chart refers to the information I have just been over: an employee's work history, including performance ratings, sick and vacation days, safety, whether the consumer is a complainer or not, can go out to all affiliates, your certificates of deposit maturity dates, so somebody can contact you when that certificate matures; stocks you own, so others can approach you. Then there are the personal things, such as political contributions, charitable contributions, your magazine subscriptions.

Think about that. These companies develop a personal profile on who you are and what you like, and then tell other companies about you. Today, I heard testimony at a Senate Judiciary Committee hearing about someone who shopped at Victoria's Secret who had their personal information used in that way. That is what this allows.

The collection of this information is not hypothetical. In Great Britain, unlike the United States, companies are required by law to file a report with the Government on the type of information they collect about consumers.

Here is what Citibank reported to the British Government about the type of information it was collecting about British citizens for marketing purposes. I think it is likely they collect the same information about United States customers. This information includes: personal identifiers, financial identifiers, identifiers issued by public bodies, personal details, habits, current marriage or partnerships, details of other family, household members, other social contacts, accommodations or housing, travel movement details, lifestyle, academic record, membership of professional bodies, publications, current employment, career history.

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

Mrs. FEINSTEIN. Mr. President, I am not aware of a time limitation.

The PRESIDING OFFICER. There is a previous order to recess for the policy meetings at 12:30 p.m.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that I might be permitted to continue when the Senate resumes.

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

Mrs. FEINSTEIN. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 12:30 p.m., the Senate recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NATIONAL CONSUMER CREDIT REPORTING SYSTEM IMPROVEMENT ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under the order, the Senator from California has the floor. If I may propound a unanimous consent request, the Senator from California is going to speak for approximately another half hour or thereabouts. Following that, Senator DURBIN and Senator MCCAIN wish to speak on matters unrelated to the matter now before the Senate. To save a lot of confusion, I ask unanimous consent that following the remarks of the Senator from California, Senator NELSON of Florida be recognized for up to 3 minutes; following that, the Senator from Illinois, Mr. DURBIN, be recognized for up to 15 minutes; following that, the Senator from Arizona, Mr. MCCAIN, be recognized for up to 20 minutes.

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

Mr. MCCAIN. Mr. President, we usually go back and forth, I tell my friend.

Mr. REID. The Senator from Arizona wishes to go before Senator DURBIN?

Mr. MCCAIN. Yes.

Mr. REID. That is fine. I thought it was the reverse order. I ask that the unanimous consent request be modified so that Senator MCCAIN be recognized prior to Senator DURBIN.

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

Mrs. FEINSTEIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from California is to be recognized.

Mrs. FEINSTEIN. Mr. President, the Senator from Florida has asked if I would yield for just a short time before I begin. Is that agreeable?

Mr. REID. That is in the unanimous consent order. It is up to the leadership. However, after Senator FEINSTEIN completes her statement and Senator NELSON completes his statement, I rather doubt they could do that, but somebody could move for a vote prior to that time. I don't suggest anyone doing so. It could happen.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, is it possible for me to yield for 3 minutes to the Senator from Florida?

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

AMENDMENT NO. 2054

Mr. NELSON of Florida. Mr. President, I rise to support the amendment of the Senator from California and to point out that I think the committee has done a very good job on the underlying bill. They address the question of medical privacy in the bill where a big holding company might have a subsidiary company, such as an insurance company, and an individual, when they get a life insurance policy, will have to get a doctor's examination, so that in the bosom of that health insurance company would be medical records. That health insurance company may be owned by a bank.

What the underlying bill does is protect against someone having their personally identifiable medical information shared throughout that holding company and shared with those who would want to market that personally identifiable medical information.

However, the underlying bill does not protect on the personally identifiable financial information, so that one part of a holding company could have personally identifiable financial information such as how much you take out of your ATM, what kind of purchases you make on your credit card, what time of day or what time of the week you go and make deposits in your ATM or take out from your ATM. Those things that are personally identifiable ought to be private unless the individual consumer says they are willing to have that information shared among the holding companies.

That is one of the things the amendment of the Senator from California addresses which, if we are going to take privacy seriously, we need to address. That is why I support the amendment of the Senator from California.

I yield the floor.

Mrs. FEINSTEIN. I thank the Senator from Florida and I thank the Chair for allowing this opportunity for the Senator to make a statement. I think he is referring to an amendment that I will introduce at a later time having to do with clearing up the health definition in the bill.

The health definition in the bill is archaic. The vast majority of states have adopted more fully inclusive definitions, and we would like to have that definition in the bill.

Prior to the break for lunch, I was beginning to explain why the bill before us has a weak privacy standard on affiliate sharing. Specifically, the underlying bill permits financial institutions to share a customer's transaction and experience information with affiliates with few, if any, restrictions. As I stated, transaction and experience information could include extremely sensitive information about individuals such as their bank account balance and data mined from their check or credit accounts or where they buy goods.

If consumers cannot preserve the privacy of their bank balances or the places they go to make purchases, they do not have meaningful privacy protections. That is the weak privacy standard that will become the national norm if this bill passes the way in which it is envisioned.

Supporters of the existing weak standard argue that America's credit environment has thrived since 1996. So they say, why mess with a system that is working? I challenge that assertion.

First, because transaction and experience information remains undefined. As I pointed out before lunch, we asked the CRS to look at current law. We asked them how they would define ''transaction and experience'' information. They said it has never been defined. So it is questionable whether any privacy regime at all exists for the bulk of affiliate-sharing practices.

Secondly, identity theft has emerged as a national epidemic in the last 7 years. Both the chairman and the ranking member of this committee have done their utmost and been very receptive to trying to enact legislation to prevent identity theft.

The Federal Trade Commission recently published a study that suggested 9.9 million Americans are victims of identity theft every year. The cost is $50 billion annually. Studies have shown that much identity theft occurs in the workplace. So increased affiliate sharing will likely facilitate this crime. Potentially, thousands of employees in affiliated businesses will have increased access to the currency of identity theft, and that is Social Security numbers and other sensitive identifying information, such as date and place of birth and mother's maiden name.

In her testimony before the Senate Banking Committee, Vermont Assistant Attorney General Julie Brill directly linked affiliate sharing to identity theft. Here is what she said:

> Many identity fraud cases stem from the perpetrator's purchase of consumers' personal information from commercial data brokers. Financial institutions' information sharing practices contribute to the risk of identity theft by greatly expanding the opportunity for thieves to obtain access to sensitive personal information.

So that is what we are doing here. Now, this is a prosecutor who should know. This is what she deals with. So why broaden the scope and opportunity for identity theft to take place?

Assistant Attorney General Brill also cited work by researchers at Michigan State University who studied 1,000 cases of identity theft and found that 50 percent of the victims traced the theft of information to an employee of a company compiling personal data on individuals.

Third, it is an open question whether affiliate sharing has offered any price or service advantage to customers. According to an article by Janet Gertz in the San Diego Law Journal, there is some evidence that businesses use affiliate sharing to extract concessions from consumers. Let me quote her:

> By profiling consumers, financial institutions can predict an individual's demand and price point sensitivity and thus can alter the balance of power in their price and value negotiations with that individual. Statistics indicate that the power shift facilitated by predictive profiling has proven highly profitable for the financial services industry. However, there is little evidence that any of these profits or cost savings are being passed on to consumers.

Just recently, for example, the Federal Reserve issued a report on financial service fees and services showing that fees at larger institutions are generally increasing and services are decreasing.

So we are letting exist this whole area where businesses buy other businesses just to share consumers' data? And the consumer has no control over their personal data. That is wrong.

My colleagues may hear during the debate on this amendment that the affiliate sharing problem is addressed because S. 1753 allows consumers to opt out of certain marketing solicitations by affiliates.

I want to go into this because this has been widely circulated by the financial institutions. Senator BOXER and I were just questioned about it at a press conference we held. In truth, these restrictions that they say are there are grossly inadequate, and they barely scratch the surface of the problem.

Let me describe some of the uses of affiliate sharing that the bill does permit. First, internal credit reports: The bill permits companies to use transaction and experience information to create internal credit reports.

Martin Wong, general counsel of Citigroup's Global Consumer Group, testified before the Senate Banking Committee in June that:

> Citigroup is able to use the credit information and transaction histories that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit.

In other words, a bank can use transaction and experience from its affiliates to determine if it is going to charge a higher interest rate to certain credit card customers and give perks to others or to deny a credit applicant a credit card.

In contrast to a traditional credit card report, a consumer has no right of access to transaction and experience information used by a bank to deny him or her credit. Nor would a consumer have any right to correct any errors made in compilation of these internal credit reports. So one can have their credit changed even without their knowledge. It can be wrong, and the person would not know about it. It all happens in this secret world of affiliate sharing.

Similarly, a health insurer could deny a customer a health insurance or life insurance policy based on transaction and experience information. For example, a life insurer might reject an insurance applicant because of evidence in his card or check transaction record that he visits liquor stores frequently, buys products at stores selling mountain climbing equipment and therefore is at risk of injury, or has purchased a gun.

These are just indications. These are just areas. But you can see where this thing is going. Essentially, consumers can be denied products or services and they will have no ability to determine why the denial occurred.

The bill would permit prospective or current employers, without an individual's knowledge or consent, to mine information about the individual from other affiliates with whom the individual does business. This could be used for hiring decisions, disciplinary action, job evaluations, or other employment purposes. Again, all of this goes on simply because you bank with a given bank. You think all these things are protected and in fact they are data-mining checks, where you go, who you are paying. This information is going out to a whole host of other companies, sometimes thousands of companies.

Some affiliates are offshore and American consumer protection laws do not apply to those countries. As United States companies continue to acquire affiliates overseas, consumers may not even be able to depend on existing consumer protection laws to protect information that is shared with an affiliate.

Earlier this month, and many of us read about it, a woman in Pakistan, transcribing medical files for the University of California Medical Center in San Francisco, threatened to post patient medical records on the Internet unless she was paid more money. While we have strict laws governing medical files in the United States, these laws are virtually unenforceable overseas.

The Senate bill does not prevent affiliated companies from accumulating and sharing uncomplimentary information about customers, such as if they have filed for bankruptcy, do not pay their credit on time, or complain a lot. This information can be used to push unprofitable customers into a different tier of customer services. Example, where there are longer waits for a customer representative, or eliminate the customer altogether. All of this happens because of the ease with which this information can be shared among commonly held companies.

Let me give an example. Business Week magazine has reported that Sanwa Bank gives A's to its best customers, but those whose profiles show they will generate less revenues get C's from the bank. The bank tends to charge those earning C's more fees, and is more likely to put them on hold when they call in for service. This type of profiling certainly can occur in the context of affiliate sharing.

Even in the area of marketing, this bill is grossly inadequate. It purports to give consumers the right to opt out of the sharing of transaction and experience information for marketing, but there are loopholes. The institutions are going around the Hill today, pointing out they already do protect this.

Let me talk for a minute about the loopholes. The bill excludes companies from the opt-out if they have a preexisting business relationship with the consumer.

What is a preexisting business relationship? Your guess is as good as mine because the bill doesn't define it. Presumably, a bank could argue it has a preexisting relationship with a consumer if a consumer came into the bank 5 years ago to cash a check, or even just made an inquiry about an account. Additionally, if a consumer does exercise the opt-out for marketing, which is in the bill, the opt-out expires after 5 years. At that time, affiliates can then start marketing again to the customer.

I find it disturbing that the supporters of the bill want to permanently preempt States from enacting stronger affiliate-sharing laws for credit reporting purposes, but only think customers' preferences should be recognized for 5 years.

Last, but perhaps most fundamental, the Senate bill denies the consumer the ability to define the parameters of his or her relationship with a company, and this, I think, is really important. Under the current bill, when a consumer purchases a product from a megacorporation, the consumer automatically, without his or her choice or consent, makes his or her information available to hundreds of companies. Lawyers call this type of relationship, where one side has all the bargaining power, an adhesion contract. Some courts rule these types of contracts invalid because they do not reflect arm's-length negotiation and could result in unconscionable terms for the consumer.

Our amendment is a substitute to the affiliate-sharing language in S. 1753. Supporters of the underlying bill claim the Government needs a viable national standard to ensure the efficiency of our credit market. This amendment provides such a standard. It gives consumers all across the country—in Alabama, in Maryland, in Kentucky, in Colorado, in Washington—the opportunity to have some say, some choice in how their personal data is shared. With the privacy of Americans more at risk because of the latest technological developments and identity theft, with privacy invasions at its core becoming the fastest growing white-collar crime in the United States, we believe strong national standards are critical.

Our amendment reflects the terms of the California privacy law, which the California Bankers Association just a very short time ago called reasonable and workable, and are now lobbying against.

I read the letter of the author of the California bill, which I think irrefutably states the turnaround the financial institutions have done in this opt-out provision. Jim Bruner of the Securities Industry Association stated at the press conference announcing the agreement on California law on August 14, just a short time ago:

''While we would have preferred a national standard,'' [the California law] ''encompasses all aspects of the workability needed to ensure protection of consumers' privacy.''

And then they turned around and did a 180.

Jamie Clark of the California Bankers Association said at the same press conference that the banks:

''. . . have no objection to the measure passing'' and would tell its supporters to vote for the bill.

Clark added:

''We prefer a national standard so that you have a uniform operating environment.''

But they didn't tell anyone in California, which has just passed a new law which provides opt-out, that they could not live with the opt-out standard.

They did not come back here saying the law was sloppily drafted. They liked it then. When you do the law back here, all of a sudden it is sloppily drafted.

Diane Colborn of the Personal Insurance Federation called the California bill ''a balanced measure that will provide meaningful privacy protections to consumers while also addressing the workability concerns that our members and customers had.''

The California credit unions supported this legislation and still do. I thank them for their support.

This amendment offers businesses in California and around the country the chance to get a moderate, reasonable, uniform national standard on personal privacy.

Under the amendment, companies would be required to give consumers notice of their intent to share transactions and experience and other information with their affiliates. Consumers would then have the opportunity to opt out—to say, I don't want you to do it, or to do nothing at which point the information could be shared. The company would be notified and would give them, I hope, a choice of whether their most personal information is shared among affiliates.

This amendment would also allow closely related affiliates in the same line of business to share information with each other. Specifically, companies would not need to provide an opt-out choice if one, the affiliate is regulated by the same functional regulator—an example of that is institutions that regulate financial service institutions such as the Office of Thrift Supervision and the Office of the Comptroller of the Currency would be considered the same functional regulator; two, the affiliate engages in the same line of business. An example of that is the selling of securities, banking services, and insurance would all be considered independent lines of business; three, the affiliate shares a common brand identification; and four, the affiliate is a wholly owned subsidiary of the same company.

The amendment also has numerous other exceptions that were ironed out after 4 years of negotiation in California to meet the practical needs of business. The exceptions include the following: No. 1, information maintained in common databases. This is another false rumor that is being spread on this bill. This amendment allows employees of an affiliate to have access to information maintained in a common information system or database so long as the information is not accessed, disclosed, or used.

That is the key. It doesn't require new databases. It doesn't mess up their database. It just says you can't access it if the individual opts out.

This exception is necessary because we don't want to disadvantage companies that have streamlined operations by combining databases and other information technology resources. On the other hand, this amendment still permits consumers to have a choice over whether information in the database can be used for secondary purposes.

This amendment, as the Gramm-Leach-Bliley and California law, has an exception for transactional uses of information.

Information sharing ''necessary to affect, administer or enforce a transaction requested or authored by the consumer'' or ''with the consent or at the direction of the consumer'' is excluded from the opt-out.

Our amendment has exceptions for affiliate sharing of personal information that is necessary for companies to effectively manage their operations. For example, for security purposes, institutional risk control, and to respond to customer disputes or inquiries.

Proponents for unrestricted sharing of affiliate information argue that it is needed to solve identity theft. They correctly point out that companies can track unlawful purchases or suspicious activity by monitoring unusual account activity, change of address requests, and other suspicious behavior.

This amendment explicitly allows for affiliates to share information ''to protect against or prevent actual or potential fraud, identify theft,'' et cetera.

In addition, the amendment has exceptions relating to a business, a merger, a sale, a transfer; to comply with Federal, State, or local laws; for outsourcing functions with vendors such as data processing or billing; and, to identify or locate missing and abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs, or to report known or suspected instance of elder or dependent adult financial abuses; and an exception is also carved out for the United States of America PATRIOT Act.

I deeply believe that without this opt-out the National Consumer Credit Reporting System Improvement Act would create a permanent and unworkable Federal standard that would set back the privacy of personal information and allow sensitive personal data to be moved through dozens, hundreds, and, in some cases, thousands of other companies.

This amendment is quite simple. It is about consumer choice.

I am puzzled at the ferocity with which the financial institutions and the banks are lobbying against this amendment. They serve people. That is what they are there to do—serve people. Shouldn't someone know if this information is being marketed within the loophole? Shouldn't someone have the opportunity to say, I don't want you to use my information? In fact, I think I am going to change banks, if they do this. Find a bank that won't do it. That would be my advice to everybody.

I think consumers should be given the opportunity to tell a bank they don't want their information shared with other companies. This is America. We should have that freedom. We should have that right. If you vote for this amendment, Americans will.

Do I have a few more minutes? If I could quickly set aside this amendment and send one other amendment to the desk, I will not speak to it.

I am happy to wait. I will yield the floor at this time and do it later.

Thank you very much.

Mr. MCCAIN. Mr. President, I don't mind waiting a few minutes if the Senator from California wishes to proceed.

Mrs. FEINSTEIN. No. That is all right.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona has the floor. The Senator from Arizona.

U.S.-RUSSIA RELATIONSHIP

Mr. MCCAIN. Mr. President, a creeping coup against the forces of democracy and market capitalism in Russia is threatening the foundation of the U.S.-Russia relationship and raising the specter of a new era of cold peace between Washington and Moscow. The new authoritarianism in Russia is more than a test of America's ability to defend universal values that have taken shallow root since the Soviet empire collapsed. It presents a fundamental challenge to American interests across Eurasia. The United States cannot enjoy a normal relationship, much less a partnership, with a country that increasingly appears to have more in common with its Soviet and czarist predecessors than with the modern state Vladimir Putin claims to aspire to build.

On October 25, masked Russian security agents from the FSB, the successor to the KGB, stormed Russian businessman Mikhail Khodorkovsky's private plane during a stop in Siberia. He now sits in prison awaiting trial, accused of tax evasion, fraud, forgery, and embezzlement. Russia's richest man, founder and chief executive of its most successful private company, a leader in incorporating Western principles of accounting and transparency into business practice, and a generous donor to charity, Khodorkovsky had committed what in the Kremlin's eyes is the worst crime of all: supporting the political opposition to President Putin. Such an alternative center of power could threaten the Kremlin's supreme political control.

Upon assuming power in 2000, President Putin announced a now-famous ultimatum to Russia's top business leaders, whose fortunes were made by acquiring control of Russian assets privatized at fire-sale prices in the 1990s. President Putin said to them: stay out of political life and keep your fortune, or risk it by engaging in political activity. Most of the oligarchs chose to remain quiet. Three did not. Business tycoons Boris Berezovsky and Vladimir Gusinsky were forced into exile as a result of their support for opposition political parties and free media. Mikhail Khodorkovsky actually attempted to exercise basic political freedoms guaranteed, in theory, for all Russians. He has been thrown into jail as a result.

Admittedly, Messrs. Gusinsky, Berezovsky, and Khodorkovsky may not provide to proponents of democracy and free markets in Russia the most laudable personal histories upon which to wage a resolute defense of our democratic principles. But failure to defend them would acknowledge exactly what the Kremlin cynically alleges: that they are being prosecuted because of the way they made their money. What has caused these three Russian tycoons to be singled out are their activities in support of opposition political parties and free media. In reality, a concerted campaign to clean up Russian politics and society would reach into every corner of the Kremlin and every boardroom in Russia, but that is not happening. For better or for worse, there is a consensus in Russian society that the past should remain in the past as Russia moves forward. If Russian business and government leaders are in fact going to be prosecuted for their conduct a decade ago, then perhaps the former KGB officer named Vladimir Putin who assisted Stasi leaders and Eric Honnecker in oppressing the German people should answer for his crimes.

Mikhail Khodorkovsky's arrest, like the politically motivated indictments of Berezovsky and Gusinsky, should be seen not as prosecution for financial dealings done a decade ago—which would implicate thousands of Russian businessmen and political figures—but as part of a larger contest between the forces of statist control and a liberal-oligarchic elite. Who wins will go a long way toward determining whether Russia reverts to the traditions of its czarist-imperial past or charts a new course as part of an integrating, liberal international order. The consequences of this struggle, for both the Russian people and the world, will be profound.

For the Russian people, President Putin's rule has been characterized by the dismantling of Russia's independent media, a fierce crackdown on the political opposition, and the prosecution of a bloody war against Chechnya's civilian population. The ascent of former KGB officers throughout Russia's ministries and in the Kremlin has enabled Putin to use the long arm of the state to crush internal dissent, silence opposing political voices, and subdue free media. During the first Chechen war, more Russians got their news from Vladimir Gusinsky's independent NTV than from state media. Today, there is almost no free media in Russia. Intimidation, coercion, assassination of journalists, and armed raids by the security services have put most independent media outlets out of business. Beatings and assassinations of journalists recall not the new Russia but the dark legacy of the Soviet past. Those independent media outlets that remain feel forced to practice the kind of self-censorship that characterized the Soviet Union. Today, most Russians who read newspapers or tune into television or radio hear only the voice of the Russian state—as they did under totalitarian rule.

