first place, and sustained his two courageous runs for the U.S. Senate.

I was struck, as I often am, by a comment in a recent Tom Friedman's column. Mr. Friedman reminded us of the value of ''inspirational leadership.''

Mr. Friedman quoted Dov Seidman, the author of the book ''How'' on what makes an organization sustainable:

Laws tell you what you can do. Values inspire in you what you should do. It's a leader's job to inspire in us those values.

I mention this because I know that, as the Assistant Secretary for Fish and Wildlife and Parks, Tom's job will demand both enforcement of important rules, regulations and laws, and inspired, collaborative leadership.

As one of the country's most successful lawyers, Tom will know how to enforce environmental laws. As a man who draws inspiration from our mountains, plains and waters, he also knows how to motivate and lead others.

With Secretary Salazar at the helm, I believe Tom Strickland will be a strong and effective partner.

As I conclude, I urge all my colleagues to support the confirmation of Tom Strickland this afternoon. There is no question he will do us proud in this new role he is so eager to assume.

Madam President, I ask unanimous consent that all debate time be yielded back and the Senate vote on the confirmation of the nomination of Thomas Strickland, with all other provisions of the previous order remaining in effect.

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

Mr. UDALL of Colorado. Madam President, I ask for the yeas and nays.

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

The question is, Will the Senate advise and consent to the nomination of Thomas L. Strickland, of Colorado, to be Assistant Secretary for Fish and Wildlife? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Alabama (Mr. SESSIONS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Texas (Mrs. HUTCHISON), the Senator from Nevada (Mr. ENSIGN), the Senator from Utah (Mr. BENNETT), and the Senator from Oklahoma (Mr. COBURN).

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

The result was announced—yeas 89, nays 2, as follows:

[Rollcall Vote No. 175 Ex.]

YEAS—89

Akaka	Barrasso	Bayh
Alexander	Baucus	Begich
Bennet	Grassley	Mikulski
Bingaman	Gregg	Murkowski
Bond	Hagan	Murray
Boxer	Harkin	Nelson (NE)
Brown	Hatch	Nelson (FL)
Brownback	Inhofe	Pryor
Burr	Inouye	Reed
Burris	Isakson	Reid
Byrd	Johanns	Risch
Cantwell	Johnson	Roberts
Cardin	Kaufman	Sanders
Carper	Kerry	Schumer
Casey	Klobuchar	Shaheen
Chambliss	Kohl	Shelby
Cochran	Kyl	Snowe
Collins	Landrieu	Specter
Conrad	Lautenberg	Stabenow
Corker	Leahy	Tester
Cornyn	Levin	Thune
Crapo	Lieberman	Udall (CO)
DeMint	Lincoln	Udall (NM)
Dodd	Lugar	Vitter
Dorgan	Martinez	Voinovich
Durbin	McCain	Warner
Enzi	McCaskill	Webb
Feingold	McConnell	Whitehouse
Feinstein	Menendez	Wyden
Gillibrand	Merkley	

NAYS—2

Bunning	Wicker

NOT VOTING—8

Bennett	Graham	Rockefeller
Coburn	Hutchison	Sessions
Ensign	Kennedy	

The PRESIDING OFFICER. Under the previous order requiring 60 votes for confirmation, the nomination is confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009—Continued

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I will yield to my colleague from Missouri for comments, and I ask unanimous consent to be recognized after she speaks to make opening remarks.

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

The Senator from Missouri.

Mrs. MCCASKILL. I ask unanimous consent to speak for 5 minutes in morning business.

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

IMMIGRATION ENFORCEMENT

Mrs. MCCASKILL. Madam President, sometimes change comes quietly. Sometimes it comes with a big bang. Today change came quietly. I want to make sure everyone realizes the change that occurred.

For 3 years I have been talking about the problem of illegal immigration and what has caused this problem to flourish. I have been talking about the problem of the magnet of jobs that has drawn people over the border without documentation because they are trying to feed their families and the fact that no one was doing anything about employer enforcement.

