make those determinations.

This editorial goes on to say:

The President also very much wants the other major part of the new wiretapping law, the section that amounts to an aggressive broadening of federal surveillance powers. The provisions would emasculate the ability of federal judges to review wiretapping orders, especially if the orders were for a general information ''dragnet'' as opposed to targeting specific persons.

Snooping government agents would be officially free to plug into phone and data lines and copy and review untold millions of calls and e-mails, all without serious adult supervision. Effective checks and balances in government this is not.

Bush and Attorney General Michael Mukasey want the new law—

The editorial goes on to say—

and they want it now. House Members—

Talking about the House-passed bill—

should not give it to them. Government wiretapping is now operating under a series of interim laws set to expire in early August.

There is no evidence that these interim rules are too anemic to protect the Nation for a while longer. Congress should extend them. If the wiretapping law needs major revisions, these can be done under a new President.

One who, unlike Bush, didn't begin a secret, illegal wiretapping months before September 11, 2001.

This is from the Denver Post. I wonder why I chose that one to read to the Presiding Officer, my good friend and colleague from Denver, CO. I suspect he may have seen this one himself, so I apologize if I am reading an editorial he has already probably read himself. This is dated June 5. ''Another Dose of Courage Needed on FISA'' is the title.

Congress once again is discussing a compromise on a long-stalled rewrite of the Foreign Intelligence Surveillance Act with the idea of getting something passed before its August recess.

The White House assuredly will play the national security card again as it seeks retroactive immunity for telecoms that give in to demands for information under the President's warrantless wiretapping program.

We hope Congress stands firm as it did in February. Frame it any way you want, but the issue is accountability.

Proponents are making a last-ditch effort—

The Denver Post says—

to squelch some 40 lawsuits that could bear witness to the breadth of Bush administration spying that took place outside the auspices of FISA.

Congress must not capitulate on this key point.

It's important to keep in mind how this country came to have FISA. Enacted in 1978, FISA was a response to widespread government abuse of wiretaps in the name of national security. The act set rules for government spying on foreign powers on their agents.

A secret FISA Court hears government eavesdropping requests and almost without exception approves them. The administration can even wiretap without a FISA warrant and get one later.

After the 9/11 attacks, President Bush decided to do an end run around the FISA Court, shifting approval for wiretaps from the judiciary to the executive branch. That program was secret until 2005 when the New York Times exposed its existence.

As I pointed out earlier, conceivably it would still be operating today but for that revealing by the whistleblower.

Last year, the administration employed fear mongering and convinced Congress—

The Denver Post says—

to legitimize the program through the Protect America Act, a temporary provision that expired this year.

The battle now is over a permanent extension, the centerpiece of which would be lawsuit immunity for the telecommunication companies that cooperated with the warrantless spying program.

Administration officials say they are very concerned about getting cooperation from the communications companies unless the companies have immunity.

We find it hard to believe that these telecoms would refuse to comply with the FISA Court order. FISA has been in operation for 30 years and that seems to have not been a problem in the past.

Let me just cut in here and point out that over the past 25 years, as I noted earlier, the FISA Courts have compelled companies to provide information and simultaneously granted them immunity when doing so. So this idea that we hope they will willingly cooperate—the courts have the power to compel cooperation when we want surveillance of individuals that could be doing us harm. So the argument that if we don't grant immunity they might not show up again when we ask them to provide surveillance that we need in order to guarantee our security—we hope they will cooperate, but if they don't, we have the ability to compel cooperation.

Back to the editorial. It concludes by saying:

It's also important to keep in mind that the Federal courts where these telecom lawsuits are being heard can—and have—dismissed some actions on the grounds that they could endanger national security. So it's not as if there is no protection at work.

The last time immunity was debated in Congress, House Democrats held firm, saying that they thought the administration's modifications would amount to a suspension of the Constitution. We hope they have the same courage of their convictions this time around.

I applaud the Denver Post for its brilliant and thoughtful editorial in that regard.