In a land where financial support for opposition political parties comes largely from business, the arrest of Mikhail Khodorkovsky, like the indictments of Berezovsky and Gusinsky, sends a chillingly clear message to Russia's business community that their assets are safe only if they steer clear of politics. Putin himself made this same threat to the oligarchs in 2000; it is clear that his government is carrying it out, and that Khodorkovsky is the latest victim.

Political assassinations also demonstrate the risk of speaking out against state power. Earlier this year, State Duma deputy Sergei Yushenkov, who had been investigating potential connections between the 1999 Moscow apartment bombings and the start of the second Chechen war, was killed outside his Moscow apartment. State Duma deputy Yuri Shendoshokhtin, who had been looking into the role of the FSB in the Moscow bombings as well as a scandal surrounding the involvement of FSB officers in illegal trade, was also killed in mysterious circumstances. Both crimes remain unsolved. In today's Russia—as in Soviet Russia, as in czarist Russia—the state uses its power to suppress political dissent. The arrest of Mikhail Khodorkovsky fits in a long tradition of political arrest and persecution stretching across the vast dictatorial tundra of Russian history.

Under President Putin, Russian citizens in Chechnya have suffered crimes against humanity at the hands of Russian military forces. It was during Mr. Putin's tenure as Prime Minister in 1999 that he launched the Second Chechen War following the Moscow apartment bombings. There remain credible allegations that Russia's FSB had a hand in carrying out these attacks. Mr. Putin ascended to the presidency in 2000 by pointing a finger at the Chechens for committing these crimes, launching a new military campaign in Chechnya, and riding a frenzy of public anger into office. Since then, between 10 and 20,000 Chechen civilians have been killed and hundreds of thousands displaced by Russian security forces. At Putin's direction, the Kremlin recently stage-managed an ''election'' in Chechnya that put Moscow's hand-picked candidate in power. The principal voters were Russian conscripts forced to serve in Chechnya. Moscow has made no effort to address the political grievances of a population increasingly radicalized by the brutality of Russian rule. Yes, there are Chechen terrorists, but there are many Chechens who took up arms only after the atrocities committed by Russian forces serving first under Boris Yeltsin's and then Putin's orders.

In short, Mr. President, I am worried that what we are seeing in Mr. Putin's government is a continuation of 400 years of autocratic state control, and repression. Since the end of the Cold War, many Western observers have optimistically argued that the way Russia is governed has fundamentally changed. Sadly, this appears not to be true. Whether ruled by the czars, Stalin, Brezhnev, or Putin, the Russian state has remained supreme within Russian society. It seeks fundamentally to control society, not to answer to it. The people serve the government,

not the reverse. This is not the behavior of a modern European nation; it is a form of unenlightened despotism cloaked in the mantle of international respectability, which Russia derives principally from its relations with other great powers—particularly the United States.

The ascent of former KGB officers to positions of power throughout the structures of the Russian state underscores this trend. Apparently KGB veterans Igor Sechin and General Viktor Ivanov, both deputy chiefs of presidential administration in the Kremlin, masterminded the assault on Mr. Khodorkovsky. I would like to congratulate the KGB for arresting one of the most pro-Western business figures in Russia today—someone whose personal and corporate behavior, through charitable giving and adopting Western standards of business, have brought more credit to Russia in the last three years than anything the Russian government has done. Meanwhile, the FSB has been unable to solve the murder of leading independent journalists. It has failed to bring to justice any suspects in the murder of democratic politicians. It has not been able to identify a single case of corruption inside the Russian government. Not a single Russian has been held to account for committing crimes against humanity in the Soviet Gulag. The FSB can't do any of that—but it can arrest Mikhail Khodorkovsky. What brave men they must be to kick down the doors of a private airplane and arrest an unarmed man.

The FSB's dominance in the Russian Government has renewed the specter of the imperial temptation that has guided Russia's external relations for centuries. For too many of Russia's neighbors, it is like the old Beatles song: ''Back in the USSR.'' Under President Putin, Russia has refused to comply with the terms of the Treaty on Conventional Forces in Europe. Russian troops occupy parts of Georgia and Moldova. Russia has effectively annexed the Georgian province of Abkhazia, which it has occupied for a decade. Moscow has supported attempts to overthrow neighboring governments that appear too independent of Russia's embrace. Russian naval forces recently attempted to assert control in the channel connecting the Sea of Azov and the Black Sea from Ukraine. Russian secret services are credibly accused of meddling in elections in Azerbaijan and Georgia. Russian agents are working to bring Ukraine further into Moscow's orbit. Russian support sustains Europe's last dictatorship in Belarus. And Moscow has attempted to cynically manipulate Latvia's Russian minority and enforced its stranglehold on energy supplies into Latvia in order to squeeze the democratic, pro-American government in Riga.

Under President Putin, Russia has pursued a policy in its ''near abroad'' that would create an empire of influence and submission, if not outright control. On October 9, Russian Defense Minister Sergei Ivanov declared that Russia reserves the right to intervene militarily within the Commonwealth of Independent States in order to settle disputes that cannot be resolved through negotiation. At the same press conference, President Putin declared that the pipelines in Central Asia and the Caucasus carrying oil and natural gas to the West were built by the Soviet Union, and said it is Russia's prerogative to maintain them in order to protect its national interests, ''even those parts of the system that are beyond Russia's borders.'' In the runup to the war in Afghanistan, President Putin was given great credit for ''allowing'' the United States to use the military facilities and airspace of sovereign countries in Central Asia. But Russia has no more right to speak for these countries than we do. The Putin Doctrine, asserting a right to imperial intervention in Russia's ''near-abroad,'' coupled with the ascendancy of the FSB, recalls a discredited Russian imperial past whose victims number in the millions. Russia's assertion of political control over its neighbors speaks not to a modern vision of Russian reform and renewal, but appears to reflect a czarist impulse to dominate neighboring populations. It is the international dimension of rising state control at home.

The dramatic deterioration of democracy in Russia calls into question the fundamental premises of our Russia policy since 1991. American leaders must adapt U.S. policy to the realities of a Russian Government that may be trending towards neo-imperialism abroad and authoritarian control at home. It is time to face unpleasant facts about Russia. Russia is moving in the wrong direction—rapidly. While the United States undertakes a necessary and comprehensive review of our policy, I believe Russia's privileged access to critical Euro-Atlantic institutions should be suspended. This access was obtained with the understanding that President Putin was committed to free markets, the rule of law, pluralist democracy, journalistic freedom, and the lawful constraint of the intelligence and security services. These now appear to be false premises.

The Russian Government is not behaving in a manner that qualifies it to belong in the club of industrialized democracies. The United States is hosting the next G–8 Summit at King Island, Georgia, in June 2004. Russia has been invited to participate and has been working its way in, but President Putin's conduct at home and abroad has worked Russia out. Putin's Russia should have no place at the next G–8 Summit.

Congress should not consider the repeal of the Jackson-Vanik amendment for Russia. It would be incomprehensible to consider easing a law created in response to Soviet repression when the Russian Government is continuing a similar pattern of behavior. I will oppose any effort to repeal Jackson-Vanik as long as Russia is moving in the wrong direction.

To any American businesses contemplating investment in or trade with Russia, I would simply say that this is not a place where the rule of law and Western codes of conduct prevail. You invest at your peril. Many Members of Congress have heard from U.S. businessmen who have lost money in Russia due to the absence of the rule of law. The American business community should consider itself warned: the Kremlin's recent behavior is a clear signal that your investments are not safe. I call on my own Government, including the Export-Import Bank and the Overseas Private Investment Corporation, to cease all guarantees of investment in Russia due to the unacceptable risk of state interference and expropriation, as demonstrated by the Russian Government's actions. American taxpayer dollars should not be used to subsidize U.S. investment in Russia as long as the rule of the FSB prevails over the rule of law.

Clearly, in personal meetings, the President of Russia attempts to reassure the President of the United States that he is a fellow democrat. An accumulation of evidence forces me to draw the opposite conclusion. I hope I am wrong, but I am increasingly concerned that in Mr. Putin's soul is the continuity of 400 years of Russian oppression. Under President Putin's leadership, Russia looks to the West for prosperity, technology, and modernity, but seems to be striving in every way to keep the values of the West out of Russia. Far from having a vision for Russia in which democracy and freedom and the rule of law thrive, I fear President Putin may have a vision for Russia in which the capricious power of the police at home, and the menacing weight of subversion and intimidation abroad, guide the state. Administration policy must recognize the cold realities of Putin's Russia.

The responsibilities that follow from this are clear: it is time for a hard-headed and dispassionate reconsideration of American policy in response to the resurgence of authoritarian forces in Moscow. It is time to send a signal to President Putin's government that undemocratic behavior will exclude Russia from the company of Western democracies. The wholesale suppression of free media and political opposition cannot be ignored. American policy must reflect the sobering conclusion that a Russian Government which does not share our most basic values cannot be a friend or partner and risks defining itself, through its own behavior, as an adversary.

Mr. President, I thank the forbearance of my colleagues. I yield back the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). Under the previous order, the Senator from Illinois is recognized for 15 minutes.

Mr. DURBIN. Thank you, Mr. President. I appreciate the indulgence of Chairman SHELBY and Senator SARBANES for this opportunity.

Mr. SARBANES. Will the Senator yield to me for just 30 seconds?

Mr. DURBIN. Yes.

Mr. SARBANES. Mr. President, we are having two major statements on unrelated issues. We have an amendment pending. We are trying to work through these amendments. We think there is an opportunity to dispatch them in good order. So I certainly encourage people who want to speak on the pending Feinstein amendment to come to the floor so they can be heard and we can complete that debate and then move to a vote on or in relationship to that amendment and then follow on with the other amendments and move this bill toward completion.

I know there is no one in the Chamber wishing to speak now, and we certainly think the Senator from Illinois ought to be able to offer his statement, so this is not directed at him. I want to certainly assure him of that. But as we proceed, thereafter, if we could follow along, I think it would be very helpful.

The PRESIDING OFFICER. The Senator from Illinois.

HONORING AND PROTECTING OUR ARMED FORCES

Mr. DURBIN. Mr. President, America's burden in Iraq grew heavier over the last 7 days. In that period of time, 27 American servicemen were killed and 35 wounded. We were awakened to newspaper headlines on Monday morning of: ''U.S. Copter Hit, With 16 Dead.''

On Sunday, I received the sad news that the National Guard helicopter which was downed was attached to the 82nd Airborne Division and piloted by 1LT Brian Slavenas from Genoa, IL. It was shot down by a surface-to-air missile near Falluja in Iraq.

Press accounts report that the missile was likely a heat-seeking missile because it hit the engine, but, thankfully, it did not explode. The helicopter went out of control, and First Lieutenant Slavenas clearly did the best he could at crash-landing the crippled aircraft. Quite possibly he saved the lives of those who survived. Sadly, he did not.

This morning, I called the Slavenas family expressing my sympathy for the loss of their son. I have read the press accounts about his short but eventful and full life and the love which his family and so many others had for him.

This morning I heard interviews on National Public Radio of his friends talking about a great young man—this 30-year-old helicopter pilot. He had just graduated from college a few months ago. He enlisted in the Army right after high school and, having completed that stint, he enlisted in the National Guard and went to officer training school and he became a helicopter pilot. He earned a degree in engineering from the University of Illinois. Although Brian stood 6 feet 5 inches tall, he was a gentle giant. He was an accomplished pianist. His brother Marcus said, ''He was very generous, very patient with people. I just loved being with him. He was my favorite person in the whole world.''

I ask unanimous consent that these articles of tribute to Brian Slavenas be printed in the RECORD.

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

[From the Chicago Sun-Times]

(By Dave McKinney)

His brothers and his father served in the military, but when 1st Lt. Brian Slavenas was called to active duty earlier this year, his family tried to discourage him from shipping out. He could have resigned his commission in the Illinois Army National Guard and skipped the deployment that carried his aviation unit to Iraq, Despite his family's concerns, the 30-year-old helicopter pilot who had graduated from college a few months earlier decided it was his duty to go overseas with his outfit. On Monday, relatives gathered at the family home in the tiny farm town of Genoa to mourn his death spoke with pride—and some regret—about his decision to continue a family tradition of military service.

Brian Slavenas died Sunday when his CH–47 Chinook helicopter was shot down by shoulder-fired missiles in a attack that killed 16 U.S. soldiers. ''We know he didn't have to be there. But he chose to go and to serve his country,'' said his oldest brother, Eric Slavenas, 39 a U.S. Army veteran who participated in the invasion of Grenada in 1983. ''I miss him. I wish he were still here,'' Eric added. ''But I'm not going to go against his decision. I back him 100 percent.''

Brian wasn't eager to go to Iraq when he left in April, other family members said. He had completed study at the University of Illinois at Urbana-Champaign in December with an engineering degree and was eager to get on with his career. Still, he felt obligated to go overseas with his unit. ''He wasn't keen on the idea but he said, 'Once you're in, you can't cop out,''' said his dad, Ronald Slavenas, a former Army paratrooper who later served for a time with Brian in the same Illinois National Guard unit.

DRAWN BY HISTORY, ADVENTURE

During his time overseas, Brian's letters, calls and e-mails home were usually upbeat and often funny, his family said. Brian liked the adventure of being overseas in such an exotic location, Eric said, recalling that in one letter Brian described how he sipped a glass of Tang as he flew over the ancient ruins of Babylon. ''He enjoyed the sights he saw, being in such a historic part of the world,'' Eric said. ''He knew it was dangerous, but it was more of an adventure for him.'' At times, Brian talked of possibly staying in the military as a career, in part because he loved flying. ''I think during the war, he got gung-ho about what he was doing,'' said his brother, Marcus Slavenas, a 33-year-old former U.S. Marine who served in Operation Desert Storm.

Brian had already served a stint in the Army, joining after he graduated from DeKalb High School, where he played drums and threw the discus. After finishing active duty, he joined the National Guard, then went to officer school and became a helicopter pilot. Along the way, he also obtained a private pilot's license and earned his degree from the U. of I. Although he stood a towering 6 foot 5 inches tall, Brian was a ''gentle giant,'' according to his father. He was an accomplished pianist and dedicated weight lifter who could get along with just about anyone, his brother said. ''He was very generous, very patient with people,'' Marcus said, adding, ''I just loved being with him. He was my favorite person in the whole world.''

Besides his two brothers and father, he is survived by his mother, a stepmother, a stepbrother and stepsister.

MAY HAVE SAVED LIVES

Brian, a member of the Peoria-based 106th Aviation Unit, was activated in February and had been serving in Iraq since April, said Brig. Gen. Randal Thomas, adjutant general of the Illinois National Guard. He had been certified to fly the CH–47 Chinook helicopter since 2002 and was flying at 150 mph at about 200 feet off the ground when it was shot down near Fallujah, Iraq. Thomas told reporters in Springfield.

''We're thankful that a number of individuals survived that crash. It would be speculative to say the pilot did his job and got that aircraft down and saved lives, but I'd sure like to believe that,'' Thomas said.

The Slavenas brothers say they're upset the Army wasn't taking more precautions to protect the slow-moving Chinook helicopters from missile attacks like the one that killed Brian. Since the attack, the military has banned Chinook flights during the day because the choppers are too vulnerable. ''I support our military. The only thing I question is the tactics that were used in this situation,'' Eric said. ''Someone should have had enough foresight to see ahead that a lumbering aircraft that only flies 180 miles an hour makes a good target.''

Saying he ''just didn't believe this was our war,'' Marcus isn't sure the conflict was worth his younger brother's life. ''Personally, I wish these people in Iraq well, but I don't care about them like I do about my brother,'' he said. ''I think maybe I would like to see American military used to defend America and not police the entire world.''

And he regrets not trying harder to keep his brother from going to Iraq.

''We all very strongly encouraged him not to go,'' Marcus said. ''In retrospect, I'm going to kick myself—I wish I would have tried harder.

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[From American Morning (CNN), Nov. 4, 2003]

INTERVIEW WITH FAMILY OF DOWNED HELICOPTER PILOT

SOLEDAD O'BRIEN, (CNN Anchor). There was more violence in Iraq this morning. Another soldier was killed, the second in as many days. The soldier was killed after an improvised explosive device, or an IED, exploded in Baghdad. Another U.S. soldier was wounded in that blast.

The attacks followed Sunday's downing of a U.S. helicopter near Fallujah, the deadliest single attack on U.S. forces since the invasion. According to eyewitnesses, the second of two shoulder-launched missiles hit the CH–47 Chinook, as it flew just a few hundred feet above the ground. The missile struck the rear engine and started a chain reaction that caused the helicopter to crash.

Most of the soldiers were heading out to begin a two-week leave when the chopper was shot down. Sixteen soldiers were killed, and among them was the pilot, First Lieutenant Brian Slavenas, a member of the National Guard from Peoria, Illinois.

A little earlier today, I spoke to his family about their loss.

Mr. Slavenas, if I can begin with you. Brian actually could have avoided deployment, but he chose not to. Tell me why.

RONALD SLAVENAS (Father of Chinook Pilot). Well, that's the kind of person he is. He's a responsible person, and he took on something and he brought it to completion. That's the nature of Brian. He may not like the idea, but he followed it through, and I've got to do it, and he did it.

O'BRIEN. I read that he felt obliged to serve his country. He was a helicopter pilot in the National Guard.

Marcus, why don't you tell me a little bit about your brother, the person, not necessarily the military man?

MARCUS SLAVENAS, (Brother of Chinook Pilot). Not just because he was my brother, but he was really one of the best people I've ever known. Very clean living, very dedicated to what he did. If he decided to do something he did it. He focused on it and did it until he was excellent at it. He was very kind to people. He was a good person. It was not based on some rules. It wasn't based on religion. It's just the way he was. He cared about those around him and tried hard always to do his best.

O'BRIEN. Tell me—I know that he recently finished school. He'd gone to school for engineering. Give me a sense of what his plans were and his dreams were further down the road.

UNIDENTIFIED MALE. Well, we felt that Brian was probably going to get out of the military and pursue a career in engineering. He had a very promising career ahead of him. He did well in his field. I know there were a lot of companies that wanted to interview him. So, we were hoping and we all felt that he was going to continue on with the engineering.

O'BRIEN. Mr. Slavenas, when you first saw the reports—I have to imagine you saw the reports before you heard the news that it was Brian who was actually piloting this chopper. What was your reaction to this? And I've got to ask you, did you think after a certain amount of time that it was indeed your son who was among the lost?

R. SLAVENAS. Well, it crossed my mind. I thought he was further west of the area of where it happened, but he's been flying around all over Iraq, I guess, to Kuwait and back and forth. The Chinook is like a shuttle service for different units. He was flying support for different outfits. The last one for the 3rd Armored Calvary, and I thought he was further west. So, that was my kind of hope that maybe that wasn't Brian, but then later on we found the news that it was Brian, actually.

O'BRIEN. You served in the military, sir, and your three sons all served in the military as well. What are your thoughts about the U.S. involvement in Iraq and the occupation of Iraq right now?

R. SLAVENAS. Well, now that we're in, we have to stay the course. We just can't pull out. If we pull out, we'll have pandemonium. They have so many different factions in Iraq—the Sunnis, the Shiites, the Kurds, and what have you. And if we pull out now without stabilizing the situation, we'll have, as I said before, pandemonium. It would be a revolution. That's my feeling.

So, we have to keep a stabilizing cap over it and hopefully getting more help from other nations and other sources.

O'BRIEN. Marcus, you served in the military as well, and I know you have strong opinions on this.

M. SLAVENS. Yes.

O'BRIEN. What's your take on U.S. involvement in Iraq right now?

M. SLAVENAS. I don't believe we need to be there. I wish the Iraqis well, and I hope they can figure out their problems, but I don't want this to happen at the expense of our boys. I would like to see them come home. And as far as the troops go, while they're still there, I'm fully behind them. Fight as hard as you can. Destroy the enemy and keep yourselves alive and come back home. But as far as the government is concerned, please try to get out of that business and bring them back home as soon as possible.

[From the Chicago Tribune, Nov. 4, 2003]

FOR FAMILIES, SAD NEWS HITS HOME

(By Russell Working and Angela Rozas)

One soldier was going to visit his wife and three children, the youngest of whom he had never met. Another was on his way home to attend his mother's funeral. A third wanted to surprise her family in California with a two-week visit.

On Monday, the Department of Defense began releasing the names of the 16 soldiers killed when a transport helicopter was shot down in Iraq, marking the single largest loss of service members in that country since major combat ended in the spring. Another 20 soldiers were injured. Many of the dead had been heading home for vacation or emergency leave. Around the country, families that had been anticipating happy reunions instead were stunned by unexpected loss. As of Monday evening, 377 U.S. service members had died since military action began in Iraq. In that time, more than 1,836 have been injured as a result of hostile action.