When I got to Washington and I asked the head of immigration enforcement how many employers have been held accountable for knowingly hiring illegal immigrants, how many have been arrested, she could not even tell me. They didn't even keep the statistics. Think about that for a minute. They didn't keep the statistics of how many employers were held accountable for knowingly hiring illegal immigrants. I began pounding on immigration and customs enforcement about this, talking to them about basic investigative techniques.

In Missouri right now there are hundreds of employers that are breaking the rules knowingly. They are hiring people, paying them under the table, cash on Fridays. They are bringing pickup trucks from Mexico full of people, stuffing them all in an apartment. The vast majority of the business people are doing it right. They are trying to play by the rules, doing the very best job they can. But there is a chunk of employers out there that knew they were not going to get caught, knew nobody cared if they did, and they knowingly violated the law.

I asked the new head of immigration enforcement if that was going to change. I asked the new Secretary of Homeland Security if that was going to change. Today they announced a new policy. Finally, they have a set of guidelines going to everyone in the country about how we are going to prioritize going after those employers that knowingly hire illegal immigrants. We finally are going to get to the magnet. This is a crime we can deter.

If you think somebody is going to put you in jail for saying: Hey, I didn't care if you have papers or not, I can pay you cheaper; work you harder. I don't care if you are illegal or not; I don't want to know. In fact, bring your friends—if you don't think those people being held accountable is going to make a difference, then you don't understand law enforcement.

Today I am proud to say change came. The new guidelines require that, in fact, instead of working off tips, they are now going to embrace basic investigation. They will use undercover. They will use informants. They will use all kinds of documentation they can look at in terms of paper documentation. They will enlist the support and cooperation, ahead of workplace enforcement, of local law enforcement agencies, including the Justice Department. They have decided it is a new day in immigration enforcement and that we will get at the root of the problem.

I support E-Verify and I support giving employers all the tools we can to do the best job they can in hiring legal workers. But for those employers that don't care, that are doing it on purpose and knowingly doing it, we need to come down on them and come down hard.

This administration has figured it out. I congratulate the Secretary of

Homeland Security for these new policies. I stand in full support, and I know most of my colleagues do also. We finally will do something about illegal immigration when we shut down the magnet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Let me inquire, Madam President, if I may, of my colleague: Do you want to offer the amendment at this juncture or do you want to make some comments on it?

Mr. CORKER. Madam President, I do not want to make any comments. I just want to call it up.

Mr. DODD. Why not go ahead and do that.

Mr. CORKER. OK. I thank my friend from Connecticut.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 1019 TO AMENDMENT NO. 1018

Mr. CORKER. Madam President, I ask unanimous consent to call up amendment No. 1019.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. CORKER] proposes an amendment numbered 1019 to amendment No. 1018.

Mr. DODD. 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 address safe harbor for certain servicers)

On page 17, strike line 1 and all that follows through page 18, line 4 and insert the following:

''(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors or group of investors; and

''(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the following criteria:

''(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008.

''(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

''(C) The servicer reasonably determined, in good faith, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures or other resolution.

Mr. DODD. Madam President, I thank my colleague from Tennessee. Let me—since we are across the room from each other—invite you and your staff to meet with our staff and talk about the amendment since we are not sure what it is. But let's see if we can reach some accommodation.

Mr. CORKER. Madam President, I have a sense the merits of this amendment are so great that it will be accepted universally.

Mr. DODD. Madam President, I would expect nothing less from the Senator from Tennessee.

Mr. CORKER. I thank the Senator very much.

Mr. DODD. Madam President, let me first of all thank our colleague from Illinois. I know he did not prevail in his amendment dealing with the bankruptcy provisions, but I commend him for his efforts over the last number of weeks, I know in serious negotiations with others, to try to achieve an accommodation. That did not happen. I regret that was the case because I think that was one meaningful way to try to avoid some of the foreclosure problems we see in the country. So I am sorry that did not prevail.