This is an editorial from the Register-Guard in Eugene, OR, so we get the breadth of this across the country. This one is entitled ''Sinking the Boat: House Approves Flawed Electronic Surveillance Bill,'' June 24, 2008.

Congressional leaders have crafted a deeply flawed bill on electronic eavesdropping, caving once again to White House warnings that failure to give the executive branch broad license to spy on U.S. citizens without a warrant would make it harder to protect Americans from terrorists.

In one of the most disappointing votes of the 110th Congress, the House on Friday approved a compromise over a contentious intelligence surveillance bill. The House measure would allow the Federal Government to intercept international telephone calls or e-mails without prior court approval if the executive branch claims it is necessary in an emergency. It would also grant de facto immunity to telecommunications companies that cooperated in the administration's secret and blatantly unconstitutional surveillance program after the September 11 attacks.

Congressman Peter DeFazio deserves credit for voting, along with 127 other Democrats, against the House bill. ''We do not trample over the U.S. Constitution in order to protect Americans from terrorism—that is akin to sinking the boat so the enemy can't sink it,'' the Oregon Democrat said.

After September 11, President Bush authorized the National Security Agency to monitor, without the prior court approval required by the Constitution, e-mails and phone conversations between suspected terrorists of United States residents. Called the Terrorist Surveillance Program, the initiative ignored the 1978 Foreign Intelligence Surveillance Act which required a special Federal court to authorize electronic spying on Americans.

The editorial goes on to say:

The Bush administration grudgingly accepted judicial oversight of the program only after its existence was leaked to the media and Congress howled in outrage. That outrage has since been muffled by a White House campaign intended to scare Americans and to allow the administration to further expand the chief executive's powers and erode civil liberties. And, oh, yes, to ensure that no one is held accountable for the illegal wiretapping that Bush ordered after September 11.

The House bill is a modest improvement over the earlier versions. While it unwisely allows the administration to authorize monitoring of international calls or e-mails, it requires the secret Foreign Intelligence Surveillance Court to review and enforce protections for U.S. residents, and it bars surveillance until those procedures are approved except in ''exigent circumstances.''

The Senate should improve the House bill by requiring court supervision of any surveillance that can involve American citizens or others in the United States. That's a constitutional red line the Bush administration—or any other—should not be allowed to cross.

The Senate should also make certain that the courts are allowed to decide whether telecommunication companies violated the

law by handing over data to the government over the past five years without a court order. The Senate should also demand a full accounting to Congress of all surveillance conducted since September 11—accounting the White House has refused to provide, telling lawmakers and the American public to instead ''trust us'' with their freedoms.

Congress still has a chance to make certain that the Federal Government Surveillance Program complies with the rule of law. History would suggest the failure to do so could leave the door open to lawless behavior as long as the current President remains in office—

And, I would argue, set a precedent for future administrations where that could occur as well.

Again, let me suggest here that what we are talking about is not the choice between security and liberty. This is not an issue that ought to divide people based on our party affiliation or how one is characterized and where they sit in the political spectrum. This is an issue that goes to the heart of who we are. It is talking about the rule of law and the Constitution. Everyone here takes an oath of office to protect and defend our country and to protect the Constitution. Certainly that is what this ought to involve.

Are the courts going to make a determination about the legality of this effort? Again, I don't know of another instance in our Nation's history where for 5 long years, 17 companies were allowed to virtually sweep up every phone call, every e-mail, every fax, every text message that was sent by every citizen of this country, and that is exactly what happened and would still be ongoing if it hadn't been revealed.

Do we require that there be some justification as to whether this was legally occurring? That ought not to be a matter of political choice. That ought to be a matter for the courts. That is why we established the third branch of government—the judiciary—to determine the constitutionality and legality of actions taken by the executive or legislative branches. We are shortcutting in the legislative branch, at the request of the executive, the ability of that branch to make that determination. We are sanctioning, in effect. We are closing the door, never to know why this happened, who ordered it, why did they avoid FISA, what was behind their thinking. That is a dangerous step for us to take.