Among those killed Sunday in the crash was 1st Lt. Brian Slavenas, 30, an Illinois Air National Guard pilot from Genoa who was one of two pilots on the twin-rotor CH–46 Chinook that was shot down Sunday. Four crewmembers, also National Guardsmen, were from Iowa. They were injured, but survived the crash, said Illinois National Guard spokeswoman Lt. Col. Alicia Tate-Nadeau. One of the Iowans was the senior pilot of the aircraft, but it was unclear whether he or Slavenas was flying the Chinook when it crashed, she said. Some 120 members of Slavenas' unit, the Peoria-based F Company of the 106th Aviation Battalion, are now deployed in Central Iraq. Another 85 Guard soldiers are deployed from an aviation unit housed in Davenport, Iowa.

Slavenas was a dedicated student who followed his father and two older brothers into the military. He was so unassuming it took him a week to tell his family he had recently been promoted to first lieutenant, said his father, Ronald Slavenas. His unit arrived in the Persian Gulf in mid-April, and had been based in Balad, Iraq, since July 22, said Chief Warrant Officer Ty Simmons, operations officer for the company. On Monday, they were grieving Slavenas' death and hoping for the recovery of the helicopter's crew, he said.

The crews spend their days flying over central Iraq, a dusty desert region better known as the Sunni triangle, where they move everything from Humvees and generators to drinking water and soldiers on leave. During missions, they fly fast and low, seeking to make themselves a more difficult target as they navigate dust clouds, high-tension electric lines and tan-colored towers that blend into the background of the desert, Simmons said.

Brian Salvenas deployed with the unit to the Middle East in March. Four months earlier, he had received a bachelor's degree in industrial engineering from the University of Illinois, said his mother, Rosemarie Dietz Slavenas, who lives in Rockford. He studied piano in high school and ''played beautiful, beautiful Chopin nocturnes,'' his mother said.

On Sunday, Ronald Slavenas thought of his son as he listened to reports of a helicopter crash in Iraq, and watched through the front curtain as a uniformed man arrived on the doorstep of his two-story brick home in Genoa. ''My heart sank,'' he said. ''I opened the door and said 'He's dead, right?' ''

On Monday, an American flag hung in the rain from the second floor of his house. ''Brian was just a real perfectionist,'' said Slavenas' brother Eric, 39. ''He wasn't a gung-ho, go-to-war kind of guy.''

Mr. DURBIN. Mr. President, there is another very important issue that is associated with this story. I have learned within the last 24 hours that all of the Chinook helicopters in the 106th unit, of which Mr. Slavenas was a part, consist of seven helicopters from the Illinois National Guard and seven from the Iowa National Guard. All of these helicopters do not have the aircraft survivability equipment required to protect them from the very threat that brought down this helicopter on Sunday.

This is a recurring and troublesome issue. We have heard time and again about National Guard forces which are activated and then shortchanged when it comes to the best equipment. We expect the most updated equipment to be given to the units that are in the fight. We understand that Active Duty troops must receive what they need. But consider where we are in the war in Iraq. It is supposedly a complete and seamless integration of National Guard, Reserves, and Active Duty forces. We expect the National Guard, under these circumstances, to receive the necessary upgrades in the war theater.

These Chinook helicopters are supposed to be equipped with one or more protective systems, such as the ALQ–156 system, to detect surface-to-air missiles, along with an automatic flare dispenser as a countermeasure. They are also supposed to be equipped with seat armor to protect the pilot and crew.

What I have learned within the last 24 hours, from reliable military sources familiar with the situation on the ground in Iraq, is many of the Illinois and Iowa National Guard helicopters have flown for almost 6 months in the theater without the necessary aircraft survivability systems. Some of them have received systems, some partial systems, but only within the last week or two, many of the systems have been scavenged from departing Guard units from other States that are leaving Iraq. Many of the helicopters don't have seat armor. There are reports that the radios don't function properly. Reliable military sources have told me and my office about the level of protection for our helicopters in Iraq and what they tell me is unacceptable. They tell me of helicopters ill equipped to deal with the threat of shoulder-fired missiles; units scavenging equipment from helicopters leaving the theater to secure the protective gear they need. They report on helicopters flying without seat armor to protect the pilot and crew, and of helicopters flying without equipment designed to protect them from known infrared missile threats; Guard units scrambling to find the parts necessary to equip their craft with protective gear. Is this how we equip our men and women who are called to active duty?

Today I am asking Secretary Rumsfeld to see to it the helicopters in the theater are provided with the aircraft survivability equipment necessary to meet the expected threat. If that equipment is not available, I believe Secretary Rumsfeld should protect those

units until they are properly equipped or reassess when and where they will fly.

I ask unanimous consent that this letter I am sending to Secretary Rumsfeld be printed in the RECORD.

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

DEAR MR. SECRETARY: We are concerned about reports that the CH–47 National Guard helicopters attached to the 82nd Airborne Division, the unit which included the helicopter shot down by a surface-to-air missile in Iraq on Sunday, may not have had necessary or fully complete aircraft survivability equipment. As you know, 16 military personnel died in that attack, including the pilot, First Lieutenant Brian D. Slavenas, from Genoa, Illinois. The helicopter was from the Iowa National Guard.

We understand that, while Guard units that are activated may leave the United States without all the necessary equipment, they are to be upgraded in theater. Sources tell us that a number of the helicopters in the unit in question were flying in Iraq for almost six months without necessary equipment, and were only recently provided aircraft survivability equipment, some of which was not complete. Some may still be lacking this equipment.

First, we ask that you immediately ensure that the helicopters in theater are provided with the aircraft survivability equipment necessary to meet the expected threat. If that equipment is not available, you should protect those units until they are properly equipped, or re-assess when and where they will fly.

We ask that you investigate, and respond as soon as possible, whether the helicopter that was shot down on Sunday had on board a fully-operational ALQ–156 system with an automatic flare dispenser and whether it had seat armor; whether all of the helicopters in this unit are fully equipped at this time and the precautions being taken to protect the crews and passengers of those not properly equipped. The same questions need to be asked regarding all activated Guard and Reserve helicopter and fixed-wing units.

We understand that the ALQ–156 is intended to protect against the expected threat from some surface-to-air missiles, but may not be as effective against other missiles. Is the ALQ–156 adequate for the expected threat in Iraq? If not, we would like to know when the helicopters will receive the upgraded equipment and your assessment of the risk to military personnel of flying without such upgraded equipment.

I appreciate your prompt response to this inquiry.

Yours truly,

RICHARD J. DURBIN
U.S. Senator.

Mr. DURBIN. Mr. President, I am also calling on Secretary Rumsfeld to investigate and respond as quickly as possible on whether the helicopter that was shot down on Sunday had on board a fully operational ALQ–156 system with an automatic flare dispenser and whether it had seat armor. I also believe we need to know the status of the other helicopters in this unit in reference to protective equipment, and what steps are being taken to protect the crews and passengers in those that are not properly equipped. I understand the ALQ–156 system is intended to protect against the expected threat from surface-to-air missiles, but may not be effective against other missiles in the theater.

I am also asking the Secretary if that ALQ–156 is adequate for the expected threat in Iraq. If not, I would like to know when the helicopters will receive the upgraded equipment and his assessment of the risk to military personnel of flying without such upgraded equipment.

I find the reports I am receiving from military sources about the lack of protective equipment on these helicopters to be alarming and unacceptable. We know what a dangerous environment Iraq is. The threats from surface-to-air missiles were well known even before this tragic crash. The helicopter that was shot down was not on a mission directed against regime remnants or terrorists. It was transporting soldiers to the airport in Baghdad so they could leave for R&R.

We will not know for sure how it was shot down or how it was equipped until the investigation is completed. This tragedy highlights the fact that protective equipment cannot only be reserved for missions in the fight. Every mission is in the fight in Iraq today.

The Senate passed the Iraq supplemental appropriations conference report yesterday with more than $87 billion for equipment for our troops in Iraq. If the funds are not adequate to protect our troops and aircraft, the Congress must be advised immediately. If there is a shortage of equipment, we must act immediately to secure it.

The dangers of war are well documented. Every soldier, sailor, marine, and airman should know this Government has done everything in its power to protect them, keep them safe, and give them everything they need so they can complete their mission and come home safely.

We have given this administration every dollar for which they have asked. Now they must give our soldiers what they need to be safe and successful—the protective gear and body armor they need—as they work on the ground among dangerous situations. Armor is needed for the Humvees to protect them from rocket-propelled grenades, and they need state-of-the-art equipment to protect our helicopters from shoulder-fired missiles.

I call upon the Secretary to address these shortages immediately and to investigate fully whether the helicopter that was shot down and all of the helicopters in Iraq are adequately protected. We owe this to our men and women in uniform and to their families who pray for their safe return.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, does the Senator from Colorado wish to speak?

Mr. ALLARD. Yes.

Mr. SARBANES. Before the Senator begins, I want to renew the call we made a few minutes ago. I know the chairman agrees with me in doing this. To those who want to speak on the pending amendment, we hope you will come to the floor and do so. We hope others who have amendments they want to offer will be prepared, once we dispose of the current amendment, to present their amendments so we can move along.

There is a possibility I think we can finish this bill in good order. I know that is what everyone would like to accomplish. I know Chairman SHELBY is anxious to, on the one hand, move things along and, on the other hand, ensure people have an opportunity to address these matters. In order for them to do that, we need them to come to the floor, so we are putting out that call.

Mr. REID. Will the distinguished Senator from Maryland yield for a question?

Mr. SARBANES. I am happy to yield to the distinguished leader for a question.

Mr. REID. My concern with this legislation is not as much the legislation itself as it is that Thanksgiving is coming soon. We don't have the luxury of waiting for days. This legislation could take days with the order that is now in effect in the Senate. We have more than 20 amendments. If we take several hours on each amendment, we are not going to finish this week. I ask that those people—Senator FEINSTEIN was here and she has indicated on her next two amendments she would take a half hour on each.

I ask the floor staff, when they have an opportunity, we probably should probably get two amendments locked in so we have at least time limits on those two. I know Senator BOXER has some amendments. If we could ask those Senators to come forward and agree to time limits on them, that makes it much easier for the two managers to manage the bill. I am quite confident that if the two leaders see the work on this bill is not going very quickly, it will be an awfully late night tonight because I know there are many things the two leaders want to finish on Thursday and Friday. I think there was some expectation and hope the bill would be completed by tomorrow.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the chairman of the Banking Committee and the ranking member for giving me the opportunity to speak on the bill. To accommodate them, if individuals come to the floor willing to offer an amendment, signal me and I will clear the floor and give them an opportunity to offer their amendment. I agree with their goal of getting us out of here quickly and getting the work done. If someone has an amendment, I do not want to hold up the process.

I rise in support of S. 1753, commonly referred to as the National Consumer Credit Reporting System Improvement Act of 2003. I was pleased to support the bill as a member of the Banking Committee, and I am sure it will receive

strong support on the Senate floor as well.

I would like to thank Chairman SHELBY and his staff for their hard work. This is a balanced, sensible bill and clearly a product of their willingness to listen to all interested parties. Chairman SHELBY compiled an extensive hearing record and provided a comprehensive foundation for crafting this legislation.

He crafted a bill that provides a balanced approach to the concerns expressed during the hearings and provides significant improvement, I believe, to the Fair Credit Reporting Act. I thank him for working so closely with committee members to ensure that our concerns were addressed in this bill.

I would also like to acknowledge the efforts of the ranking member, Senator SARBANES, and his staff. As I mentioned, this bill received strong bipartisan support in committee, and this is certainly due in part to the diligence of Senator SARBANES. His effort and his support have made this a stronger and better bill.

Reauthorization of the Fair Credit Reporting Act is vital to the functioning of our Nation's credit markets. I think that goes without saying. Without the FCRA, credit would cost more or, in many cases, simply would not be available to consumers.

S. 1753 ensures that the markets will continue functioning smoothly by permanently reauthorizing the Fair Credit Reporting Act. As a former State legislator and a strong champion of States rights, I do not take Federal preemption lightly. In fact, I have a very high threshold for Federal preemption. I believe, though, that FCRA meets the necessary standard. The credit markets truly are national, and a patchwork approach to credit reporting will quickly disintegrate the necessary comprehensive approach we need.

When it comes to credit reports, accuracy is in the best interests of both industry and consumers. I believe this bill will help improve accuracy in credit reports. Consumers will have increased access to their credit information and increased tools to combat identity theft.

The framework provided in the bill provides sufficient flexibility for the act to adapt with time and changes in technology. I am especially pleased that S. 1753 includes a bill I have worked on with Senator SCHUMER referred to as the Consumer Credit Score Disclosure Act of 2003. This provision would allow consumers applying for a mortgage to receive a copy of their credit score. Credit scores are increasingly being used in deciding whether to extend credit. Yet consumers do not always have access to this information.

What I found out about credit scores and heard in reports back from my constituents about things that affect their credit was that few of them realize that the number of times you apply for a credit card, for example, could impact your credit. It does when you look at the credit score.

I always figure as long as you paid your bills on time or your credit cards on time and the more credit cards you had and paid them on time, it just showed what a better job you were doing in managing your finances and would actually enhance your ability to get loans. That is not true. If you got carried away and decided to apply for every credit card you received in the mail, you could actually adversely impact your credit rating, particularly as it applies through the credit score.

This provision contained in S. 1753 would ensure that consumers would receive the critical information when applying for a mortgage, which is generally the largest purchase a person will make during their lifetime.

In addition to their actual numerical score, the consumer will be entitled to receive information concerning the factors that helped determine their score, as well as ways in which they can improve their score. This provision will empower consumers to shop around and help prevent them from becoming victims of predatory lending.

I believe expanding access to credit scores is an important victory for consumers, and I am pleased it has been included in the bill we are considering today. I am hopeful this will be the first step toward giving consumers even broader access to credit scores.

As chairman of the Housing Subcommittee, I would also like to make a few comments on the impact, the importance of the Fair Credit Reporting Act as part of the home buying process. Because FCRA gives lenders access to more accurate and more complete credit information, they are able to more accurately price risk. This is important because for most people, a home is the largest purchase they will make. The ability to accurately price the risk as reflected in mortgage rates can make the difference of thousands and thousands of dollars over the life of the mortgage.

The availability of credit information stemming from the FCRA has reduced the cost of home ownership for many and opened up previously unavailable opportunities to others. In fact, home ownership rates are currently at record highs. Permanent reauthorization of the Fair Credit Reporting Act will help us continue on that path. This is especially important as we work to expand the minority home ownership rates as minorities are disproportionately impacted when credit becomes less available.

The Fair Credit Reporting Act has been beneficial to consumers, and the improvements contained in S. 1753 will extend those benefits. I am pleased to add my voice to those in support of the bill, and I encourage my colleagues to join me in voting for the National Consumer Credit Reporting System Improvement Act of 2003.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 2054

Mr. JOHNSON. Mr. President, I wish to express my great high regard and respect for my colleague from California, Senator FEINSTEIN, but I must rise in opposition to the amendment she offered earlier this afternoon.

I think it is important for us to keep in mind that the Fair Credit Reporting Act provided for a national preemption going back to 1996. It has been an extraordinary success story for America's consumers, particularly America's middle class and working families who previously suffered the most from a lack of access to credit but now find themselves having access to credit never before imagined and having it done in an instant fashion.

The legislation before us is an enormously complex piece of legislation. It takes the 1996 preemption and builds on it, and strengthens consumer rights beyond anything we have ever known before. Chairman SHELBY and ranking member SARBANES deserve great credit for what they have been able to do. They put together a bill that had a unanimous vote out of the Senate Banking Committee—no easy feat, we all know.

To now on the floor of the Senate introduce a very complicated and, some would suggest, improperly drafted amendment only serves to slow the process and, in fact, perhaps even to jeopardize passage of the reauthorization of the Fair Credit Reporting Act, something that must be done before the first of the year, otherwise, the consequences would be catastrophic not only to the business community and to our economy but to American consumers who would be the biggest losers of all if we were unable to pass legislation because of the additional burden put on it by the Feinstein amendment.

I wish to very briefly touch on some problems that this amendment poses. The amendment being offered is different from and far more unworkable than the affiliate sharing restriction in the California legislation, and I will comment on why this is so.

First, the amendment being offered is much broader in scope than the California bill. Despite claims that they fixed the overly broad scope because of drafting errors, that simply is not the case. Unlike the California amendment SB–1, which applies specifically to financial institutions, this amendment applies to any institution that has affiliates, including retailers, manufacturers, nonprofits, labor unions, churches, universities—basically, every type of organization in the country that shares certain consumer report information.

Yet the most important exception by this amendment being offered is provided only to financial institutions. Clearly, the drafters of the amendment have spent a lot of time on the California bill, perhaps more so than on the FCRA, because there does not seem to be the full appreciation of the breadth of the very statute they are amending.

The Feinstein amendment provides exceptions to certain institutions based on their functional regulator, a concept we defined in Gramm-Leach-Bliley in the Banking Committee and which is specifically defined in this amendment. It is limited to financial institutions such as banks, securities firms, and insurance companies.

This means while financial institutions can qualify for what proponents refer to as the ''silo'' exception, other covered businesses cannot. I assume this is probably a drafting oversight, but it simply reinforces my concern that this amendment has not been fully vetted by the Banking Committee or by any other presence in the Congress. I doubt very seriously that the sponsors are trying to give large financial institutions a competitive advantage, but that is one of the consequences of the amendment that has been offered.

The FCRA has a sweeping scope by design. Congress believed and still believes that sensitive information bearing on credit, employment, or insurance risk, no matter who is using it, should be protected. That is why the FCRA is by no means limited to financial institutions, and should not be.

The amendment being offered backtracks on the final version of the California legislation with respect to the so-called common database exception that was an integral part of the deal.

The amendment contains the original, unnegotiated version of the common database exception, which was widely understood to be unadministratable. This provision, which was intended to assure companies with large information databases that they would not have to undergo major systems revisions, fails to accomplish that goal.

The final version of the database exception prohibited information from a common database to be further disclosed or used by an affiliate. The amendment before us this afternoon prohibits not only disclosure or use but even access itself.

What is the point of a common database if it cannot be accessed? I understand that the California bill has come under fire recently for including what some view as a giant loophole of the common database exception, and I share Senator FEINSTEIN's concern about the loophole but it is not right to make a major change to a central provision and continue to claim that this amendment mirrors SB–1, the California legislation.

Even if all the California exceptions were added, the amendment would still be far less workable than the affiliate sharing provision in the unanimously adopted Senate Banking Committee bill.

With all the California exceptions, the only sharing not permitted would be affiliate sharing used for solicitation and marketing purposes.

It is simply not true, as some have suggested, that the California opt-out applies to information shared for a broad range of purposes other than marketing and solicitation. But if sharing for solicitation is all that is subject to the California opt-out, then why not use the far more straightforward approach of the bipartisan Banking Committee bill? That is, why not target the opt-out only to solicitations of noncustomers made possible by affiliate sharing?

As the Banking Committee has recognized, and as the Senator from California has pointed out many times during today's debate, the real consumer concern is getting bombarded by advertisements from unfamiliar companies. We all sympathize with that. The bipartisan committee bill addresses this concern head on with its targeted, focused provision on affiliate sharing, while the pending amendment, even if it added all of California's numerous exceptions, which it does not, is far more cumbersome and overreaching on its face. In fact, the committee bill gives consumers far more control. S. 1753 allows consumers to opt out of all marketing from any affiliate. The pending amendment does not do that.

For example, the California silo exception strips away consumer control over information shared by affiliates in the same line of business. By contrast, we believe consumers should not have to be bombarded by marketing materials just because they have chosen to do business with a large financial institution.

Sharing of information among affiliate entities has a significant impact on the cost and availability of credit in ways that are not always apparent to consumers. This is a critical point that I believe has been lost in the course of this debate.

Former Treasury Secretary Robert Rubin testified back in 1997, for example, that consumers could expect ultimate savings of as much as $15 billion per year from the increased efficiencies that affiliation provides.

Treasury Secretary John Snow recently testified that affiliate information sharing serves a critical purpose in the war on identity theft.

FDIC Chairman Don Powell has noted that access to credit and the cost of credit is far more favorable in the United States than in other parts of the world due, in large part, to the relative ease of information sharing between potential credit customers and potential lenders.

Finally, Federal Reserve Chairman Alan Greenspan has noted that information sharing has had ''a dramatic impact on consumers and households and their access to credit in this country at reasonable rates.''

The Senate bill ably balances the legitimate concerns of consumers against the substantial benefits that information sharing brings to this economy and to all consumers. As Chairman SHELBY and ranking member SARBANES have noted, this is an enormously complicated area of law, and the committee took great care to guard against unintended consequences, spent literally months on the drafting and formulation of this legislation.

Make no mistake, it is hard to imagine that what we are doing here today is the last word on privacy. Our constituents will continue, rightfully so, to demand that we review our current laws as information technology develops. I believe we intend in a bipartisan fashion to do just that.

At this point in time, giving consumers the right to opt out of marketing, with no exceptions, is the right rule for American consumers, while at the same time providing immediate and affordable access to credit to all of our consumers, regardless of their economic background, regardless of racial or other factors is something that I think this Senate can take great pride in and we can take great satisfaction in the quality of this bipartisan legislation.