Madam President, I wish to spend a few minutes, if I may, briefly describing the substitute amendment I have offered on behalf of myself and Senator SHELBY that is before us and will be now open for amendment—as the Senator from Tennessee has his amendment, and I know my colleague from Louisiana also has at least one—maybe two amendments—to offer on this bill as well.

Let me say to others, we would urge, if you have amendments, to let us know what they are. I also say to my colleagues this is a bill that, while it is going to be helpful to consumers and helpful to homeowners in trying to deal with the underlying problems, it is being sought after primarily by the financial institutions, the banks across the country, dealing with the FDIC, the insurance limits, among other matters. So it is very important to them, and Senator SHELBY and I recently worked this out to move forward.

But I want to say to my colleagues, there were other matters that are important as well. If this gets bogged down for days on end, the leader has indicated to me he will pull this bill down and we will maybe deal with it next fall. So to those out there who have an interest in what we have worked on here, I urge them to communicate with people that it is important we try to get this done fairly quickly.

We spent a lot of time on it. I think it is a good bill. It is a balanced bill. Senator SHELBY and I worked hard on these matters with our committee members. So this substitute is bipartisan, and we hope our colleagues will respect that and let this not become a vehicle for an awful lot of other issues for which I do not question the motivations or the sincerity of those who might offer amendments, but this is not going to become a vehicle for all these other ideas that do not relate to the underlying purpose of this bill.

As we all know, and I have mentioned before, we have a staggering number of foreclosures in the country. Some 9,000 to 10,000 homeowners, before this evening is out, will receive a default or action notice. If current trends continue, two-thirds of those people will lose their home. So of the 10,000 today who will receive that default or action notice, two-thirds of them will probably lose their home unless some action is taken. In all, some 3.4 million homes are expected to go into foreclosure this year alone—between 8 and 12 million homeowners over the next several years. Those are breathtaking numbers when you consider the damage to families, to neighborhoods, and to communities across our Nation.

According to industry figures, by the end of last year, 20 percent of all mortgage loans were already under water—1 in 5—that is, the cost of the mortgage exceeded the value of the home. Those are stunning numbers: One out of every five homeowners owed more on their mortgage than the home was worth.

In my home State of Connecticut, the problem is very serious and spreading. The Center for Responsible Lending projects that some 17,000 homes in my State of Connecticut will go into foreclosure in 2009—nearly 60,000 over the next 4 years.

I recently invited HUD Secretary Shaun Donovan to my State. We visited Bridgeport, CT, which alone has some 5,200 subprime mortgages—many already in foreclosure. Joan Carty, the CEO of the Housing Development Fund, a housing nonprofit group in Bridgeport, CT, showed the Secretary and me a series of maps of the city of Bridgeport. She had in those maps the locations of each subprime loan and each foreclosure. It literally looked like a cancer spreading across the body politic of that city.

We visited New Haven, CT, where we saw how property values for homes located within an eighth of a mile of a foreclosed home dropped by an average of $5,000 the day of that action or default. And as we saw across Hartford, CT, where home prices have sunk almost 8 percent in the last year alone, it does not take long before the epidemic affects whole cities.

In fact, this crisis could even result in a net loss in home ownership rates for African Americans, wiping out a generation of hard work and gains in wealth.

The people I have met who are losing their homes are not statistics. They are grandmothers on fixed incomes who trusted a mortgage broker who put them in adjustable rate mortgages with exploding payments. Their incomes were not going to ever adjust to a level where they could afford the fully indexed price of that mortgage. But their mortgages adjusted, and the brokers knew these borrowers were headed for trouble.

I have met working parents who lost a job or are facing a health care crisis. Fifty percent of the foreclosures are related to a health care crisis in that family—not acquiring an automobile

you cannot afford or a big-screen television, as some have been suggesting. Fifty percent are related to a health care crisis. One victim of predatory lending I met in Hartford, CT, tests children for lead poisoning for a living.