That is the only case I am making. I have my doubts, as I said, about the legality of it, but that is just one Senator. I have the right to certainly have my doubts about certain actions. I don't have the right to determine the legality of it. I am a Senator, I am not a Federal judge. I don't sit in that third branch, I sit in the second branch. I sit in the Congress of the United States. It is my job here to stand up and see to it that we don't take actions that would deprive that branch—the legal branch, the judicial branch—from asserting its rights under our Constitution—exactly what the Founders intended.

So while I know there are those who are going to argue and make the case that those of us who stand up here to defend the rule of law, somehow we are weak-kneed when it comes to terrorism, that is hardly the case. I don't want to give terrorists a greater victory. As profoundly sad, as tragic, and as violent as the attack was on 9/11 that destroyed so much and showed us how dangerous the world is today, to grant them the power—those terrorists—to allow them to deprive us of our liberties is to grant them a victory even greater than they achieved that day. It must be our common determination to see to it that we stand up and not allow these rights and these liberties we enjoy as citizens to be eroded at our own hand.

Let's say to terrorists around the world: We will fight you and defeat you as you try to do us and others great harm, but you will not bring down the pillars of our constitutional form of government and the rule of law. That is what this is all about, while it is argued and we are told that we have to do this and if we don't do it, that somehow we are succumbing to those terrorists who wish to do us great physical harm.

Let me, if I can, sort of wrap up because I know I am taking a little bit of time. I want to leave some time to argue my housing bill. I am consuming the time on my housing bill to do this, but I want people to understand, at least from my perspective, why this is a dangerous conclusion, why we ought to vote against cloture, and why I am going to use my power as a Senator to object to going to that cloture vote, at least as long as a cloture vote exists on dealing with the housing legislation.

I think retroactive immunity is a disgrace. In the last months, I believe we proved that beyond any doubt whatsoever. As I said, I believe it is more disgraceful in all that it represents. It is the mindset that the Church Committee summed up so eloquently three decades ago. As I read these words—they are no longer with us. A lot of these Members have long since left us, not only from this Chamber but who have since passed away. But it is worthwhile for us to read their words, these Democrats and Republicans. There were those who suggested somehow they were weak-kneed when it came to giving the President the power to protect our national security. But listen to their words of three decades ago:

The view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom, that view created the Nixonian secrecy of the 1970s.

The Church committee wrote those words in part as a rebuke to our predecessors in this Chamber who for years allowed secrecy and executive abuses to slide. But today those words take on new meaning. Today, they rebuke us, in a way. Today they shame us for a lack of faith that we can, at the same time, keep our country safe and our Constitution whole.

As I said before, when the 21st century version of the Church committee convenes to investigate the abuses of the past years, how will we be judged? When it reads through the records of our debates—not if, Mr. President, but when—what will they find? When the President asked us to repudiate the Geneva Conventions and strip away the rights of habeas corpus, how did we respond? What was our Congress? What did we say about that? When stories of secret prisons and outsourced torture became impossible to deny, what did that Congress do in 2008 and 2007? In June of 2008 when we were asked to put corporations explicitly outside the law and accept at face value the argument that some are literally too rich to be sued, how did that Congress, how did that Senate vote on that matter?

All of these questions are coming to us, Mr. President. All of them and more. And in the quiet of his or her own conscience, each Senator knows what the answers are.

Remember, this is about more than a few telephone calls, a few companies, or a few lawsuits. If the supporters of retroactive immunity keep this argument a technical one, they will win. A technical argument obscures the defining question: the rule of law or the rule of men? That question never goes away. As long as there are free societies, generations of leaders will struggle mightily to answer it. Each generation must ascertain an answer for itself. Just because our Founders answered it correctly doesn't mean we are bound by their choice. In that, as in all decisions, we are entirely free.