I urge my colleagues on both sides of the aisle to mirror the bipartisan vote of the Senate Banking Committee and to support the FCRA reauthorization and oppose the Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. I have listened carefully to the comments of Senator FEINSTEIN earlier, and I will make a couple of important points in response to her amendment.

First, as a privacy advocate, I fully appreciate the interest and concern at hand. Indeed, both Senator SARBANES and I have been very sensitive and worked together a lot on privacy concerns. As we took up the Fair Credit Reporting Act, this was one of the key considerations we sought to balance, even as the law itself requires. We did this in what was a very comprehensive, transparent, and lengthy review of the law and issues at hand as we considered reauthorizing our national credit standard.

Second, the amendment of the Senator from California makes two basic assumptions which ultimately guide her amendment's approach and goal, as I understand it. No. 1, that there is something inherently nefarious about the use of affiliate structures; No. 2, that consumers have no rights or means to protect themselves with respect to the handling of their transaction and experience information.

I believe that our consideration in the Banking Committee would therefore be instructive in understanding the better approach adopted in our bill and why I intend to oppose the amendment of the Senator from California. To the first point: Why do affiliates exist? Companies establish affiliates for a variety of legal, tax, and accounting reasons—because laws require them to do it.

What do these structures mean for consumers? Some companies choose to create separate legal entities known as

separately capitalized affiliates. Other companies elect to locate all of their business lines in a single entity. Regardless of the structure that a firm employs, consumer information is generally used in the same fashion. Affiliates or the separate business line share it to service their customers, fight fraud, or develop new business. The affiliate sharing provisions contained in the Fair Credit Reporting Act exist to make it clear that companies should not suffer because they have chosen a particular corporate structure.

From the consumer's perspective, I believe there is no real difference between a company making an internal transfer of information among departments and sharing between affiliates. In fact, in many cases where affiliate sharing is occurring, most consumers would not recognize that the two parties are involved in the transfer. Rather, they would be under the impression that information is merely being moved within the single entity with whom they have chosen to do business.

Second, there are real rules and provisions governing the manner in which transaction and experience information is handled. First, we need to consider what exactly transaction and experience information is. Transaction and experience information involves checking and saving account balances, credit card balances and repayment history, mortgage balances and repayment history, and mortgage and brokerage account balances and transaction activity. In many instances, the information is the very information provided to the consumer reporting agencies where, as consumer report information, consumers are afforded significant rights under the Fair Credit Reporting Act.

More important, however, this is information that is routinely provided to consumers as required by separate laws and regulations. For example, the Truth in Lending Act, the Fair Credit Billing Act, the Truth in Savings Act, the Electronic Funds Transfer Act, provisions of the securities laws and the Uniform Commercial Code all provide consumers substantive rights with respect to transaction and experience information. These include disclosures and access rights and error resolution procedures.

I believe the bottom line is that consumers already have access to and rights concerning transaction experience information right now under the law. But at the end of the day, I believe the main concern I heard with affiliate sharing uses was the use for marketing purposes. At the end of the day, I believe that is all that is really left restricted, in some way, under California's approach after accounting for the exceptions and exemptions.

So after spending more than a year considering the law carefully in order to balance the needs of our national credit system, which we all believe is crucial to the operation and strength of our economy, with a need to protect consumers rights, the Banking Committee identified two key areas for increased Federal protection: The sharing of medical information and restricting affiliate sharing used for marketing purposes.

This bill does so in the context of the Fair Credit Reporting Act in a straightforward and narrowly tailored way and does not give preferential treatment to certain business models over others.

This brings us to a third and very important point. The Fair Credit Reporting Act deals with more than just financial institutions. The sponsors, as you know as a member of the Banking Committee, Mr. President, seek to impose a model that was tailored strictly for financial institutions to all furnishers of credit information, subject to the Fair Credit Reporting Act. This model is largely based on SB–1, the California Financial Services Law.

The amendment's sponsors have tried to graft a banking bill on to the Fair Credit Reporting Act. This effort, I believe, is misplaced, and this effort does not mesh with how the FCRA, the Fair Credit Reporting Act, works and to whom it applies. Gramm-Leach-Bliley made it permissible for California and all other States to pass legislation that regulates third party sharing activity. This bill would not affect those provisions in the California law that come because of Gramm-Leach-Bliley. With respect to the part of SB–1 that conflicts with the Fair Credit Reporting Act, the California law was preempted, making it unenforceable when it was enacted. This bill does not change or alter that fact in any way.

The irony is that, even if we were to assume these provisions were violated, California's attempt to overturn Federal law is actually weaker than the Senate bill. The California law, as I have heard here, as it is targeted at financial institutions, covers a much more limited range than the broader Fair Credit Reporting Act, which deals with information, not entities, and therefore includes retailers, auto dealers, mortgage providers—anyone who furnishes credit.

Furthermore, California's rule is eaten by its exceptions and its exemptions. Its provisions provide consumers with no real choices or meaningful protection. The Senate bill covers the areas that consumers care about—marketing and the sharing of medical information—by providing real protection. Unlike the Senate bill, the California law still exempts most of the largest financial service firms they claim the law is intended to address.

The Senate bill was carefully tailored to address key concerns in a more clear and a concise way. The Senate bill before us targets unwanted solicitations without otherwise preventing sharing activities that provide benefits to consumers. Unlike the California bill, the Senate bill is designed to protect consumer interests. The unenforceable portions of the California law were designed to promote a specific business model by hobbling others.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I rise in favor of the Feinstein-Boxer amendment, and I note that there are a number of others on that amendment as well. I hope colleagues will realize this amendment will make this bill better, will make this bill stronger, and I am going to take a few minutes to explain why in as simple a way as I can.

I stand here very proud that my State treasures privacy and they acted on that value. After years of struggle, California put into law the most tough financial privacy standard in the Nation.

Others can say oh, that is not true, and they can quibble, but the facts are the facts. Every consumer group that you ask, any group that is objective on the subject, will tell you that our law is the best and is far better—certainly than the House bill, and better than the bill that is before us today.

I do want to compliment my friend. You have made some good advances here. I will talk about that in my statement. But we can do better, and I offer this amendment with Senator FEINSTEIN in a very friendly way, in the hopes that maybe we can make this better.

The struggle to pass SB–1, California's financial privacy law, was very long and very transparent. I want to say that State Senator Jackie Speier did an unbelievable job. For 4 years, she worked with banks on behalf of the consumers. The industry invested more than $20 million in lobbying expenses and campaign contributions during those 4 years but eventually a wonderful thing happened. The banks came to the table and they negotiated with Senator Speier. The fact is, there was a reason. They saw the handwriting on the wall. They saw that there was going to be a State initiative. They had already gathered 550,000 signatures quickly and Senator Speier's provision for more strict privacy was supported in the polls. How about this? California Democrats in the polls supported this initiative by 96 percent; and California Republicans, 88 percent; Independents, 90 percent.

So Senator Speier had touched on a very important value of Californians. I really do believe if you took a poll today, just a really carefully worded one which went into every State in the Union, there would be support for this Feinstein-Boxer amendment to make this bill stronger.

I will explain it.

The committee went ahead and did some good things. It includes fraud alerts for consumers and protection for credit card numbers on receipts and free credit reports.

It is very important they say that you can't go outside and share the information with outside companies. That is great. I salute Senators SHELBY and SARBANES for that progress.

However, there is one major problem Senator FEINSTEIN and I are addressing in this amendment. We are saying, first of all, if a State wants to go further than you have, we ought to have that chance. Your bill ought to be a ceiling. All good wisdom doesn't reside here. We always like to think it does, but it doesn't.

A lot of our States are ahead of us, and they want to do more. Yet California finds itself left out because there is no preemption for our State. We know we are not going to get that. We have 35 million people in our State. We can't get an exemption. We understand that. We are simply asking you follow the lead of our State on this one because I think it is the fair thing to do.

Some people listening today might say, Well, the committee bill says you can't go outside and share information. But you can share it with your own affiliates that are in your little corporate family. What is wrong with that? That is a logical question until you look at the banking industry and look at how big these families can get.

Let us take a look at some of these families for which this bill would allow affiliate sharing.

Let us take a look at Citigroup. They are small? They have 1,630 affiliates.

Bank of America. How well I remember the proud history of that bank in my State. They have 1,323 affiliates.

JP Morgan, 967 affiliates; Wachovia Corporation, 886 affiliates; Wells Fargo, 671; Bank One, 253.

When you say to all of these people you cannot share information outside your family, you are in essence saying you can share it within your families. We are talking about thousands of affiliates that will get every bit of information about you and your financial transactions. My colleagues can stand up here from night until morning and argue with me on the point that we are wrong on this. I know we are right. This is the right thing to do to protect our constituents.

Let me show you Bank of America affiliates. I want to show it in a way that is pretty graphic. I will not read every one of their affiliates. I am going to truncate and do this quickly.

We have nine charts listing all of these. These are Bank of America banks: Commonwealth National Bank, First National Bank, National Bank of Howard County, and American State Bank. I can't even pronounce some of these. Bank of America Mexico; Finacero Bank of America. They will know your transactions. That is just the first Bank of America chart. Let us look at one other. We do have nine of these. I will go quickly.

Here is another one. Let us go to Bank of America insurance companies and look at who they own: First National Insurance Services, American Fidelity and Liberty, Bank of America Insurance Services, Inc., and Home Focus Services. I don't know what they do, but they will know what you do. General Fidelity Life. How about Boatman's Insurance Agency? You do business with any one of these and more than a thousand affiliates will know how much you earn, what your Social Security number is, how did you pay, if you missed a payment, what your likes and dislikes are.

Let us show a couple of others.

Bank of America and other affiliated companies: Oakland Trace Redevelopment, Holly Springs Meadows, LLC, East Nashville Housing. You go into a bank in California and East Nashville will know what you are worth.

Dallas-Ft. Worth Affordable Housing, Old Heritage New Homes, Texas Corporate Tax Credit Fund, and it goes on. Michigan, Osbourne Landing Limited, it goes on and on. West Wood Manor Development, Elk Ridge Apartments.

The point I am making—and I will show one last chart. We have 9 of these charts listing Bank of America's 1,600 affiliates, for anyone who really cares enough to examine each and every one of these affiliates.

Our point is we could go on and on and make our point with each and every chart, but I am going to spare my colleagues. They have worked long and hard already today. Here is the point: Do not share. That is a simple message. This Senate supported ''do not call.'' We said people deserve their privacy. If you don't want to get a call at night, you shouldn't have to get a call at night.

We are saying if you decide—and our amendment simply says you have to opt out automatically under this Feinstein-Boxer amendment—your information would be shared, you have to take an affirmative step and opt out. If you are a person who believes in your right to privacy, and you don't want some company over in The Netherlands to know what you are about, because there is one here—Bank of America Netherlands. How about Odessa Park? These are worldwide affiliates. We are very proud of Bank of America. Good for them. They have all of these affiliates. But not good for them if they start to share information.

Under the underlying bill, they can share all sorts of information with every one of these affiliates. Guess what. You get turned down for a loan, let us say, because of information that was shared among the affiliates. You have absolutely no right to know who told who what, where, and when. What if it was wrong? There is no redress. There is no way to correct the record.

All I can say is I have heard the debate, and I have heard our amendment taken out of context: Oh, gee, that amendment will make it worse for people. Wrong. I will tell you who is supporting our amendment—people who have fought their whole lives for consumers and for the rights of people to have privacy. That is who is supporting us.

The AARP, which represents many seniors, supports our amendment; the ACLU fights for civil liberties and privacy; Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, National Community Reinvestment Coalition, Privacy Rights Clearinghouse, Privacy Times, U.S. PIRG. These are people who absolutely know our amendment is a step in the right direction.

I have a couple of other points to make. I will make them as quickly as I can.

I want to share with you some of the quotes that were made by the big banks when California passed its law. Did they complain about it? Not at all. This is what they said.

This is Diane Colborn who lobbies for Personal Insurance Federation. She called this workable, reasonable compromise a ''balanced measure that will provide meaningful protections to consumers while also addressing the workability concerns that our members and customers had.''

Jim Bruner, who lobbies for the Securities Industry Association, appeared before our committees in California. He said the measure is a ''good, workable, reasonable bill.''

The ink didn't dry on that bill before they came up here and started wining and dining and talking to people—I guess you can't wine and dine anymore, and that is a good thing—about why this bill couldn't go too far. Don't go too far; it is a burden. I am so sorry about that. I was so excited when California passed the privacy protections.

In closing my remarks, I will read some newspaper editorials.

From the New York Times: ''Buyer Beware,'' just written a few days ago.

> This (affiliate sharing) is a dark and unmapped universe in which banks, credit card companies and insurers have free rein to share detailed records among thousands of affiliates, with customers largely powerless and unknowing. Bank balances, buying habits, investment profiles and more can be tapped into in ways that invite fraud, marketing assaults, identity theft and unfair credit decisions.
>
> The Senate measure contains no real solution for indiscriminate data sharing. Far preferable is an amendment to be offered by Senators Dianne Feinstein and Barbara Boxer of California that would require advance notice from businesses so consumers would have a chance to block planned sharings that reached beyond relevant credit issues. Rejection of this amendment would only compound businesses' temptation to be marketers rather than the protectors of the privacy of the American consumer.

We know in the underlying bill you cannot share for marketing purposes, but there is a giant loophole dealing with preexisting relationships, making it confusing and complicated. That is why I believe the Feinstein-Boxer amendment will cure these problems.

From the San Jose Mercury News:

> The financial services industry is guilty of a nasty bait-and-switch on the people of California. Its lobbyists worked with privacy advocates to help shape the law into what the industry called a reasonable and workable compromise. All the industry said it hoped for was a uniform privacy standard across the nation.

Yet immediately after the California law was approved, industry lobbyists went to Washington to try to erase it from the boxes. The only national standard they are interested in is one that gives them the unfettered right to sell their customers' personal financial details to the highest bidder. That was the San Jose Mercury News, in the heart of Silicon Valley. This is a newspaper that very often is on the cutting edge of the way we ought to be thinking about financial issues.

I close with an editorial from The Los Angeles Times, October 29, entitled ''Put Privacy on the List.''

Congress promised voters that it would improve consumer rights with regular reviews of the Fair Credit Reporting Act, initially passed 33 years ago to balance the competing interests of business and consumers. Bills in the House and Senate would make it easier for consumers to see credit reports and report identity theft. But the legislation wouldn't help consumers keep private their bank balances, spending patterns and other sensitive data. Congress could cover this gaping problem by adopting the amendment crafted by Feinstein and Boxer, which keeps alive the protections at the heart of SB 1.

Colleagues, I know sometimes we get bills where deals have been cut, deals have been made, and everyone has put their hand out like after a sports game, saying: OK, on blood oath, we will not take amendments. I have been here long enough to know that.

I hope some colleagues will be open to this. We have done the right thing. Strong percentages of the American people—if it mirrors California, it would be 80 percent and above—support making sure that your personal-private financial data cannot be shared within a family of a company which could include thousands—1,600, 2,000, who knows—as more and more mergers go on. We do not want that information to be shared.

That is exactly the right course to take. I am hopeful we will get a strong vote on the Feinstein-Boxer amendment.

I yield the floor.

Mr. DURBIN. Mr. President, I rise to speak in support of the Feinstein-Boxer amendment to S. 1753 on the sharing of information among affiliates. This amendment would give consumers the choice to opt out of having their personal ''transaction and experience'' information shared among affiliates. The privacy provision in the California law represented by this amendment was the result of long negotiations among consumer groups and banks, and in the end the banks in California called this provision ''reasonable and workable.'' Reasonable and workable. I am a cosponsor of this amendment because, in a reasonable and workable way, it simply gives consumers some control over their personal information.

Let me emphasize just a few key points about this amendment. The amendment is still about an opt out, not a blanket restriction. It just gives consumers the option of keeping their personal information personal. Now the underlying bill also has an opt out, but that opt out is minimal: it is just for marketing, just for new customers, and would expire 5 years after the consumer requested it. The Feinstein-Boxer opt out, by comparison, is for the exchange of transaction and experience information; it is for uses other than marketing; it is for current and new customers; and it has no expiration. It, therefore, provides more protection for consumers who are concerned about protecting their privacy.

Another thing to remember about this amendment: the amendment does not alter preemption. With this provision States would still be deprived, permanently, of the opportunity of enacting their own legislation relating to affiliate sharing. If we are going to have a national law, we need a reasonable national standard.

Mr. President, a lot has been said about this amendment and how it would create all kinds of problems, so let me be clear about what this amendment would not do.

The amendment would not prevent the extension of affordable credit. Affiliates could still request credit reports and scores, as always.

The amendment would not prevent affiliates working under the same name in the same line of business from working together: it contains an exception for sharing among such close affiliates. It would not impede the investigation for fraud or identity theft. It would not impede transactions or the servicing of a product requested by the consumer. It would not impede institutional risk control. It would not impede the resolution of customer disputes or debt collection. It would not impede efforts to locate missing and abducted children.

Mr. President, I say again: If we are going to have a national law, we need a reasonable national standard. This amendment is just such a standard. I urge my colleagues to support it.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Maryland.

Mr. SARBANES. I will be quick because I know the chairman intends to move ahead with respect to this amendment. I will make some very basic points.

Some of this discussion has been along the lines that under existing law this information is shielded and we are taking something away from people. The fact is, under existing law there are no limitations on the sharing of information with affiliates. That is the existing law.

What the committee has sought to do is place the limitation on the sharing of information with affiliates for solicitation for marketing purposes, which is the biggest complaint we have heard flowing out of the sharing of information. That is what people have complained to us about. We are trying to provide that protection for the consumer.

The California law and the amendment take a different approach. They, in effect, say you cannot share information with an affiliate or the consumer has to be given the opportunity to opt out. But the California law has some exceptions or exemptions from that requirement. The amendment that is pending has 17 such exemptions.

To evaluate this—it is very complex; I agree with my colleague from California when she says this is a complex area; it is very complex—but to evaluate these exemptions, you have to work through all of the exceptions and see where that leads as opposed to what is in the committee bill.

Let me give an example. One exception is if a company is in the same line of business, a common brand, then the provisions of the amendment do not apply with respect to restricting and sharing of information. What the committee has reported out would, in fact, apply a limitation, an opt-out limitation in that instance for soliciting for marketing purposes.

As I said earlier, that is generally what we have heard as being the source of people's concern and discontent. In that sense, what is in the bill is for that purpose broader than what is in the amendment.

These extensive exceptions will involve a great deal of litigation. We do have a preexisting customer relationship exception, our provision, which we expect the regulators to define, to give it more content and more meaning.

Second, the amendment has an exemption for a common database and the information that goes into a common database. In fact, it says a person does not disclose information or share information with an affiliate solely because information is maintained in a common information system or database and employees of the person and its affiliate have access to that common information system or database. That is another provision in the amendment, a major provision, which in fact restrains or restricts the consumer's ability to opt out.

I could go on with this form of analysis, but I have probably given enough to underscore my thoughts. I appreciate the commitment of the two Senators from California, Mrs. FEINSTEIN and Mrs. BOXER, on this issue. They have been champions and leaders on this issue. Many Members have been with them on these matters and presumably will remain with them.

But we are trying to craft a bill to deal with the FCRA. It is not comprehensive. We are dealing with that subject alone. What is in the bill from the committee is a significant improvement over existing law. I don't think there is any question about that. I think there is an arguable case that, in fact, it may provide more protection for the consumer than the amendment that is pending. Therefore, I am supportive of the chairman and his efforts with regard to this issue.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I now move to table the Feinstein-Boxer amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 2054. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. BUNNING), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. BUNNING) would vote ''yes.''

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

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

The result was announced—yeas 70, nays 24, as follows:

[Rollcall Vote No. 434 Leg.]

YEAS—70

Akaka	Daschle	McCain
Alexander	DeWine	Miller
Allard	Dodd	Murkowski
Allen	Dole	Nelson (NE)
Baucus	Domenici	Nickles
Bayh	Dorgan	Pryor
Bennett	Ensign	Reid
Biden	Enzi	Roberts
Bingaman	Fitzgerald	Santorum
Bond	Frist	Sarbanes
Breaux	Graham (SC)	Schumer
Brownback	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hagel	Smith
Carper	Hatch	Snowe
Chafee	Hutchison	Specter
Chambliss	Inhofe	Stabenow
Cochran	Inouye	Stevens
Coleman	Johnson	Sununu
Collins	Kyl	Talent
Conrad	Landrieu	Voinovich
Cornyn	Lincoln	Warner
Craig	Lott	
Crapo	Lugar	

NAYS—24

Boxer	Feinstein	Leahy
Byrd	Graham (FL)	Levin
Cantwell	Harkin	Mikulski
Clinton	Hollings	Murray
Corzine	Jeffords	Nelson (FL)
Dayton	Kennedy	Reed
Durbin	Kohl	Rockefeller
Feingold	Lautenberg	Wyden

NOT VOTING—6

Bunning	Kerry	McConnell
Edwards	Lieberman	Thomas

The motion was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2059

Ms. CANTWELL. I call up the Cantwell amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself and Mr. ENZI, proposes an amendment numbered 2059.