These are good people, decent Americans, many of whom were taken advantage of, often by deceptive practices. In fact, the Wall Street Journal reported that 61 percent of those in subprime mortgages could have qualified for prime mortgages but were urged or pushed into riskier mortgages by lenders and brokers who knew better. Why did they do so? Because those brokers and lenders made more money by putting these unsuspecting borrowers into riskier, higher priced mortgages.

So we have an obligation, I think as a body, to do everything we can to get this right. That is not to excuse irresponsible behavior. I am not suggesting such. But in matter after matter, this was not a matter of irresponsibility; it was either deceptive practices or conditions which forced a family—through a job loss or a health care crisis or others—to be put at risk of losing their home. This effort is to get this right not only for the families but even, in a larger sense, for the economy as a whole, which hinges on our ability to put a stop to these foreclosures.

Protecting families and our economy was what motivated me 2 years ago—this month, in fact—when I convened a Homeowners Preservation Summit, at which leaders and servicers agreed to a set of principles. This was in the spring of 2007, 2 years ago. We met, and they committed themselves to a series of principles to making their best efforts to reduce foreclosures through loan modifications.

To say there was a total failure by the industry to follow through on that agreement would be a vast understatement.

Thankfully, even if lenders, servicers, and the previous administration failed to understand the magnitude or the severity of the crisis and the obligation to act, there has been no such problem with the current administration, I am pleased to report. In putting forward a $275 billion plan, the Obama administration clearly understands that we cannot get our economy back on track until we stop the tidal wave of foreclosures sweeping across our country.

The underlying legislation Senator SHELBY and I have offered gives them the tools to do that as effectively as possible by expanding the ability of FHA, the Federal Housing Administration, and Rural Housing—and I have mentioned cities. But I want to point out, rural housing is also suffering from foreclosures; this is not just an urban problem. This affects rural States. I know the Presiding Officer and my friend from Louisiana will testify to this: In their rural communities, foreclosures are not limited to the larger cities in their States but it also affects rural people as well. That point needs to be made.

The underlying legislation gives them the tools to do that as effectively as possible by expanding the ability of FHA and Rural Housing to do loan modifications, by creating more enforcement tools for FHA, the Federal Housing Administration, to drop lenders who break FHA rules, by expanding access to the HOPE for Homeowners Program, and by providing safe harbor for servicers who modify a loan consistent with the Obama plan or refinance a borrower into a HOPE for Homeowners loan.

It is disheartening that even as more and more homeowners have fallen behind on their loans, the response of loan servicers has been so inadequate. We have heard over and over that the reason servicers are hesitant to use the tools we have given them is that they fear they will be sued for violating pooling and servicing agreements.

You would think that from an investor's point of view, reduced interest payments from modified loans would be better than no interest payments from defaulted loans. Unfortunately, you would be wrong in that. The mortgage-backed securities market in which so many of these loans are tied up is—not to put too fine a point on it—a mess. These mortgages have been sliced and diced into thousands of pieces, with securities sold off to different investors all over the globe. These investors have different interests in the loan pools—some rated triple-A, others have more risky segments. Untangling this complex mess of competing interests has been nearly impossible. One direct solution to this problem would have been the bankruptcy amendment offered by Senator DURBIN. That failed.

Another, which we provide for in this amendment, is to make modifications more likely by ensuring that servicers who provide modifications consistent with the administration's plan get the benefit of safe harbor from needless lawsuits.

Our colleague from Florida, MEL MARTINEZ, is the author of this provision. This, again, is a bipartisan proposal. Senator MARTINEZ, I think, will come to the floor and address the issue in greater detail. Senator MARTINEZ is a former Secretary of HUD under the Bush administration and brings a wealth of knowledge to these debates and discussions. It was his contribution on the safe harbor provision which caused it to be included in this legislation.