The burden falls not on history but on each one of us—the 100 of us who serve in this remarkable Chamber. But we can take counsel, listen to those who came before us, who made the right choice even when our Nation's survival was at risk. They knew the rule of law was far more rooted in our character than any one man's lawlessness. From the beginning, they advised us to fight that lawlessness whenever we found it. At the Constitutional Convention, James Madison said:

The means of defense against foreign danger historically have become the instruments of tyranny at home.

He also said:

I believe there are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden assertion.

As long as we are temporary custodians of the Constitution, as we are, we have a duty to guard against those gradual and silent encroachments. That is exactly what this is. It is a gradual and silent encroachment. It doesn't come in a burst, it comes slowly. Our Founders knew these threats were coming. They could predict, persuade, and warn, but when it comes time to stand up against those threats in our own time, they cannot act for us. They can only teach us, they

can warn us, they can remind us that they would come. And they have. They are here. They are before us. They cannot act for us. The choice is ours and ours alone.

Tomorrow or the following day, when we are asked to vote on this, the choice will be ours. We have been warned and cautioned by history. The decision now rests with each and every one of us to decide whether we have listened to them and not only answer them but provide the answer for generations to come, as generations before us have answered that question. May we rise to that moment, Mr. President, and defeat this legislation. May we reject this retroactive immunity for a handful of companies so that we may determine whether their actions were legal or whether they were above the law or whether they were the rule of law or the rule of men. That is the important choice we will have to make.

I yield the floor.

COMMEMORATING THE 44TH ANNIVERSARY OF THE DEATHS OF CIVIL RIGHTS WORKERS ANDREW GOODMAN, JAMES CHANEY, AND MICHAEL SCHWERNER

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 600, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 600) commemorating the 44th anniversary of the deaths of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEAHY. Mr. President, our Nation owes a tremendous debt of gratitude to all of those who risked their lives in the pursuit of making America a more perfect union. This week, we commemorate the 44th anniversary of the day three brave civil rights workers—James Chaney, Michael Schwerner, and Andrew Goodman—paid the ultimate price in the struggle to secure civil rights and expand our democracy for all Americans.

On June 21, 1964, these three young men were abducted, brutally beaten, and shot to death by Ku Klux Klansmen for simply attempting to register African-Americans voters. Their deaths touched the conscience of our country and inspired events that changed the course of our history. The public outcry over the initial disappearance of these workers drew national and international attention to the violence associated with efforts to register African-American voters. It spurred efforts to desegregate the voting delegates at political party conventions. And it served as a catalyst for Congress to pass the Civil Rights Act of 1964 and the Voting Rights Act of 1965, key legislation that would eliminate segregation and usher in a new era of equal opportunity and access to our democracy for all Americans.

Unfortunately, our march toward equal justice under law is not yet complete. Three years ago, Edgar Ray Killen was convicted for the deaths of the three civil rights workers we honor today. Almost two dozen other men were involved in this crime; some are still alive, yet, none have ever been held charged with this murder. Even more troubling, the families of hundreds of other Americans who lost their lives in the fight for equal rights still await justice.

As we pass this resolution, we must recognize that it is long past time to pass the Emmett Till Unsolved Civil Rights Crime Act, which would strengthen our ability to track down those whose violent acts during a period of national turmoil remain unpunished. Last year, the House overwhelmingly passed this bill. Yet, one lone Republican Senator has prevented this important bill from passing. As we commemorate the deaths of three of the most celebrated civil rights activists of the past, let us remember this does not obviate our need to solve the hundreds of less recognized civil rights crimes of that era.

Today's resolution is an important gesture for us to remember the civil rights misdeeds of the past. But it is also an opportunity for Congress to show the country that we will not tolerate similar offenses. As we pass this resolution, it is fitting to carry this principle to the present and act in kind to prevent hate crimes and civil rights abuses occurring now in this country and around the world.