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

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

The amendment is as follows:

(Purpose: To provide for certain information to be provided to victims of identity theft, and for other purposes)

On page 22, line 6, strike the quotation marks and the final period and insert the following:

''(e) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 20 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim in such a request; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

''(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, is otherwise able to verify the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

''(A) as proof of positive identification of the victim, at the election of the business entity—

''(i) the presentation of a government-issued identification card;

''(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

''(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

''(B) as proof of a claim of identity theft, at the election of the business entity—

''(i) a copy of a police report evidencing the claim of the victim of identity theft; and

''(ii) a properly completed—

''(I) copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(II) an affidavit of fact that is acceptable to the business entity for that purpose.

''(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

''(A) be in writing; and

''(B) be mailed to an address specified by the business entity, if any.

''(4) NO CHARGE TO VICTIM.—Information required to be provided under paragraph (1) shall be so provided without charge.

''(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

''(A) this subsection does not require disclosure of the information;

''(B) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

''(C) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

''(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

''(7) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(8) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law (except a law involving the nondisclosure of information related to a pending Federal criminal investigation) prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

''(9) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(A) the business entity has made a reasonably diligent search of its available business records; and

''(B) the records requested under this subsection do not exist or are not available.

''(10) DEFINITION OF VICTIM.—For purposes of this subsection, the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, identity theft or any other violation of law.''.

On page 33, line 6, strike ''7'' and insert ''5''.

On page 41, line 19, strike ''(e)'' and insert ''(f)''.

On page 47, line 1, strike ''(e)'' and insert ''(f)''.

Ms. CANTWELL. Mr. President, this amendment is one more addition to the great underlying Fair Credit Reporting Act that would establish a process where business records can be accessed by consumers whose identities have been stolen. I urge my colleagues to support this amendment.

Mr. ENZI. Mr. President, I thank Senator SHELBY and Senator SARBANES for their work. They have put in a lot of time working through different changes in this to make it not only more acceptable but more useful. We appreciate that.

I also want to give special mention to Senator CANTWELL, the Senator from Washington, for her perseverance, for her tenaciousness, for her innovation, and for her flexibility. She did a marvelous job of working on this bill. It is extremely important to the Nation.

This is an extremely critical part of fair credit.

In today's world of digital transactions and online living, nobody is safe from the fastest growing crime in America known as identity theft. Last year alone, the Federal Trade Commission estimated that nearly 10 million Americans were victims of this crime, and each paid an average of $500 in order to repair the damage done by fraudsters and credit abusers. To these millions of American families, $500 means mortgages, car payments, student loans, child support, groceries. In the larger context, $500 per victim means American families and businesses lost more than $50 billion in recovery costs in 2003 alone. That is a $50 billion drag on our economy—an economy that is just starting to bounce back. With the number of identity theft cases increasing at an alarming rate, the economic costs will be even higher next year.

As such, I rise today in support of an amendment that will make it easier for victims of identity theft to recover both economically and emotionally from this devastating crime. This amendment is based on a bill my colleague from Washington and I introduced in both 2002 and 2003. Even though the bill passed unanimously last Congress, we have made a number of changes that I believe greatly improve the legislation. I firmly believe this amendment will provide consumers with the right information and businesses with the right safeguards to facilitate quick and cost effective recovery from identity theft.

This amendment will allow victims to work with businesses to obtain information related to cases of identity theft so they can start reversing the lasting and damaging effects of this crime. In drafting this legislation we have worked with all of the stakeholders to ensure that the needs of both consumers and the needs of small businesses, banks and other credit agencies were addressed.

Our amendment provides consumers with the right to ask businesses for records relating to a transaction evidencing identity theft. Businesses, in return, have the right to ask for specific kinds of identity verification and clear proof that the individual asking for the information is, in fact, a victim and not another fraudster. Also important to note, our amendment does not require businesses, to keep new records or seek out information not in their control. It simply requires businesses to share current records with consumers who can prove they have been victims of identity theft.

I am confident that we have drafted careful legislation that will truly help victims of identity theft recover from this terrible and expensive crime. I commend my colleagues on the Banking Committee who have worked closely with us to make the numerous improvements to this amendment. I urge my colleagues to support it.

In summary, the Federal Trade Commission estimated that nearly 10 million Americans were victims of identification crime and that each paid an average of $500 in order to repair the damage done by the fraudsters and credit abusers. That is $50 billion that is taken out of our economy each year.

This amendment is based on a bill my colleague from Washington and I introduced in 2002 and in 2003. Even though the bill passed unanimously the last time, we have made a number of changes that I believe greatly improve the legislation.

I firmly believe this amendment will provide consumers with the right information and businesses with the right safeguards to facilitate quick and cost-effective recovery from identity theft.

This amendment allows the victims to work with businesses to obtain information related to cases of identity theft so they can start reversing the damaging effect of the crime.

In drafting this legislation, we worked with all of the stakeholders. Our amendment provides consumers with the right to ask businesses for records relating to the transaction. Businesses, in return, have the right to ask for specific kinds of identity verification and clear proof that the individual asking for the information is in fact the victim and not another fraudster.

It is also important to note our amendment does not require businesses to keep records or seek out information not in their control. It simply requires businesses to share current records with consumers who can prove they have been victims of identity theft. I think this will help consumers in a tremendous way.

I appreciate the work Senator CANTWELL has put in on this amendment. This $50 billion drag on the economy can be solved and will be appreciated by consumers.

I thank my colleagues for supporting it and Senators SARBANES and SHELBY for statements on the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, the managers are prepared to accept this amendment. I commend Senator CANTWELL and also Senator ENZI for the work they have done in this regard.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, we are happy to take this amendment. I wish to echo the chairman in thanking Senator CANTWELL and Senator ENZI for their work on this important issue. This is an issue they have been addressing for quite some time, and we are very pleased that there are important identity provisions as the bill came from the committee, and I think this is a positive addition.

Mr. SHELBY. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 2059.

The amendment (No. 2059) was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2060

Mrs. BOXER. I send an amendment to the desk and ask for its immediate consideration. I am very pleased to say both Senator SARBANES and Senator SHELBY have signed off on this amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself and Mrs. FEINSTEIN, proposes an amendment numbered 2060.

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

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

The amendment is as follows:

(Purpose: To address the duration of certain consumer elections and to define the term ''pre-existing business relationship'')

On page 50, strike line 12 and all that follows through page 51, line 3 and insert the following:

''(3) DURATION.—The election of a consumer pursuant to paragraph (1)(B) to prohibit the sending of solicitations shall be effective permanently, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

''(4) DEFINITION.—For purposes of this section, the term 'pre-existing business relationship' means a relationship between a person and a consumer, based on—

''(A) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction between the consumer and that person during the 18-month period immediately preceding the date on which the consumer receives the notice required under this section; or

''(B) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer receives the notice required under this section.

''(5) SCOPE.—This section shall not apply to a''.

Mrs. BOXER. I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor.

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

Mrs. BOXER. Very briefly, this amendment closes what I consider to be a little bit of a loophole in the marketing opt-out provision of the bill. We do two things. The underlying bill says the marketing opt-out expires after 5 years, unless a consumer opts out

again. We make the first opt-out permanent as long as the consumer wants it.

Secondly, the definition of a preexisting relationship with a company, with an affiliate, is drawn in such a way, it is very broad. So what we say is, a person will be deemed to have this preexisting relationship with the affiliate if they have purchased, rented, or leased a service or good from the affiliate during the 18-month period before the information sharing takes place or they have inquired about an affiliate's product in the 3 months before the sharing takes place.

By adopting this simple amendment, we keep financial institutions from violating consumer rights. I am very pleased that both sides of the committee have signed off on this, and I would be happy to take a voice vote on this at this time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, the managers are prepared to accept this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I actually wish to commend the Senator from California because she has introduced some specificity into a provision that is in the committee-reported bill. I am very frank to say I think this will be very helpful, and I join the chairman in supporting the amendment.

Mr. SHELBY. I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2060.

The amendment (No. 2060) was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2061

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk on behalf myself, Senator BOXER, and Senator KENNEDY.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mrs. BOXER, and Mr. KENNEDY, proposes an amendment numbered 2061.

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

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

The amendment is as follows:

(Purpose: To address restrictions on the sharing of medical information among affiliates, and for other purposes)

On page 81, strike lines 6 through 15 and insert the following: ''to any person related by common ownership or affiliated by corporate control, if the information is medical information, including information that is an individualized list or description based on the payment transactions of the consumer for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.''.

(c) DEFINITION.—Section 603(i) of the Fair Credit Reporting Act (15 U.S.C. 1681a(i)) is amended to read as follows:

''(i) MEDICAL INFORMATION.—The term 'medical information' means information or data, other than age or gender, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

''(1) the past, present, or future physical, mental, or behavioral health or condition of an individual;

''(2) the provision of health care to an individual; or

''(3) the payment for the provision of health care to an individual.''.

Mrs. FEINSTEIN. Mr. President, this amendment essentially updates the definition of ''medical information.'' It takes a medical definition submitted by the National Association of Insurance Commissioners. It is the definition that is used by a majority of our States. I ask unanimous consent that a letter in support of this definition from the American Medical Association, the American Cancer Society, the California Medical Association, the Community Clinic Consortium, the San Francisco AIDS Foundation, and the AIDS Health Care Foundation be printed in the RECORD.

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

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, November 3, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Medical Association (AMA), we applaud you for your amendment that would improve the medical privacy protections in the National Consumer Credit Reporting System Improvement Act of 2003 (S. 1753).

Your amendment would strengthen the protections in S. 1753 restricting the sharing of medical information for employment, credit or insurance purposes, by broadening the definition of ''medical information'' to ensure that it covers all patient information held by physicians and other health care providers, including mental and behavioral health information.

Thank you for your efforts to protect sensitive patient information in this important legislation.

Sincerely,

MICHAEL D. MAVES, MD, MBA.

AMERICAN CANCER SOCIETY,
Washington, DC, October 30, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Cancer Society and its millions of volunteers and supporters, we applaud your efforts to protect patient medical information from improper use or disclosure by employers, insurers or creditors.

Many cancer patients and their families are concerned about the privacy of information relating to their medical care, especially with the increasing use of electronic payments and data keeping. As a result, the American Cancer Society supports a definition of medical information that allows medical research to advance, while at the same time, protects the rights and needs of patients and their family members.

Sincerely,

DANIEL E. SMITH,
National Vice President, Federal and State Government Relations.

WENDY K. D. SELIG,
Vice-President, Legislative Affairs.

CALIFORNIA MEDICAL ASSOCIATION,
Sacramento, CA, October 31, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the California Medical Association and its 35,000 member physicians, we support your efforts to protect patient medical information from improper use or disclosure by employers, insurers or creditors.

Many patients and their families are concerned about the privacy information relating to medical care, especially with the increasing use of electronic payments and data keeping. We support a tight definition of medical information of when such information could be used. Your language accomplishes this while at the same time allowing appropriate utilization for research purposes.

Please let us know if we can do more to support your efforts.

Sincerely,

STEVEN M. THOMPSON,
Vice President, Government Relations.

SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM,
San Francisco, CA, October 31, 2003.

Re The San Francisco Community Clinic Consortium Supports S. 1753, the Medical Information Privacy Amendment to the Fair Credit Reporting Act (FCRA).

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: The San Francisco Community Clinic Consortium—an organization of neighborhood health centers serving 66,000 low-income and uninsured San Franciscans—strongly supports the passage of S. 1753, the Medical Information Privacy Amendment to FCRA.

The vague definition of ''medical information'' in FCRA creates loopholes in FCRA protection that could prove harmful to people like our clinic clients with stigmatized diseases like mental illness, HIV/AIDS and long-term chronic conditions. S. 1753 corrects the potential problems and provides the more complete protections that people deserve.

S. 1753 would clarify and strengthen FCRA's definition of medical information. It would also eliminate the false distinction between medical information and medical transaction information. This new definition is critical to protecting the privacy of individuals with chronic illnesses. Even the possibility of breaches of patient medical record confidentiality undermines health care. Patients who know their medical care information could and would be shared with employers, credit organizations and insurance companies will be less forthcoming with their health care providers and, thus, the quality of health care they receive will be compromised; this is neither necessary nor desirable.

SFCCC looks forward to continuing to work with you to protect the essential privacy of individuals' medical and health status information; this is a cornerstone of effective health care. Please call (415 345–4233)

if you need additional information or assistance on this matter.

Sincerely,

JOHN GRESSMAN,
President/CEO.

SAN FRANCISCO AIDS FOUNDATION,
San Francisco, CA, October 29, 2003.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: The San Francisco AIDS Foundation strongly supports the passage of S. 1753, the Medical Information Privacy Amendment to the Fair Credit Reporting Act (FCRA). While the FCRA attempts to protect consumers from having their medical information used for employment, credit or insurance purposes, the vague definition of ''medical information'' in FCRA creates loopholes in the protection that would prove harmful to people living with HIV/AIDS, mental illness and other stigmatized diseases. S. 1753 rectifies the problems in the underlying legislation and provides the protections these consumers require and deserve.

The current definition of medical information in FCRA does not protect the information consumers would supply on documents such as life insurance applications, which ask what medications a consumer is taking. Nor does FCRA protect information obtained without consent. A specific example of this is the reporting of unpaid medical bills from HIV clinics. FCRA does not protect consumers from banks data mining its customers' medical payment transactions to make credit decisions. The majority of U.S. bankruptcies are due to health care costs, which give banks an incentive to determine a customer's creditworthiness based on health. The ties between insurance companies and banks are continuously strengthened as large banks often have hundreds of affiliates, many of whom are also insurance companies. As insurance companies move to electronic forms of payments, they are giving banks large amounts of medical transaction data about their clients. This may include the type of clinic and specific service delivered.

S. 1753 would clarify and strengthen FCRA's definition of medical information and eliminate the false distinction between medical information and medical transaction information. This new definition is essential for people living with HIV/AIDS because it provides them with financial privacy. After more than 20 years of dealing with the epidemic, there is still significant cultural stigma attached to HIV disease. Potential disclosure of medical information and breaches in financial privacy create additional health care access barriers. It is therefore essential that the confidentiality of ones health status and medical information be protected from inappropriate use in employment, credit or insurance purposes.

The AIDS Foundation looks forward to working with you to promote medical information privacy and health status confidentiality. Please do not hesitate to call at 415–487–3096.

Sincerely,

ERNEST HOPKINS,
Director of Federal Affairs.

AIDS HEALTHCARE FOUNDATION,
Los Angeles, CA, November 3, 2003.

Re Letter of support for privacy amendment to S. 1753.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN:

AIDS Healthcare Foundation (AHF) would like to thank you for sponsoring a legislative amendment to the Fair Credit Reporting Act that will protect the privacy of personal medical information in the form of payments for medical services and products and other transactions. As the United States' largest AIDs organization, and provider of medical care to over 12,000 persons in the U.S., AHF is acutely aware of the need to protect consumers from unauthorized use of data pertaining to their medical treatment. Such information is clearly private, and it is highly inappropriate for it to be used for marketing or similar purposes. Such an abuse can only erode the trust patients have in their medical providers and the medical system in general. Thank you, again, for sponsoring this amendment, which AHF is happy to support.

Sincerely,

CLINT TROUT,
Associate Director, Government Affairs-Federal.

CONGRESS OF THE UNITED STATES,
Washington, DC, October 30, 2003.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: We applaud you for your efforts to strengthen and improve the medical privacy protections containd in your amendment to expand the definition of ''medical information'' under The National Consumer Credit Reporting System Improvement Act of 2003 (S. 1753).

Although the original bill's medical privacy section includes significant new consumer protections that black-out the use of medical information for employment, credit, or insurance purposes, it includes an inadequate definition of the term ''medical information,'' which could result in creating a loophole that weakens the bill's intended objective. By describing ''medical information'' using the National Association of Insurance Commissioner's (NAIC) definition, which has been agreed upon and implemented by insurance regulators in a vast majority of states, your amendment closes existing loopholes and eliminates the opportunity for unscrupulous use of sensitive medical information.

We also support your amendment because it eliminates the inconsistent differentiation between medical information and medical transaction information, providing greater certainty to the bill's language and to future interpretations of legislative intent. This would be a marked improvement to the underlying bill's definition of medical information, which as currently written does not protect mental or behavioral health information, data provided by consumers on life insurance applications, or medical information obtained without consent, such as the reporting of an unpaid bill from a cancer center. We believe the effect of these harmful oversights can be negated by passage of your amendment.

As you know, millions of consumers worry that their health providers or insurers may be sharing their private information with others. Beyond this concern, however, is a feeling that they have less and less control over their sensitive medical files. Medical information should have no place in employment decisions or credit determinations and related corporate entities should not be able to share it—this information deserves the strongest protection under the law, but beyond that, it is important that we give consumers back some control over who can and cannot use this information.

Both the National Consumer Credit Reporting System Improvement Act and the Fair and Accurate Credit Transactions Act, recently passed by the House of Representatives, contain landmark provisions protecting consumers' private medical information. This amendment builds upon these strides by correcting important deficiencies in the Senate bill, and we strongly urge its adoption by the Senate and its inclusion in the legislation that emerges from the Conference Committee. Again, we congratulate you on your thoughtful and bipartisan amendment, and wish you success in its passage on the Senate floor later this week.

Sincerely,

RAHM EMANUEL,
Member of Congress.
WALTER B. JONES,
Member of Congress.

Mrs. FEINSTEIN. I believe both sides will accept the definition, and I would be happy to take a voice vote.

The PRESIDING OFFICER. Is there further debate?

The Senator from Alabama.

Mr. SHELBY. The managers are prepared to accept this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I join with my colleague in accepting the amendment. I commend the Senator from California. Actually, medical information is something that people feel very keenly about and the Senator's amendment will strengthen the provision that was in the bill adopted in the committee. We thank her very much for the amendment.

Mr. SHELBY. I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2061.

The amendment (No. 2061) was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2062

Mr. DURBIN. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follow:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 2062.

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

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

The amendment is as follows:

(Purpose: To require reporting to national consumer reporting agencies regarding Federal student loans in order to promote the responsible repayment of such loans and ensure the completeness of information contained in consumer credit reports and scores)

At the end of section 312, insert the following:

(c) REPORTS TO CONSUMER REPORTING AGENCIES.—

(1) REPORTS.—Section 430A(a) of the Higher Education Act of 1965 (20 U.S.C. 1080a(a)) is amended to read as follows:

''(a) AGREEMENTS TO EXCHANGE INFORMATION.—

''(1) IN GENERAL.—For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to

this title or covered by a guaranty agreement pursuant to section 428, the Secretary, each guaranty agency, eligible lender, and subsequent holder shall enter into an agreement with each national consumer reporting agency as described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) to exchange such information as is required by the Secretary concerning each borrower of a loan made, insured, or guaranteed under this title who is served by the Secretary, agency, lender, or holder, respectively, regardless of the default status of the borrower. Such information shall be reported to the agencies regularly, shall be identified as pertaining to such a loan, and shall include any positive or negative repayment information relevant to the borrower.

''(2) OBJECTIONS RAISED BY BORROWERS.—For the purpose of assisting the reporting agencies in complying with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary (concerning loans covered by Federal loan insurance), by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement), or to requests from the reporting agencies, for responses to objections raised by borrowers.

''(3) NONPAYMENT.—Subject to the requirements of subsection (c), such agreements shall require the Secretary, the guaranty agency, eligible lender, or subsequent holder, as appropriate, to disclose to the reporting agencies, with respect to any loan under this part that has not been repaid by the borrower—

''(A) the total amount of loans made to any borrower under this part and the remaining balance of the loans;

''(B) information concerning the date of any default on the loan and the collection of the loan, including information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 430(a) or the guaranty agency has made a payment to the previous holder of the loan; and

''(C) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 437.''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(A) in section 427(a)(2)(G)(i) (20 U.S.C. 1077(a)(2)(G)(i)), by striking ''credit bureau organizations'' and inserting ''reporting agencies'';

(B) in section 428C(b)(4)(E)(i) (20 U.S.C. 1078–3(b)(4)(E)(i)), by striking ''credit bureau organizations'' and inserting ''reporting agencies''; and

(C) in section 430A (20 U.S.C. 1080a)—

(i) in subsection (b)—

(I) by striking ''such organizations'' and inserting ''the reporting agencies''; and

(II) by striking ''(a)(2)'' and inserting ''(a)(3)(B)'';

(ii) in subsection (c)(2), by striking ''such organizations'' and inserting ''the reporting agencies'';

(iii) in subsection (b)(4)—

(I) by striking ''(a)(2)'' and inserting ''(a)(3)(B)''; and

(II) by striking ''credit bureau organizations'' and inserting ''the reporting agencies'';

(iv) in subsection (d), by striking ''credit bureau organization'' and inserting ''reporting agency''; and

(v) in subsection (f), by striking ''consumer reporting agency'' each place the term appears and inserting ''reporting agency''.

Mr. DURBIN. Mr. President, I announced my intention to offer this amendment at an earlier date. Since the announcement of that intention, we have been negotiating with Sallie Mae, the Government-sponsored enterprise which is the largest provider of student loans in the country. The reason for this amendment was a new policy of Sallie Mae, as of a few months ago. In fact, about a year ago Sallie Mae decided to stop reporting repayment information to two of the three major credit bureaus in the United States. It turns out that the Higher Education Act, which governs Sallie Mae, required that defaults on student loans be reported to all three national credit bureaus but, by regulation, positive repayment information only went to one.

As a consequence, many responsible students who had paid off their student loans were not provided the credit information on their own backgrounds so that it was clear that they paid off their loans. So these students who had turned to a credit bureau for a mortgage or a loan on a car would have an outstanding student loan. It worked to their disadvantage. This decision by Sallie Mae worked a terrible disadvantage to students who had done the right thing.

I made it clear to the chairman, Mr. SHELBY, as well as Senator SARBANES, that I thought this was an injustice that needed to be corrected. Fortunately for me and for the students involved, Sallie Mae has sent a letter. I understand Chairman SHELBY, if I am not mistaken, has received a copy of this letter from Sallie Mae; is that correct?

Mr. SHELBY. If the Senator will yield, we do have a copy of the letter from Sallie Mae.

Mr. DURBIN. I ask unanimous consent this letter be printed in the RECORD.

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

SALLIE MAE, INC.,
Washington, DC, November 4, 2003.

Hon. RICHARD C. SHELBY,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Washington, DC.

Hon. PAUL S. SARBANES,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR SENATORS SHELBY AND SARBANES: I am writing to update you on how Sallie Mae reports the credit performances of our customers to the national credit bureaus.

Our goal is to ensure that our customers get the credit they have earned. To that end, we have been reporting to one of the national credit bureaus all along, as required by law. When we learned recently that one of our borrowers has not had full access to his credit history, we began negotiating again with the other two credit bureaus so that we could resume reporting to them.

I am pleased to let you know that following extensive discussions with the other two credit bureaus, Sallie Mae has agreed to resume reporting to them and will provide each with credit information for our customers. We will keep you and your staffs apprised as we move forward in implementing this decision.

We are pleased that the credit bureaus are being responsive to our concerns and we look forward to working with them. Thank you for your interest in this important issue. Please feel free to contact me if you have questions or need additional information.

Sincerely,

ROSE DINAPOLI,
Vice President, Government & Industry Relations, Sallie Mae.

Mr. DURBIN. The letter makes it clear that Sallie Mae is reversing its position; that from this point forward they will report repayment of student loans to all three major credit bureaus. This is what my amendment sought to achieve, so I am going to withdraw this amendment and thank both Senator SHELBY and Senator SARBANES for their cooperation and urge them to join me in offering an amendment to the Higher Education Act which codifies in law this new policy that the Sallie Mae agency has now decided to implement.

There is no reason responsible college students, having paid off their loans, should be penalized because Sallie Mae refuses to notify all three major credit bureaus in America. I am glad with this letter they have decided to change their policy. I hope at a later time to offer this amendment to the Higher Education Act and thank the members of the committee for their cooperation in this regard.

Mr. DURBIN. Mr. President, Section 312 of the bill before us is entitled ''Procedures to enhance the accuracy and completeness of information furnished to consumer reporting agencies.'' My Responsible Student Amendment addresses exactly that: the completeness of information furnished to consumer reporting agencies. My amendment is designed to ensure that young Americans who have positive credit histories established by responsibly repaying their student loans will be able to take a clean shot at the American dream when they try to buy their first home. It does so simply by requiring what until recently was standard practice for student loan providers; regular reporting on all loan repayments to each of the three major credit bureaus.

Until recently, responsible repayment of student loans was rewarded as would be expected, with a positive credit history. Responsible repayment was responsibly reported by student loan providers, in the typical fashion, to all three major credit bureaus. One of those providers, the biggest, is Sallie Mae. Sallie Mae was founded in 1972 as a government-sponsored enterprise, GSE. In 1997, the company initiated the privatization process. Sallie Mae, in other words, was born and raised on the taxpayers dime. One might hope that it would therefore feel some responsibility to keep taxpayers' interest in mind.

About a year ago, however, Sallie Mae, by far the largest provider of Federally guaranteed student loans, suddenly stopped reporting repayment information to two of the three major credit bureaus. It turns out that The

Higher Education Act, which established the Federal student loan program, requires that defaults on student loans be reported to all three national credit bureaus, while positive repayment information only has to go to one. Is this the way we want to reward responsible repayment of student loans? Don't we want a system that rewards responsible repayment, rather than one that shrugs and says that that information doesn't matter?

What is the result of Sallie Mae not reporting to two of the three major credit bureaus? Thousands of young people—whose main or only use of credit has been their student loans from Sallie Mae—suddenly have major gaps in their credit histories. Stories in the Washington Post and the American Banker have described the case of one typical 31 year old, named Eric Borgeson. Mr. Borgeson is an architect who lives in Edwards, CO. Mr. Borgeson, who graduated from college 10 years ago, had a perfect credit repayment record on his three Sallie Mae loans. Then, midway through the home-buying process, his credit score dropped by 40 points. Sallie Mae had pulled his perfect repayment records from his credit reports with two of the three major credit bureaus. As a result, he ended up with a lower credit score and a significantly higher interest rate on his mortgage, that he estimates will cost him nearly $200 more per month in interest payments.

Why has Sallie Mae stopped reporting to two of the three major credit bureaus? The answer is simple: prescreened lists. Credit bureaus typically sell lists of their customers, prescreened to meet certain criteria based on the information in their credit reports. Sallie Mae's competitors were using such lists to offer Sallie Mae's customers better deals. Rather than meet the competition, Sallie Mae simply decided to pull its customers' information from bureaus that wouldn't agree to stop selling pre-screened lists.

Sallie Mae claims that it is simply protecting its customers from unwanted solicitations. Sallie Mae knows, however, that there is a toll free phone number people can call to keep their name off of such prescreened lists. If it really was concerned about protecting its customers from unwanted credit card solicitations, it could simply publicize that number: 888–567–8688.

The group of consumers in question here is a unique group of consumers. Just starting their careers, still paying off their loans: if there is any group of consumers that benefits from competition among loan providers and consolidators, this group is it. This is a group that often wants to hear from Sallie Mae's competitors. Those still repaying their student loans may get offers from consolidators who will combine all their loans and charge a lower overall interest rate. Those who have finished repaying their student loans are often establishing homes, careers, and families and therefore using credit cards more than average users. They, therefore, may benefit from being able to compare the credit card package they have with the offerings of competitors.

By trying to shield its customers from competing offers, Sallie Mae does them a disservice twice: it punches a big hole in their credit histories, resulting in higher rates on mortgages and other new loans, and it prevents them from learning of better deals for other financial services. Each of these alone could cost consumers thousands of dollars.

My amendment prevents that from happening. It amends the Higher Education Act by adding the word ''each,'' requiring reporting to each of the major ''consumer reporting agencies''—credit bureaus—and making clear that both positive and negative information should be accurately reported.

Responsible repayment of student loans should be rewarded by inclusion in accurate and complete credit histories. This amendment will ensure that result.

AMENDMENT NO. 2062 WITHDRAWN

I need no further time. I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is withdrawn.

Mr. SARBANES. Mr. President, I commend the able Senator from Illinois because he saw a problem and fastened on it and as a consequence, we at least have a solution, at least at the regulatory level. I understand the Senator may well pursue it statutorily, although Sallie Mae is not under the jurisdiction of our committee, as he understands.

I share his concern. I think this was an unacceptable situation which existed. Because of the actions of the Senator from Illinois and also the Senator from Wisconsin, Mr. KOHL—who also took a keen interest in this issue—I think we have the resolution of it. I appreciate the Senator's action.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. I take a minute to commend Mr. DURBIN, the Senator from Illinois, for his good work in this area. He has recognized this as a very important issue and has done something about it. Whether it is Sallie Mae or anybody else, what we are interested in is all the reporting we can get that would affect someone's credit. I again commend Senator DURBIN for the work he has done. I am sure he will follow up and make sure this is part of the law.

Mr. DURBIN. Mr. President, I thank my colleagues. My colleague, Senator HERB KOHL, shares my feeling on this issue and introduced a similar amendment and joins with me in saluting this change and making it clear we are going to move forward.

Mr. KOHL. Mr. President, I rise today to join Senators DURBIN, SHELBY and SARBANES in expressing our concern about an issue that could affect countless graduates who work hard to pay off their student loans.

A little over a year ago, Sallie Mae—one of the largest originators of student loans and the largest secondary market for student loans—made a quiet decision that had a huge impact on college graduates.

Sallie Mae refused to report student loan repayment histories to two out of three major credit reporting agencies. That means graduates—most of whom have good records of paying on their student loans—have huge holes in their credit histories holes that prevent them from establishing credit or getting the best rates to buy their first home.

I recognize that our credit reporting system is essentially voluntary. There is no legal requirement that any private business report information to any credit bureau. However, Sallie Mae is an exception. U.S. Department of Education regulations require Sallie Mae to report student loan credit report histories to at least one of the three major credit reporting agencies.

Until last year, they reported to all three agencies. Then, Sallie Mae decided to stop reporting to two of the agencies. Some say they stopped because those two agencies routinely sold lists of Sallie Mae customers to competitors who could offer better deals. Sallie Mae maintains that they were protecting their customers from unwanted solicitations.

Whatever the reason, the result is clear: students who have worked hard to complete their education are hurt by this policy. Graduates entering the workforce and attempting to establish credit—even those who may have excellent records paying off their student loans—end up with incomplete credit records. On that basis alone, they may be denied credit.

This is a significant problem. Leaving out positive credit information on student loans can lead to a lower credit score for consumers. Lower credit scores penalize consumers in the form of higher credit card and mortgage interest rates, more expensive insurance, and even the risk of being excluded from the marketplace altogether.

Sallie Mae's decision has been especially detrimental to new home buyers. Mortgage credit is generally based on a merged credit report which incorporates information from all three credit repositories. It can only provide an accurate credit history if all three reports are complete.

The Washington Post recently highlighted the story of a 31-year-old architect who applied for a mortgage to buy a new house. Because Sallie Mae did not report his years of on-time student loan payments to all the credit bureaus, his credit score dropped 40 points—and his mortgage rate increased 1.5 points—costing him $200 dollars more per month in interest payments.

After learning of this problem last month, I have been in touch with Sallie

Mae to urge them to resume full credit reporting to all three of the major credit reporting bureaus. I have also been in touch with the chairman and ranking member of the Banking Committee, and with Senator DURBIN. I appreciate their willingness to work with me to ensure that student loan repayment histories are fully reported to all the major credit bureaus.

I am especially pleased that today, Sallie Mae announced that they have reached agreement with the credit bureaus and will now begin reporting to all three once again. I appreciate their efforts to work with our offices to solve this problem and ensure that their customers get the credit they have earned. I commend Sallie Mae for doing the right thing and fixing this problem promptly.

This is truly a positive step forward, but I think we should take one more at the appropriate time. Congress should codify these new agreements in law by requiring Sallie Mae to report to all three major credit bureaus. This will guarantee graduates that their student loan payment histories will always be reported and their credit scores will be complete. It will make sure that we do not face further problems in the future.

Senator DURBIN and I have both been working on amendments that would do just that. While I will not offer an amendment on this bill, I look forward to working with Senator DURBIN, Chairman SHELBY, and Senator SARBANES to address this issue in the future.

Mr. REID. Mr. President, I know the two managers are on the floor. I want to bring to their attention that Senator CANTWELL has been waiting to speak for some time on an amendment which was adopted. If you could work them into the order, I would appreciate it.

Ms. CANTWELL. Mr. President, my colleague from Wyoming and I tried to accommodate Members who were here in the last few minutes, trying to get several amendments adopted.

I want to spend a few minutes going into more detail about the Cantwell-Enzi Restore Your Good Name Act that has been incorporated into the Fair Credit Reporting Act.

I would first like to thank the chairman and ranking members of the committee for their strong support of this underlying bill that has been incorporated, along with the last amendment that we just voted on by voice a few minutes ago, dealing with business records.

It was roughly 2 years ago that the chairman of the Banking Committee and I spoke at a national platform for the attorneys general of America to address the issue of privacy and some of the biggest challenges to privacy at that time. We both made known our view that this country needed stronger legislation in the area of identity theft.

I commend the chairman and the ranking member for their strong step forward, a really critical step forward, to protect Americans from what is the fastest growing crime in America—identity theft.

Unfortunately, even though the Senate passed the Cantwell-Enzi legislation last year, the House failed to act on it and the number of victims has continued to grow. In fact, 9 million Americans have been the victims of identity theft. This underlying bill incorporates some of those good ideas that my colleague from Wyoming worked so hard on in the Banking Committee and that we worked through the Judiciary Committee to pass. I certainly commend my colleague, Senator ENZI, for his dedication to this issue. Consumers in America are going to be more protected because of his efforts. It has been a pleasure to work with him on these challenging issues, to make sure those protections are put in place.

The underlying bill that we have passed changes the framework by which consumers can now restore their good name and protect their identity. It does so, first and foremost, as Senator ENZI and I suggested, by formulating an affidavit process. So many people in America are victims of identity theft. But I can tell you this: it is not a crime for which you can call 911 and get immediate response. The biggest problem, once you are a victim of identity theft, is proving that you are in fact the person whose identity has been stolen.

I like to say that, in the case of the perpetrator who steals your television set right out of your living room, chances are that he is somewhere in the neighborhood. But the crime of identity theft could involve someone anywhere in the country, or for that matter, outside the United States, working with a ring.

So part of what we are trying to do, first and foremost, is to give victims and law enforcement tools to help victims reclaim their identity. The affidavit process that now must be accepted by business owners and credit agencies as proof that you are a victim of identity theft is the first step in making sure that your credit record is corrected and perpetrators are prevented from continuing to ruin your credit.

Second, the credit provisions that Senator ENZI was successful in getting added in committee represent a tremendous step in solving the problem that so many Americans face when their identity is stolen—that the perpetrators continue to pose as them, running up large credit bills.

In the case of a constituent I recently met in Washington State, the perpetrator who stole the constituent's license succeeded in buying five different vehicles. My constituent has continued to be a subject of investigation by law enforcement as she has tried to prove that it was, in fact, her identity that was stolen, that she was the victim. So a critical part of this legislation is the fact that individuals will be allowed to go to a credit agency and get that information blocked so that their good name is restored.

The amendment that we just adopted deals with another aspect of this problem, which is getting access to business records. Law enforcement in the State of Washington have been very successful at dealing with crimes of identity theft because identity thieves are often criminals who are involved in larger activities. There is a high correlation between people who are involved in identity theft—who use that stolen identity to get access to cash and resources in the State of Washington—and people who are involved with methamphetamine production. These criminals are involved in both drug activity and identity theft.

With this amendment, police can now get access to business records. Any victim, or law enforcement official acting on behalf of the victim, will have access to business records within 20 days after the victim provides identification, an affidavit and a police report to the business. This gives consumers a real tool to correct the harm caused them by this crime. This is a very fundamental part of this bill.

The last aspect of the identity theft bill that is part of the amendment we just agreed to deals with the statute of limitations. In the 2001 Supreme Court case of TRW v. Andrews, the Court ruled that the statute of limitations in these cases runs for 2 years from the time the crime is committed. But what we have found is that some victims of identity theft don't even realize they are victims until a year or 2 years after the identity theft has occurred. The statute of limitations therefore impacted the ability of victims to get justice. The underlying amendment we just agreed to extends the statute of limitations to give victims of identity theft 5 years from the time the crime was committed.

This underlying bill with the amendment we just agreed to represents a critical first step in dealing with one of the most important issues I think we will deal with in this information age, which is the issue of privacy. While this body has tried to deal with this issue in myriad ways by protecting the financial and health records of individuals, and by making sure that either opt-in or opt-out legislation have been cleared with consumers, I think we have much more work to do in the area of privacy. But you can be sure the Fair Credit Reporting Act before us today and the Cantwell-Enzi amendment and language adopted with it take a very positive step in dealing with one of the biggest privacy threats to Americans today—identity theft.

With these tools, law enforcement and individual consumers whose identities have been stolen will have the tools to make the process of reporting and resolving identity theft go smoother. While some may have said businesses would oppose the underlying amendment, or some of the features of the Cantwell-Enzi amendment, businesses have seen record losses of $22

billion a year from identity theft, and they have joined in this effort to make sure we pass strong national legislation.

I again thank Senator SARBANES and Senator SHELBY for their hard work, and certainly Senator ENZI for his effort and his stewardship in making sure we have good legislation in the process that can go on to passage and that will better protect consumers in America.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from New York.

Mr. SCHUMER. Thank you, Madam President.

I thank Chairman SHELBY and Ranking Member SARBANES for the wonderful job they did on this legislation. An important measure such as this that sails through the floor in 1 day is a tribute to the statesmanlike and fine legislative hand of our new chairman of the Banking Committee and, of course, the steady and wise old hand of our former chairman of the Banking Committee and now the ranking member.

I have been ready to offer an amendment on an issue related but not directly on point to this legislation; that is, debit cards. Right now, millions of Americans use debit cards. They are great. You don't need a checkbook when you have a debit card. It solves many problems. It is a real measure of convenience. They are easy and they save a little time. You don't have to go to the bank and get cash. It is a win-win, except for one catch: Most consumers think when they pay with a debit card it is free; that it doesn't cost anything. However, many banks are now charging the consumer when he or she uses the debit card as much as $1.50. In my State of New York, about half the banks charge anywhere between 25 cents to $1.50. When I have asked consumers, they don't know. My wife didn't know.

What I want to do is what I did in the House on credit cards and what I was able to do here in the Senate with ATMs—not eliminate the fees, because that is up to each bank but, rather, disclose them.

There are a couple of problems with disclosure. One is because it is not the banks that own the machines—the ATMs—rather, it is the stores.

It is a little more difficult to get that information out to the consumer even when the consumer swipes the card. What we have done here is ask the Federal Reserve to within 6 months study this issue and show us how it can be done.

In addition, there is another point our amendment has that we ask the Federal Reserve to study; that is, at least putting it on the monthly bank statement in clear letters what the fees are for debit cards. That is not done now. There are kids in college who were mailed these cards, and they used them to buy a Coke. The Coke was a dollar. The fee was a dollar. If they knew it cost $1, they probably wouldn't do it anymore.

I would like to engage in a colloquy with the chairman of the committee.

As the chairman knows, after a long fight Congress enacted legislation so that every ATM—no matter if it is run by a bank or private operator—tells you when you are being charged. Customers have come to know and expect that warning. But there is no warning when you use your card at a store and use it as a debit card. As often as not, you are charged. Is that correct?

Mr. SHELBY. If the Senator will yield, I understand the concerns. I think it is also true that debit card transactions and ATM transactions have some significant differences. Namely, the retailer owns the debit machine while the bank owns the ATM machine. This makes a ''point of sale'' disclosure—as we achieved in Gramm-Leach-Bliley—more difficult since banks cannot easily adjust the equipment and the software.

Mr. SCHUMER. I ask unanimous consent that the letter the chairman, the ranking member, and myself are submitting to the Federal Reserve Board be printed in the RECORD.

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

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC, November 6, 2003.

Hon. ALAN GREENSPAN,
Chairman, Board of Governors of the Federal Reserve System, Washington, DC.

DEAR CHAIRMAN GREENSPAN: We are writing to request a study by the Board of Governors of the disclosure of fees imposed by financial institutions on consumers in debit card transactions. Our request is outlined in the attached document.

As you know, consumers are increasingly using debt cards as an alternative to cash or credit cards. In 2001, there were estimated to be over 250 million bank cards in circulation with a debit function, and today it is estimated that debit payments make up almost 12 percent of retail payments. The reasons for this growth are clear. Debit cards offer convenience for consumers, and they offer substantial cost savings for banks through more efficient electronic processing.

Debit cards can be used by a consumer in two ways. In an online transaction, the consumer enters his/her personal identification number (PIN), and the debit occurs through an electronic transfer of funds over a local debit network, e.g., InterLink or Plus, from the consumer's bank to the merchant's bank. In an offline transaction, the consumer signs his/her name on a receipt, and the transaction occurs over a MasterCard or Visa network linked to the bank.

However, depending on how the consumer chooses to use his or her debit card, banks charge and make different amounts of money. In an offline transaction, banks charge a merchant from approximately 1.5 percent to 1.99 percent of the total value of the transaction, similar to credit card transactions that utilize the Visa or MasterCard networks. For example, in a $100 transaction, the merchant would be charged up to $2.00 for the processing of the transaction over the Visa or MasterCard network. In an online transaction, banks charge the merchant a flat fee of about thirty cents.

As those numbers illustrate, banks typically make more money when consumers use their debit cards in the offline or credit card-like function. In fact, it has been estimated to us that in a typical transaction banks make three to four times more money on offline transactions than on online transactions.

In part to make up for this revenue differential, banks have introduced new debit card fees in the form of a charge to the consumer for each PIN-based, online transaction he or she makes. This fee comes on top of the flat fee already charged to the merchant.

However, the consumer may be unaware of these fees at the time of the purchase. He or she has no explicit disclosure of the fee at the point of sale, and no option to accept or deny the additional charge, or to pay cash or use a different payment to avoid the fee. The evidence of the debit car fee shows up only later on the consumer's monthly bank statement. The debit card fees are published together with ATM fees, making it difficult for the consumer to distinguish or understand the charges. Many consumers end up calling the retailer to complain about the fee in the mistaken belief that it was the retailer, not their bank, that initiated the charge.