The powerful inscription on the grave of James Chaney reads: ''There are those who are alive, yet will never live; there are those who are dead, yet will live forever; great deeds inspire and encourage the living.'' By remembering Mr. Chaney, Mr. Schwerner, and Mr. Goodman today, I hope we all can be inspired to renewed action in this Congress. Let us pass the Till bill to ensure that those who sacrificed their lives in pursuit of justice are not forgotten and the perpetrators of these crimes are held accountable.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 600) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 600

Whereas 44 years ago, on June 21, 1964, Andrew Goodman, James Chaney, and Michael Schwerner were murdered in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer'';

Whereas Andrew Goodman was a 20-year-old White anthropology major at New York's Queens College, who volunteered for the ''Freedom Summer'' project;

Whereas James Chaney, from Meridian, Mississippi, was a 21-year-old African-American civil rights activist who joined the Congress of Racial Equality (CORE) in 1963 to work on voter education and registration;

Whereas Michael ''Mickey'' Schwerner, from Brooklyn, New York, was a 24-year-old White CORE field secretary in Mississippi and a veteran of the civil rights movement;

Whereas in 1964, Mississippi had a Black voting-age population of 450,000, but only 16,000 Blacks were registered to vote;

Whereas most Black voters were disenfranchised by law or practice in Mississippi;

Whereas in 1964, Andrew Goodman, James Chaney, and Michael Schwerner volunteered to work as part of the ''Freedom Summer'' project that involved several civil rights organizations, including the Mississippi State chapter of the National Association for the Advancement of Colored People, the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, and CORE, with the purpose of registering Black voters in Mississippi;

Whereas on the morning of June 21, 1964, the 3 men left the CORE office in Meridian and set out for Longdale, Mississippi, where they were to investigate the recent burning of the Mount Zion Methodist Church, a Black church that had been functioning as a Freedom School for education and voter registration;

Whereas on their way back to Meridian, James Chaney, Andrew Goodman, and Michael Schwerner were detained and later arrested and taken to the Philadelphia, Mississippi, jail;

Whereas later that same evening, on June 21, 1964, they were taken from the jail, turned over to the Ku Klux Klan, and beaten, shot, and killed;

Whereas 2 days later, their burnt, charred, and gutted blue Ford station wagon was pulled from the Bogue Chitto Creek, just outside Philadelphia, Mississippi;

Whereas the national uproar caused by the disappearance of the civil rights workers led President Lyndon B. Johnson to order Secretary of Defense Robert McNamara to send 200 active duty Navy sailors to search the swamps and fields in the area for the bodies of the 3 civil rights workers, and Attorney General Robert F. Kennedy to order his Federal Bureau of Investigation (FBI) director, J. Edgar Hoover, to send 150 agents to Mississippi to work on the case;

Whereas the FBI investigation led to the discovery of the bodies of several other African-Americans from Mississippi, whose disappearances over the previous several years had not attracted attention outside their local communities;

Whereas the bodies of Andrew Goodman, James Chaney, and Michael Schwerner, beaten and shot, were found on August 4, 1964, buried under a mound of dirt;

Whereas on December 4, 1964, 21 White Mississippians from Philadelphia, Mississippi, including the sheriff and his deputy, were arrested, and the Department of Justice charged them with conspiring to deprive Andrew Goodman, James Chaney, and Michael

Schwerner of their civil rights, since murder was not a Federal crime;

Whereas on December 10, 1964, the same day Dr. Martin Luther King, Jr. received the Nobel Peace Prize, a United States District judge dismissed charges against the 21 men accused of depriving the 3 civil right workers of their civil rights by murder;

Whereas in 1967, after an appeal to the Supreme Court and new testimony, 7 individuals were found guilty, but 2 of the defendants, including Edgar Ray Killen, who had been strongly implicated in the murders by witnesses, were acquitted because the jury came to a deadlock on their charges;

Whereas on January 6, 2005, a Neshoba County, Mississippi, grand jury indicted Edgar Ray Killen on 3 counts of murder;

Whereas on June 21, 2005, a jury convicted Edgar Ray Killen on 3 counts of manslaughter;

Whereas June 21, 2008, was the 44th anniversary of Andrew Goodman, James Chaney, and Michael Schwerner's ultimate sacrifice;