The growth of debit cards and the rise in debit cards fees makes this an important issue. The number of parties involved in the debit cards transactions—retailers, consumers, electronic payment networks, and banks—makes this a complex issue. As always we appreciate your support and the diligence and expertise of the staff at the Federal Reserve Board in helping us to consider and to address the disclosure of debit cards fees to consumers.

Sincerely,

RICHARD SHELBY,
Chairman.
PAUL SARBANES,
Ranking Member.
CHARLES SCHUMER,
United States Senator.

Mr. SCHUMER. Mr. Chairman, I know you have been in support of the Feds doing the study so we can see what to do next year in terms of legislation; I ask if that is amenable to you?

Mr. SHELBY. Absolutely. Senator SARBANES and I agree with Senator SCHUMER and support further study of this issue. We have planned and drafted a letter to the Federal Reserve Board asking them to conduct a comprehensive review of this issue.

Mr. SCHUMER. I ask the ranking member for his views on this letter and what we have to do in terms of disclosure on debit cards.

Mr. SARBANES. I share the chairman's view. I think the Senator from New York has spotlighted a very important issue, but probably the best way to proceed now is with this joint letter to the Federal Reserve. Then we would have the benefit of their study of this issue as we move ahead to try to address it.

Mr. SCHUMER. I thank the ranking member. We will make progress on debit cards. I will not go into all the details of the study. The letter is quite detailed. The Federal Reserve is willing to do it.

I make two other points after commending my colleagues on the bill overall. I am proud to be a cosponsor and supporter of this bill. There are two parts of the bill in which I was particularly interested. One is identity theft which has become an epidemic.

When your identity is stolen, it can take years to bring back your credit rating, even through no fault of your own. The criminals are getting very good at identity theft.

I introduced comprehensive legislation in this regard much earlier this year. The chairman has added provisions very similar to those I have introduced. As a result, this bill does a good job. Right now, becoming a victim of identity theft is as easy as saying your ABC's. With this legislation, it will be tougher.

My hometown, New York City, has the unfortunate distinction of being the identity theft capital of the world. I am glad we were able to do something quickly in that regard.

Second, on credit scoring, this is another issue on which the Senator from Colorado and myself worked long and hard. We thank the chairman and ranking member for incorporating that into the legislation.

The bottom line is, consumers have been kept in the dark about what their credit score is and how it is computed. This legislation, by adding the Schumer-Allard provision, lifts the veil of secrecy over credit scores. When a bank is going to charge you more for your mortgage, which could mean hundreds and hundreds of dollars every quarter, much more money every month, now you will be able to find out why and if there is incorrect information as to why you are being charged more. Maybe it is because you have a whole lot of credit cards, for instance, even if you pay your bills on time. You will be able to correct it.

This is fine legislation. I am speeding things along here because I know people want to move quickly. I thank the chairman.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2064

Mr. CORZINE. Madam President, I have a couple of general remarks about the overall legislation and I have an amendment at the desk which I call up, No. 2064.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE] proposes an amendment numbered 2064.

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

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

The amendment is as follows:

(Purpose: To require financial institutions and other users of consumer reports to provide notice to appropriate Federal agencies in cases in which consumer information is compromised)

On page 16, line 25, strike the period at the end and insert the following: ''; and

''(C) prescribe regulations requiring each financial institution and each other person that is a creditor or other user of a consumer report to notify the Federal Trade Commission (and any other agency or person that such rulemaking agency determines appropriate) in any case in which there has been, or is reasonably believed to have been unauthorized access to computerized or physical records which compromises the security, confidentiality, or integrity of consumer information maintained by or on behalf of that entity, except that such regulations shall not apply to a good faith acquisition of information by an employee or agent of such entity for a business purpose of that entity, if the information is not subject to further unauthorized access.''.

Mr. CORZINE. I understand the amendment will be agreed to by both of the managers but let me first say that this amendment is about disclosure of breached customer data that may exist in our system. Frankly, 85 percent of businesses that have sophisticated computer systems have identified breaches in their system. My amendment asks for the reporting of those breaches to the FTC so we can get a database and understand it.

Mr. SHELBY. Madam President, the managers are prepared to accept the amendment offered by Senator CORZINE. It is a good amendment and makes a lot of sense.

Mr. SARBANES. The amendment of the Senator from New Jersey makes a positive contribution to this legislation. I am certainly happy to accept it.

I also thank the Senator for all the work he did in the committee on so many provisions in this legislation. He had a major hand in shaping the bill. I deeply appreciate that.

Mr. CORZINE. I appreciate that recognition.

The reality is the chairman and ranking member showed great stewardship and leadership to get this bill in a position where it has broad support in this body. It is going to make a big difference in the financial marketplace for consumers.

Both the reauthorization and additional elements embedded in this bill have truly improved our credit system, which is already the finest in the world. I thank the ranking member. I want to make sure the chairman knows that I appreciate the bipartisanship, the cooperation, and comity that has accompanied the framing of this bill. I very much appreciate the inclusion of the disclosure of breached consumer data as part of the bill.

There are some elements of this bill that I will highlight that others have given emphasis to. It is particularly important to strengthen the controls on personal, financial, and medical data in this bill; however, nothing is more important, in my view, than someone having the ability of requesting a credit file on themselves from the credit agencies once a year. People ought to be able to understand how they are being viewed in the system, if ever they are going to correct issues. That, to me, is one of the most important controls.

Very much to the credit of the ranking member, there is emphasis on promoting financial literacy embedded in this legislation that creates a real foundation for how we can talk to the general public, teach the principles of proper financial management, which is one of the most important elements in individual personal finances. When citizens find they are on the short end of their credit reports and they are in court to solve a bankruptcy, they wish they had learned more in school regarding managing personal finances.

The identity theft issue, which is part of why I have offered the breached customer data amendment, is so important. This is an epidemic in our society. The number of breaches, the number of extraordinary cases of individual pain that has come from people breaching our technologically connected world today is overwhelming. The protections we have started to talk about—fraud alerts, limitations on transfer of debt, and this free credit report a year—will go a long way toward trying to shape it up.

We could go further in this area, in my own view. As the Senator from New York discussed, this is an important piece of legislation. I wish we had done a little more to control the use of financial information, particularly among affiliates in some of our most complex organizations where there are 1,000 or 1,500 affiliates, some spread out but not as broadly controlled as some Members might think relative to what I know is in the case of the world financial markets.

But that said, this is a fine piece of legislation. The manager and ranking member should be congratulated, as should all of the members of the committee, including the Presiding Officer.

With that, I will yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, has that amendment been disposed of?

The PRESIDING OFFICER. It has not.

Is there further debate?

If not, the question is on agreeing to amendment No. 2064.

The amendment (No. 2064) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I have spoken to the two managers of the bill, and at this stage it appears we have two amendments left, both from the Senator from Wisconsin, Mr. FEINGOLD. He has agreed, with the permission of the managers, to offer one amendment, then offer the next amendment, and debate both those amendments at the same time; and then we would vote on both amendments following his debate on both amendments and, of course, the adequate response from the managers of the bill.

Senator FEINGOLD is here and he is in agreement with that, so we do not need a unanimous consent agreement, but

people should understand what he intends to do at this time, and what we intend to do.

Following that, it is my understanding, from speaking to the two managers, there are no other amendments. I think there may be a statement or two that Senators wish to give on the bill, but other than that, I know of no substantive amendments.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I would anticipate we would be ready to go to final passage. I think we can move fairly quickly. I know Senators have conflicting demands on them, and we are trying to move along.

Mr. REID. Madam President, I have a statement that will take about 3 or 4 minutes that I will give at some time.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 2065

Mr. FEINGOLD. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 2065.

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

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

The amendment is as follows:

(Purpose: To provide for data-mining reports to Congress)

At the appropriate place, insert the following:

SEC. ___. DATA-MINING REPORTING ACT OF 2003.

(a) SHORT TITLE.—This section may be cited as the ''Data-Mining Reporting Act of 2003''.

(b) DEFINITIONS.—In this section:

(1) DATA-MINING.—The term ''data-mining'' means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term ''database'' does not include telephone directories, information publicly available via the Internet or available by any other means to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

(c) REPORTS ON DATA-MINING ACTIVITIES.—

(1) REQUIREMENT FOR REPORT.—The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(A) A thorough description of the data-mining technology and the data that will be used.

(B) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(C) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(D) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(E) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(F) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected and used.

(G) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(H) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

(3) TIME FOR REPORT.—Each report required under paragraph (1) shall be—

(A) submitted not later than 90 days after the date of the enactment of this Act; and

(B) updated once a year and include any new data-mining technologies.

Mr. FEINGOLD. Madam President, the Fair Credit Reporting Act was designed to make sure that personal financial information about consumers is fairly maintained and accurately reported by credit agencies and provided only to the appropriate people. Maintaining the privacy of the consumer is one of the central objectives of the Fair Credit Reporting Act. My amendment will ensure that the Federal Government is not overstepping its role in obtaining and using this highly personal information.

My amendment will require all Federal agencies to report to Congress on the practice of datamining but it would not impose any limits on the use of datamining. This amendment will provide the American people with critical information about the use of datamining technology and the way highly personal information, such as credit reports and other financial information, is obtained and used by our Government.

The untested and controversial intelligence procedure known as datamining is capable of maintaining extensive files containing both public and private records on each and every American. Periodically, after millions of dollars have been spent, we learn about a new datamining program under development. Congress and the public should not be learning the details about these programs only after millions of dollars are spent testing and using datamining against unsuspecting Americans.

Coupled with the expanded domestic surveillance undertaken by this administration in the wake of September 11, the unchecked development of datamining is a potentially troubling step that threatens one of the most important values that we are fighting for in the war against terrorism; and that, of course, is freedom. My amendment would simply require all Federal agencies to report to Congress within 90 days and every year thereafter on datamining programs used to find a pattern indicating terrorist or other criminal activity and how these programs implicate the civil liberties and privacy of all Americans. If necessary, information in the various reports can be classified.

The amendment does not end funding for any program, determine the rules for use of the technology or threaten any ongoing investigation that uses datamining technology. All it does is ensure that Congress has complete information about the current datamining plans and practices of the Federal Government. With this information, Congress will be able to conduct a thorough review of the costs and benefits of the practice of datamining on a program-by-program basis and make considered judgments about which programs should go forward and which ones should not.

My amendment would provide Congress with information about the nature of the technology and the data that will be used. The amendment would require all Government agencies to assess the efficacy of the datamining technology and whether the technology can deliver on the promises of each program. In addition, the amendment would make sure that the Federal agencies using datamining technology have considered and developed policies to protect the privacy and due process rights of individuals and ensure that only accurate information is collected and used.

Congressional review and oversight is necessary in order to find out whether and how Government agencies, such as the Department of Homeland Security, the Department of Justice, and the Department of Defense, plan to collect and analyze a combination of intelligence data and personal information such as individuals' traffic violations, credit card purchases, travel records, medical records, communications records, and virtually any information contained in commercial or public databases. Through comprehensive data mining, everything from people's

video rentals or drugstore purchases made with a credit card to also their most private health records could be fed into a computer and monitored and reviewed by the Federal Government.

Using data mining, the Government hopes to be able to detect potential terrorists. There is no evidence, however, that data mining will, in fact, prevent terrorism. Data mining programs under development are being used to look into the future before being tested to determine if they would have even been able to anticipate past events like September 11 or the Oklahoma City bombing. Before we develop the ability to feed personal information about every man, woman, and child into a giant computer, we should learn what data mining can and can't do and what limits and protections are needed.

We must also consider the potential for errors in data mining. Most people don't even know what information is contained in their credit reports. Subjecting unchecked and uncorrected credit reports to massive data mining makes the prospect of ensnaring many innocents very real. If a credit agency has data bout John R. Smith on John D. Smith's credit report, even the best data mining technology might reach the wrong conclusion.

Most Americans believe that their private lives should remain private, especially from the Government. Data mining programs run the risk of intruding into the lives of individuals who have nothing to do with terrorism but who trust that their credit reports, financial records, shopping habits and doctor visits would not become a part of a gigantic computerized search engine, operating without any controls or oversight.

The executive branch should be required to report to Congress about the impact of the various data mining programs now underway or being developed, and the impact those programs may have on our privacy and civil liberties so that Congress can determine whether the proposed benefits of this practice come at too high a price to our privacy and our personal liberties.

Some may argue that this amendment does not belong in the bill before us. I respectfully disagree. As we consider legislation dealing with individuals' credit reports and their financial privacy, I think it is both relevant and important that we find out whether and to what extent the Government is reviewing databases containing highly personal information.

So I urge my colleagues to support this very simple reporting amendment. All it asks for is information to which Congress and the Americana people are entitled.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, I intend to oppose this amendment and all amendments that are not within the four corners of the Fair Credit Reporting Act legislation.

The committee spent a great deal of time, as the Presiding Officer knows, as a distinguished member of the Banking Committee, carefully considering the reauthorization and reform of the Fair Credit Reporting Act national standards.

The committee bill is carefully crafted, and it balances protecting consumer interests and ensuring the efficiency of our credit markets.

The committee bill was unanimously approved, as the Presiding Officer knows, by a voice vote in the committee, which is hard to get. It was unanimous.

Extraneous amendments, I believe, alter this balance and focus and threaten our ability to maintain the strong, bipartisan consensus necessary to pass this important legislation this year.

As a result, the managers of the bill—Senator SARBANES and I—intend to oppose including this amendment and all non-Fair Credit Reporting Act-related amendments, regardless of their merit. This might have some merit, but I think it can be better served at another place on another day.

At the proper time, I will move to table the amendment. Right now, I yield to Senator SARBANES.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, if I could respond briefly to the chairman, first, I congratulate the chairman and ranking member for putting this bill together. I intend to support it. I am pleased to support it. I recognize the managers had to achieve a balance, and they do not want to disrupt that balance.

I think I can pretty confidently assure my colleagues that a mere reporting requirement by Federal agencies could not possibly upset the balance they have so skillfully achieved. So I would argue in the case of this amendment—and my second amendment, which is also only about Federal Government reporting information—that it does no violence to what they have achieved and actually is, in this case, very consistent with the purposes of the bill that have to do with people's privacy of their financial records.

So I urge the chairman and ranking member to consider that this would be different from many other amendments that could upset the balance.

Mr. SARBANES. Madam President, I understand the data mining amendment encompasses the legislation which the Senator introduced and which is pending in the Judiciary Committee, if I am not mistaken. At least I am informed of that. So it is not within the scope of the work of our committee, I say with all due respect to the Senator.

I share some concerns about the issues he is raising, and I think they are worth paying attention to. But we have tried very hard to deal only with amendments that are relevant to the Fair Credit Reporting Act. A number of Members on both sides of the aisle, upon hearing that, have refrained or withheld from offering amendments that are outside that parameter, and we are very grateful to them for doing that. Obviously, it has enabled us to move this legislation along.

I think we have had a very open process in dealing with amendments that affect the provisions of the FCRA. We tried to keep it open and I think, in a sense, we have bent over backward to do that. But we have tried to dissuade the offering of amendments that are outside that scope.

I think this amendment falls into that category, and therefore I will be supportive of the chairman in the statement he made. This is not to speak to the substance of the Senator's amendment in any developed way; I assure him of that. But it seems to me this is not within the scope of what we do in the Banking, Housing, and Urban Affairs Committee.

Mr. FEINGOLD. Madam President, I will briefly respond with great respect. There were a number of other amendments with great substance that I would have very much wanted to offer, but did not in the spirit of trying to make sure nothing of great moment occurred on this bill. These are merely reporting amendments.

I understand the Senator's point. These are amendments that could have been possibly accepted; they are not particularly controversial. In any event, I respect what the managers have had to do in order to get the bill through.

I am prepared to move on to the next amendment, unless they want to continue to debate this. If the managers prefer, we could move on in the next amendment.

Mr. SHELBY. Madam President, I move to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SHELBY. Madam President, I ask unanimous consent that the vote be deferred temporarily.

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

AMENDMENT NO. 2066

Mr. FEINGOLD. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 2066.

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

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

The amendment is as follows:

(Purpose: To require a report to Congress regarding Federal acquisitions of American-made products)

At the end of title VII, add the following:

SEC. 712. BUY AMERICAN REPORT.

(a) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the head of

each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

(b) CONTENT OF REPORT.—The report required by subsection (a) shall separately indicate—

(1) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States;

(2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.); and

(3) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

(c) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under subsection (a) shall make the report publicly available by posting on an Internet website.

Mr. FEINGOLD. Madam President, I have come to this floor on several occasions this year to discuss the crisis in American manufacturing and some steps that I think Congress should take to stop the flow of manufacturing jobs overseas.

One step that I believe we should take to support American manufacturers is to ensure that the Federal Government buys American-made goods whenever reasonably possible. Congress enacted such a policy when it passed the Buy American Act of 1933. This law was enacted to ensure that the Federal Government supports domestic companies and domestic workers by buying American-made goods.

However, the Buy American Act includes a number of waiver provisions which allow agencies to buy foreign-made goods in certain defined circumstances. I am concerned that agencies may be using these waiver provisions to get around the spirit, if not the letter, of the law. That's why, earlier this year, I introduced the Buy American Improvement Act, which would strengthen the existing act by tightening its waiver provisions.

Unfortunately, it's virtually impossible to get hard numbers on the Federal Government's purchases of foreign- and domestic-made goods. Under current law, only the Department of Defense is required to report annually to Congress regarding its use of waivers of the Buy American Act and its corresponding purchases of foreign-made goods. As for other agencies, there is no real disclosure or accountability in the waiver process.

I think that Congress and the public should know how taxpayer dollars are being spent, and that's what my amendment would do. The amendment is very simple and, I hope, noncontroversial. It would just require all Federal agencies to prepare an annual report that details their purchases of foreign-made goods. That's it. It would not make any changes in the Buy American Act; that law and its waiver provisions would remain the same. All that would change is that we would all know whether the Buy American Act is working.

My amendment would require that the annual report to be submitted by agency heads include the following information: the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States; an itemized list of all applicable waivers granted with respect to such articles, materials, or supplies under the Buy American Act; and a summary of the total procurement funds spent by the Federal agency on goods manufactured in the United States versus on goods manufactured outside of the United States. The amendment also requires that the heads of all Federal agencies make these annual reports publicly available on the Internet.

Some may argue that this is a burdensome requirement. The truth is that it is similar to the reporting requirement that the Defense Department complies with every year. If the Pentagon, with its many procurement contracts, can report to Congress annually on its purchases of goods, so too can all other Federal agencies.

I am pleased that this amendment is supported by an array of business and labor groups including the AFL–CIO, Save American Manufacturing, the U.S. Business and Industry Council, and the International Brotherhood of Boilermakers.

Madam President, 2.5 million American manufacturing jobs have been lost since January 2001. The current unemployment rate is 6.1 percent. The stagnant economy and continued loss of high-paying manufacturing jobs underscore the need for the Federal Government to support American workers and businesses by buying American-made goods. This amendment is a modest step toward that goal.

I understand that the managers will oppose this and all amendments that are deemed to be non-relevant to the bill. I respect their prerogative to do so. I would have preferred to offer this important amendment to another bill. But opportunities to offer amendments have been few and far between this year, and it is the right of all Senators to offer amendments. I hope that my colleagues will not oppose this amendment simply because they do not feel it belongs on this particular bill. The question is not whether this amendment belongs on the bill; the question is whether it is good law. I think it is and I hope others will agree.

The American people deserve to know how their tax dollars are being spent, and to what extent these dollars are being used to support foreign jobs. I urge my colleagues to support American companies and American workers by supporting this amendment.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CARPER. Madam President, as we approach the end of actually a rather short, abbreviated debate on this legislation, I want to say a few words encouraging my colleagues to join the Presiding Officer, myself, and our respective Republican and Democratic floor managers in supporting this measure.

Let me begin by saying to Chairman SHELBY and our ranking Democrat, Senator SARBANES, that I think it is rather remarkable that we have come through the deliberations of the past year. We had extensive, balanced hearings on this legislation that gave people from all sides of the issue the chance to comment on what they would like to see us do with respect to reauthorization of the Fair Credit Reporting Act.

This is the way the process is supposed to work. We have a deadline, and that deadline is to act by December 31. Our chairman and ranking Democrat have orchestrated a series of hearings, as I said earlier, which allowed financial institutions to come in, allowed consumer groups to come in, and other folks—rank-and-file citizens—to share with all of us on the Banking Committee how they think we ought to proceed.

We did not have one hearing; we have had a whole series of hearings. I think what emerged from those hearings is a consensus that we aspire to have, but all too rarely see. I am proud to be part of this process, and I suspect the Presiding Officer feels the same way.

Our national credit granting standards that are created under the Fair Credit Reporting Act allow all Americans quick and easy access to credit, whether it is to purchase a home, to purchase a car, or any number of other consumer goods. There is compelling evidence that failure to reauthorize the expiring provisions of the Fair Credit Reporting Act would have significant economic consequences, and not very positive ones.

I am pleased to say that the legislation before us today extends these uniform standards. It makes them permanent. We avoid any adverse impact on our national credit granting system, and we avoid any negative impact on our national economy.

The legislation before us also makes a number of improvements to current law. I think this is an important point. It is one made by others, but I want to make it again. Earlier this year, the Federal Trade Commission released a survey indicating that millions of consumers have been victimized by the crime of identity theft. My own family understands how disruptive and devastating this crime can be, as one of our relatives in your State, Madam President, was victimized over a period of several years by identity theft. It

was an awful experience for her and not a pleasant one for her family.

The bill before us responds to this increasing trend by requiring the creation of a system of fraud alerts. This system of fraud alerts allows the victims of identity theft and also allows active duty military personnel to flag their credit reports for potential fraud. For example, if a consumer believes they have been the victim of identity theft, then that consumer can make one call and have a fraud alert put on his or her credit report. The alert will notify users of that report that this consumer could be the victim of a fraud. This alert, in turn, requires the users of this report to take extra steps before establishing new credit or establishing a credit limit.

In the year after the fraud alert is placed in the file, a consumer will be able to receive not one, but two free credit reports to make sure the information in their credit report is correct. In addition, consumers will have the ability to block information on their credit report that is the result of identity theft.

Importantly, the bill increases the maximum penalty for those who commit the crime of identity theft.

This legislation also gives consumers more control over the information that is contained in their credit reports. First of all, consumers will have easy access to a free credit report on an annual basis. This is a significant right that will allow consumers to review the information contained in their credit report and to make corrections to it.

To ensure consumers are aware of these rights, the Federal Trade Commission must actively publicize how consumers may obtain a free credit report and how to dispute information contained in that report.

I oftentimes use the analogy of if a tree falls in a forest, there is nobody there to hear it. My colleagues have probably heard that; probably used it a time or two. In this case, if a consumer has the ability to obtain a free copy of their credit report annually, but they don't know they have that right, is there a benefit that inures from this legislation?

In the legislation, we put the onus on others and the Federal Trade Commission to publicize how consumers can obtain a free credit report.

In addition, the bill gives consumers important protection for their medical information. One of our colleagues on the floor today was asking if they deal with a particular financial institution, a company that has access to some of the medical data, can they then share medical data with other affiliates of that company?

The answer is no; that is protected and prevented by this legislation. This bill prohibits the use of medical information in the credit granting process. In addition, as I just said, the legislation creates a system for consumer reporting agencies to code medical information so that someone looking at a credit report cannot discover a consumer's medical history.

Finally, the bill before us establishes the Financial Literacy and Education Commission. I believe this is an essential part of the legislation—it may not have gotten a lot of credit, but it is an important part of this bill—because a lot of consumers in this country have no knowledge or at least limited knowledge of how our credit system works. This new commission will be charged with reviewing financial literacy efforts throughout the Government to eliminate duplicative efforts. Importantly, the Commission will also coordinate the promotion of Federal financial literacy efforts, including outreach among State, and local governments, nonprofit organizations, as well as private enterprises.

This legislation creates many new tools for consumers. I have mentioned some of them. But if consumers lack basic financial literacy, they may not be able to use these tools with the kind of effectiveness that is intended.

Again, let me go back to where I started. We have seen this year a number of occasions when legislation has come to the floor without going through committee. We have seen legislation come to the floor for our consideration, sometimes rather complex legislation, and it has not had the benefit of the hearings it should have. The system has worked in this case: excellent hearings, the ability for us as Democrats and Republicans to work together to receive a whole lot of input from a broad cross-section of people and interest groups in this country, the ability to bring a bill out of committee on a unanimous voice vote. This is legislation that I think is going to be disposed of today.

I am proud to at least have been a small part of that process and pleased to lend my support. I urge my colleagues to do the same for this legislation.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Madam President, this is my opportunity to say a word or two about the National Consumer Credit Reporting System Improvement Act.

We always hear about how divided the Senate is and how divided we are politically, that there is so much partisanship. My experience indicates that when there is something that really is extremely important that needs to get done, we do it.

As I look back, there was the terrorism insurance, which was difficult to do, but in a bipartisan method we stepped forward and did that. We had significant problems after 9/11 with the airline industry. It was difficult to do, but we stepped forward with legislation that in fact allowed the airline industry as we know it in America to continue.

Fair credit reporting is an important issue, and the two sides have joined together. I think one reason we were able to do this was the experience and the abilities of the two managers of this bill. The Senator from Maryland has heard me brag about him on many occasions. He is a person of great intellect, a Rhodes scholar, someone who is very quiet. But whenever Senator SARBANES speaks, everyone should listen because he does not speak impulsively. He is aware of every word he says. His being the ranking member on this Banking Committee every day gives me comfort because it is an area of the law that I do not fully understand.

I have never been on the committees of jurisdiction that deal with these most important issues. This committee has wide-ranging jurisdiction. It deals with certainly much more than banking—housing, mass transit.

I also say, as I said this morning earlier about my friend from Alabama, the distinguished chairman of the committee, he is a fine legislator. We on this side of the aisle always look forward to the senior Senator from Alabama being part of legislation. Everyone in the Senate is a person of their word. I do not know anyone in the Senate, of the 99 other Senators, whose word we cannot trust.

The Senator from Alabama certainly is a man of his word, but the reason I have such great admiration for him is that he is willing to listen. He is willing to listen to someone who disagrees with him.

That this legislation arrived at the point it has, is the result of two fine legislators working through the committee system and reporting a bill to the Senate. This bill is proof that with enough hard work and commitment, we can move substantive, quality legislation through the Senate. Again, I applaud and commend the two managers of this legislation.

I have personally spent some time on this legislation, working with Members trying to work out an arrangement to allow us to have the bill on the floor today. We have been able to do that. We have worked to limit the number of amendments. The majority leader originally said he would not accept the agreement that we had. There were more amendments, so we went back and worked and whittled down the amendments. As a result of that, we were able to bring this to the floor.

I am very happy to see us moving this bill forward. It is very close to passage. It is an excellent example of what we can accomplish when Members make a dedicated effort to pursue a reasonable compromise. This legislation is not what Senator SARBANES wants, it is not what Senator SHELBY wants; it is what the committee wanted. They had to work with their Members. It is a compromise. Legislation is the art of compromise. That is not a bad word. That is the only way we can get legislation passed—consensus building—and they have done that.

This legislation will help safeguard the security of consumers' credit data

at the same time it guarantees those consumers rapid, widely available, and inexpensive credit.

It is a win for the people all over Nevada. It's a win for a family in Elko who receives a better mortgage rate because a mortgage bank can be confident about the information in the parents' credit history. The family pays a lower rate for their mortgage and, as a consequence, will pay thousands less over the lifetime of the loan, and that money can be redirected toward childcare, college, a family vacation.

It is a win for the used car dealer in Reno, or anyplace else in Nevada, who receives more complete and reliable information about prospective buyers. He can review an applicant's credit history and feel greater confidence about the degree of risk he is assuming when he extends credit to his customers.

It is a win for the public who will receive better protection than ever before against identity theft.

The United States has the lowest cost, most effective consumer credit market in the entire world, due in part to the Fair Credit Reporting Act. This bill will preserve and extend the best elements of this law and add important new provisions and make it even better.

In closing, I am glad to see that our hard work negotiating this legislation has paid off with a solid bill, and I look forward to seeing consumers and business reaping the benefit of this legislation for years to come.

Mr. CARPER. Will the Senator from Nevada yield for just a moment?

Mr. REID. I am happy to yield to my friend from Delaware.

Mr. CARPER. The Senator from Nevada has again heaped praise on our chairman and our ranking Democrat, as others of us have done, and that is important. I failed to mention this in my remarks and I want to atone for that omission now, that we are blessed with wonderful staff, as we all know, on both the Republican and the Democratic sides, and on the subcommittee and the full committee. I want to take a moment to also express my thanks to them and say to my own counsel, Margaret Simmons, who has done great work on this bill, a special thank you. None of us do this stuff by ourselves, as we all know. In this case, we have been greatly assisted by their efforts.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 2066 WITHDRAWN

Mr. FEINGOLD. Madam President, with regard to the second amendment I offered concerning the reporting for the Buy America Act, at this time I will withdraw the amendment, with my appreciation to the chairman for his interest in the matter, and I defer to his comments.

Mr. SHELBY. If the Senator will yield, I believe that is a good amendment. I think it ought to be in other legislation. I am going to work with Senator FEINGOLD. We all want to promote jobs in America. We believe the American worker can produce anything as well as, if not better than, any worker in the world. If we promote Buy America, I think we are saying something to our workers and our industry and our economy down the road, notwithstanding what others will argue.

So I commend the Senator from Wisconsin for bringing this up tonight. We are going to continue to work on this and try to put it in the proper legislation, where it is going to go somewhere.

Mr. FEINGOLD. Madam President, I thank the Senator from Alabama for his important statement to finally make some progress in strengthening the Buy America Act. I look forward to working with him on this matter.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. FEINGOLD. My understanding is the Senator intends to table my other amendment.

The PRESIDING OFFICER. The motion to table is pending.

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

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

AMENDMENT NO. 2067

Mr. SHELBY. Mr. President, on behalf of Senator NELSON of Florida, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY] for Mr. NELSON of Florida, proposes an amendment numbered 2067.

The amendment follows:

(Purpose: To ensure proper disposal of consumer information and records derived from consumer reports)

At the end of title II, add the following:

SEC. 216. DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following:

"§ 627. Disposal of records

''(a) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Federal Trade Commission shall issue final regulations requiring any person that maintains or otherwise possesses consumer information or any compilation of consumer information derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

''(2) EXEMPTION AUTHORITY.—In issuing regulations under this section, the Federal Trade Commission may exempt any person or class of persons from application of those regulations, as the Commission deems appropriate to carry out the purpose of this section.

''(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to alter or affect any requirement imposed under any other provision of law to maintain any record.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by this Act, is amended by adding at the end the following:

''627. Disposal of records.''.

Mr. NELSON of Florida. Mr. President, most companies are required to adopt rules to ensure the proper disposal of a consumer's private financial records. I learned last year, before comprehensive privacy regulations took effect, that some companies do not have protocols in place outlining the proper way to dispose of private consumer information when it is no longer needed. Last year, thousands of files containing sensitive customer records were discarded in a dumpster. If the wrong person came across these files, he or she would have had everything necessary to commit numerous crimes, including identity theft.

Since this incident, the company has acted to correct its privacy policies and the Federal Trade Commission issued its safeguards rule. The rule applies to credit reporting agencies and financial institutions that maintain consumer records and also contains guidance for businesses, which includes the storage and proper disposal of records.

Although check-cashing businesses, ATM operators, real estate appraisers, and even couriers are covered by the safeguards rule, rental property companies that assess the creditworthiness of tenants and businesses that maintain consumer accounts, such as cell phone companies and utilities, are not covered by the rule.

Improper disposal of a credit report could compromise driver's license information, Social Security numbers, employment history and even bank account numbers. My amendment will close the loophole and further protect credit information by requiring the Federal Trade Commission to issue regulations regarding the proper disposal of consumer credit information.

Mr. SHELBY. Mr. President, Senator SARBANES and I have reviewed the amendment. We have no objection to the amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I support this amendment. Senator NELSON of Florida has focused on an important issue involving the disposal of consumer financial records. We commend the amendment to our colleagues.

Mr. SHELBY. I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2067) was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

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

UNANIMOUS CONSENT REQUEST—H.R. 1904

Mr. REID. Mr. President, there has been a lot of talk the last few days and different offers by the majority to go to conference on the Healthy Forests initiative and a number of other pieces of legislation. For the majority to say that going to conference is the only way to legislate between the two Houses is really, for lack of a better description, a bogus argument. Almost every day both Houses pass legislation for which a conference is not appointed. As I mentioned earlier today, just last night the Senate passed H.R. 3365, the Fallen Patriots Tax Relief Act. We amended it and sent it back to the House without asking for conference.

On other measures, we have done the same thing—H.R. 1584, H.R. 1298, H.R. 733, H.R. 13, H.R. 4146, and H.R. 659 just to name a few.

If there is any concern about holding up legislation, we believe the shoe fits the majority. The Healthy Forests initiative is something that needs to be done. We cannot understand on this side why the leadership has refused to send the bill to the House; that is, H.R. 1904, the Healthy Forests initiative, which passed here overwhelmingly just a few days ago. The House may not want to go to conference. They may like our legislation or they may want to amend it and send it back. But at least we ought to give the House this opportunity rather than holding the bill hostage. That is what is happening now. By refusing to send it to the House, the majority is holding the bill hostage.

I ask unanimous consent that the enrolling clerk be directed to immediately send H.R. 1904, which is the Healthy Forests initiative, as amended by the Senate, to the House of Representatives.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I 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. 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. REID. Mr. President, what is the regular order at this time?

The PRESIDING OFFICER. The regular order is the motion to table amendment No. 2065.

Mr. SHELBY. I believe the Senator from Wisconsin has an amendment pending.

Mr. DASCHLE. Mr. President, before the Senator from Alabama moves to table, first of all, I know we are getting close to the end of deliberations on this bill. I think that it merits broad bipartisan support.

I appreciate very much the efforts that have been made by the chairman and ranking member. Both Senators have worked very closely together to get it to this point. Obviously, there are outstanding issues that still have to be resolved. We have a couple of amendments.

I wanted to take a moment—I didn't realize we were this close to having the vote on the amendment itself—to draw a distinction in this legislation.

Obviously, because of the extraordinary effort that has been made on both sides to work together and the assurances I have been given by the chairman that it is not his intention to conduct a conference that would not involve the ranking member and members of the minority with regard to this bill and issues to be resolved in conference, I will recommend to our caucus that we move forward with a conference on this bill. I wish I could say that with regard to other legislation, but we have not been given the same assurances. We are not at that point yet. But in this case, we certainly intend to work with our colleagues and with the chairman in particular. I applaud him for his efforts and thank him for the kind of working relationship that our two colleagues have. It is a tribute to both of them. I acknowledge that prior to the time we take our vote.

Mr. SHELBY. Mr. President, I would like to respond to the Democratic leader.

First of all, we have gotten to where we are tonight on the Fair Credit Reporting Act coming out of the Banking Committee by working together in a bipartisan way. Senator SARBANES and the Democrats on the committee have been involved in the formulation of this legislation as so many members of the Banking Committee have. That is why we are here today. That is why we believe we have put together a far-reaching, very complex piece of legislation. We are going to continue—assuming this bill passes and goes into conference—to work together because that is the only way we are going to pass this legislation. This legislation, the Fair Credit Reporting Act, would expire at the end of this year. We know we are working on a deadline. We are working on a good piece of legislation. We want to continue that.

I yield to the Senator from Maryland.

Mr. SARBANES. Mr. President, I simply want to observe that we had a fair and open working relationship in the committee in bringing the legislation forward. All Members participated from both sides. I would expect that same relationship to then continue in the conference committee. We have been dealt fairly by the chairman. I presume we will continue to be dealt fairly by the chairman. I just wanted to add that perception to this relationship.

Mr. DASCHLE. Mr. President, with that explanation of our circumstances involving this bill, as I say, we will not object to going to conference. I wish our colleagues well as we finish our work on this legislation before the end of the year.

I yield the floor.

Mr. SHELBY. Mr. President, if it is proper at this time, I move to table the Feingold amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. The question is agreeing to the motion to table amendment No. 2065. The yeas and nays have already been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. BUNNING), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting, the Senator from Kentucky (Mr. BUNNING) would vote ''yes.''

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator form Connecticut (Mr. LIEBERMAN), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''no.''

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

The result was announced—yeas 61, nays 32, as follows:

[Rollcall Vote No. 435 Leg.]

YEAS—61

Alexander	Daschle	Landrieu
Allard	DeWine	Lincoln
Allen	Dole	Lott
Baucus	Domenici	Lugar
Bennett	Ensign	Miller
Bond	Enzi	Murkowski
Breaux	Fitzgerald	Nelson (NE)
Brownback	Frist	Nickles
Burns	Graham (SC)	Pryor
Campbell	Grassley	Roberts
Carper	Gregg	Rockefeller
Chafee	Hagel	Santorum
Chambliss	Hatch	Sarbanes
Cochran	Hollings	Sessions
Coleman	Hutchison	Shelby
Collins	Inhofe	Smith
Cornyn	Inouye	Snowe
Craig	Johnson	
Crapo	Kyl	

Specter	Sununu	Voinovich
Stevens	Talent	Warner

NAYS—32

Akaka	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	McCain
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Byrd	Graham (FL)	Reed
Cantwell	Harkin	Reid
Clinton	Jeffords	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Dayton	Lautenberg	

NOT VOTING—7

Bunning	Lieberman	Thomas
Edwards	McConnell	
Kerry	Nelson (FL)	

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I would like to take a few moments to thank some of the staff who did outstanding work on the Banking Committee—Kathy Casey, chief of staff of the Banking Committee; Doug Nappi, our general counsel; Mark Oesterle, one of our counsel.

I also thank some of the Democratic staff who worked with us on this: Steve Harris, who is Democratic chief of staff; Marty Gruenberg; Lynsey Graham Rea, and Dean Shahinian. They have all worked together in a bipartisan fashion. I believe that is why this legislation was brought out of the committee unanimously and we will be able to pass it, because we had a lot of input from Members and committee staff on both sides of the aisle. It makes a difference.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I echo the chairman in expressing my deep appreciation to the staff people he enumerated: Kathy Casey, Doug Nappi, and Mark Oesterle on the Republican side, and Steve Harris, Lynsey Graham, Dean Shahinian, and Marty Gruenberg on the Democratic side.

We are fortunate in the Banking Committee that we have a very committed, able, dedicated staff on both sides of the aisle. Furthermore, they have been able to work with one another in a very productive and cooperative fashion. The chairman and I are keenly aware of the fact of how much we rely upon them, and we want them to know how much we appreciate their terrific effort, which was reflected in this legislation and in many other matters with which the committee deals.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I ask unanimous consent that the vote occur on passage of the bill on Wednesday—tomorrow—with no intervening action or debate, at a time determined by the majority leader, after consultation with the Democratic leader. Further, I ask unanimous consent that following that vote, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate, with a ratio of 4 to 3. I also ask unanimous consent that S. 1753 then be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

UNANIMOUS CONSENT AGREEMENT—H.R. 2673

Mr. STEVENS. Mr. President, I ask unanimous consent that following morning business on Wednesday, the Senate proceed to the consideration of H.R. 2673, the Agriculture appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, there is no objection. The persuasiveness of the chairman of the committee allays any fears Senator DASCHLE and I had of proceeding to this appropriations bill. We look forward to having as few amendments as possible. We hope to find out how many amendments we have even tonight. It would be good to get them to the cloakroom. We will be on this probably around 10:30 tomorrow morning.

Mr. STEVENS. Mr. President, I echo what the assistant minority leader said in making that request. We know of some amendments that are out there. We believe we can finish the bill tomorrow if we apply ourselves to the task.

I yield the floor.

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

Mr. REID. Mr. President, I 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. ALEXANDER. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for as much time as I may consume.

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

INTERNET TAX NON-DISCRIMINATION ACT OF 2003

Mr. ALEXANDER. Mr. President, the distinguished occupant of the chair and I are new Members of the Senate. There are a great many privileges to being here, and one is the congeniality to new Members of the Senate. One is the seriousness of the issues with which we deal these days. One is the great traditions in the Senate. But there is a very special privilege of being here, and being here tonight, which I realize, and that is this: Every single one of us as Americans someday, sometime, while sitting at home or on our job, may suddenly realize something about our Government that really stirs us up and we wish we could say something and do something that somebody would hear. We are angry about it, we are upset about it, we want to say something about it. I have a privilege as a Member of the Senate of being able to do just that tonight.

Nothing used to make me more upset as the Governor of Tennessee for the 8 years I was Governor than when Members of this distinguished body and the other distinguished body—Members of Congress—would get together and come up with some great idea and pass a law and tell us to do it, and then send us the bill requiring us to pay for it, even though they were printing money up here and we were balancing budgets at home.

The distinguished occupant of the Chair was mayor of a great city for 8 years, I believe, the same amount of time as I was Governor. I know he must have felt the same way.

It might have been the case in terms of storm water runoff. Somebody in Washington, like the EPA, the Environmental Protection Agency, in that case may have said sometimes when it really rains hard, the water gets mixed up with the sewage and it runs into the river, so we need to fix that situation.

Great idea, but who is going to pay the bill? I tell you who pays the bill. In Minneapolis, you have to raise the property tax, or in Nashville, you have to raise the sales tax. Or in Maryville, TN, you have to fire some teachers so you have enough money to do the storm water runoff.

I remember back in the mid-1970s, about the time I was getting into politics, the Members of Congress decided we needed to help children with disabilities. We are all for that. That is a wonderful idea. But at the time, the Federal Government was paying, as it is today, about 7 percent of all the costs of elementary and secondary education in America. Most of that is paid for by Minnesota and Tennessee taxpayers through income taxes, and sales taxes, and property taxes that are raised at home.

The Congress said, ''Help the children with disabilities,'' but they didn't pay the bill. So what happens. I meet with the Shelby County School Board in Memphis. What do they say to me? We have this huge, terrific cost and these orders from Washington and regulations about what to do, and then we have to take money we raise, that we would otherwise be spending for other purposes, and deal with the good idea from Washington, DC.

I have heard many Members of this body talk a little bit about No Child