Whereas by the end of ''Freedom Summer'', volunteers, including Andrew Goodman, James Chaney, and Michael Schwerner, helped register 17,000 African-Americans to vote;

Whereas the national uproar in response to the deaths of these brave men helped create the necessary climate to bring about passage of the Voting Rights Act of 1965;

Whereas Andrew Goodman, James Chaney, and Michael Schwerner worked for freedom, democracy, and equal justice under the law for all; and

Whereas the Federal Government should find an appropriate way to honor these courageous young men and their contributions to civil rights and voting rights: Now, therefore, be it

Resolved, That the Senate—

(1) encourages all Americans to pause and remember Andrew Goodman, James Chaney, and Michael Schwerner and the 44th anniversary of their deaths;

(2) commemorates the life and work of Andrew Goodman, James Chaney, Michael Schwerner, and all of the other brave Americans who made the ultimate sacrifice in the name of civil rights and voting rights for all Americans; and

(3) commemorates and acknowledges the legacy of the brave Americans who participated in the civil rights movement and the role that they played in changing the hearts and minds of Americans and creating the political climate necessary to pass legislation to expand civil rights and voting rights for all Americans.

Mr. DODD. Mr. President, a few weeks ago, our colleague in the other Chamber, JOHN LEWIS, joined us for lunch and brought along several Freedom Riders who knew very well the wonderful young people we are recognizing by this resolution who lost their lives in the quest for freedom and democracy during the civil rights movement in the 1960s. It was a moving opportunity to listen to these remarkable individuals who, today, are gray in hair and getting older, but in their youth they stood up for democracy and freedom. It is worthy that this institution is recognizing them. I wanted to mention that this evening, as we agreed to this resolution.

ORDERS FOR WEDNESDAY, JUNE 25, 2008

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m., tomorrow, Wednesday, June 25; that following the prayer and the pledge, the Journal of the proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the House message to accompany H.R. 3221, the housing legislation, and that the time during the adjournment count against cloture. I further ask that the mandatory quorum rule XXII with respect to H.R. 6304 be waived.

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DODD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 10:20 p.m., adjourned until Wednesday, June 25, 2008, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

DAVID D. PEARCE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

LYNDON L. OLSON, JR., OF TEXAS, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2011. (REAPPOINTMENT)

DEPARTMENT OF EDUCATION

HOLLY A. KUZMICH, OF INDIANA, TO BE ASSISTANT SECRETARY FOR LEGISLATION AND CONGRESSIONAL AFFAIRS, DEPARTMENT OF EDUCATION, VICE TERRELL HALASKA, RESIGNED.

CHRISTOPHER M. MARSTON, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR MANAGEMENT, DEPARTMENT OF EDUCATION, VICE MICHELL C. CLARK, RESIGNED.

DISCHARGED NOMINATION

The Senate Committee on Rules and Administration was discharged from further consideration of the following nomination and the nomination was confirmed:

MATTHEW S. PETERSEN, OF UTAH, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011.

CONFIRMATIONS

Executive nominations confirmed by the Senate Tuesday, June 24, 2008:

FEDERAL ELECTION COMMISSION

STEVEN T. WALTHER, OF NEVADA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2009.

CYNTHIA L. BAUERLY, OF MINNESOTA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011.

CAROLINE C. HUNTER, OF FLORIDA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2013.

DONALD F. MCGAHN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2009.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

MATTHEW S. PETERSEN, OF UTAH, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011.

THE JUDICIARY

HELENE N. WHITE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

RAYMOND M. KETHLEDGE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

STEPHEN JOSEPH MURPHY III, OF MICHIGAN, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

WITHDRAWAL

Executive Message transmitted by the President to the Senate on June 24, 2008 withdrawing from further Senate consideration the following nomination:

J. GREGORY COPELAND, OF TEXAS, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY, VICE DAVID R. HILL, WHICH WAS SENT TO THE SENATE ON JANUARY 22, 2008.