Another provision, which we provide for in this amendment Senator SHELBY and I have offered, is to make modifications more likely by ensuring that servicers who provide modifications, consistent with the administration's plan, get the benefit of safe harbor from needless lawsuits. I mentioned that. To ensure more servicers take advantage of the HOPE for Homeowners legislation we created last summer, those refinances are covered as well. Indeed, the legislation also streamlines the HOPE for Homeowners program. My colleagues will recall we adopted that last summer. We all hoped it would be a great source of modification for these mortgages. And, candidly, it ended up being a lot less than we hoped for. As the author of those provisions, it was a complicated proposal. There were a lot of fingerprints on it to try to get it out of the Congress. Unfortunately, I think we made it far more complicated than we needed to.

Our bill today is designed to streamline that program and to make it more workable for families across the country. The truth is, despite the efforts of Senator SHELBY, myself, and others, the HOPE program has not worked to date—in large part because of servicers' steadfast refusal to accept reasonable settlements for second mortgages, which belong to about half of all at-risk mortgage holders.

This is a problem the administration recognizes, with its recently announced Second Lien Program, which will make it easier for borrowers to modify or refinance their loans under the HOPE for Homeowners program.

With this legislation, we make the program far more user-friendly for borrowers and servicers alike by lowering fees and streamlining borrower certification requirements. In addition, we allow for incentive payments to servicers and originators to participate in the program, while giving the HUD Secretary limited discretion to determine who reaps the benefits of any future appreciation on that home.

For all these reasons, it is time for the banks, I believe, to step to the plate.

Consider for a moment all that we are doing to prevent foreclosures and restart lending in this legislation alone, this substitute.

As I said, we are offering banks a safe harbor to do modifications and refinancing.

To free up credit, we increase permanent borrowing authority for the Federal Deposit Insurance Corporation and the National Credit Union Administration to $100 billion and $6 billion respectively. On a temporary basis, we increase that authority to five times those amounts. Chairman Sheila Bair has said those levels will allow the FDIC to reduce the special assessments on banks by as much as 50 percent, making credit more available in our communities. According to the Independent Community Bankers Association, which strongly supports this legislation—and I thank them for it—this will increase lending by some $75 billion.

In addition, Senator SHELBY and I extend for 4 years—to December 31, 2013—the increase in deposit insurance limits from $100,000 to $250,000. We initially did this in the Emergency Economic Stabilization Act. However, in that legislation we increased the limit only through this year.

For 75 years, deposit insurance has been a stabilizing force during some of

our Nation's most troubling economic times. This increase will prove especially helpful for smaller financial institutions today, particularly our community banks across the country, which derive 85 to 90 percent of their funding from deposits.

The increase from $100,000 to $250,000 goes a long way toward eliminating uncertainty in the system. If you are planning for your retirement and buy a 3-year certificate of deposit at a bank for $150,000, you want to know your investment will be safe after 2009 comes to a close. This is to say nothing of the many other programs and capital injections already in place to protect and sustain them in our credit markets.

I would be remiss if I did not take a moment to commend our majority leader, Senator HARRY REID, for a very important contribution he has made to this legislation. Section 103 of this bill authorizes an additional $127.5 million, on top of other amounts that may be authorized, for foreclosure counseling and outreach efforts targeted to the areas that are the hardest hit by foreclosures. In addition, the provision provides for funding to increase public awareness such as through advertising, including Spanish language advertising, to try to steer people away from foreclosure and other financial scams that proliferate in hard times such as these.

Ultimately, this legislation by itself, of course, will not turn this Nation's economy around, but it will be a contribution, and a positive one, both to a healthier banking system and, more importantly, to more stable home ownership. There is no silver bullet—I know my colleagues know that—when it comes to solving our financial crisis, but each step such as this that we take brings us closer to seeing this come to an end, these most troubling economic times for our country. So by providing additional stability and certainty within the banking system, by providing assurances and help in rural housing as well as urban housing, by providing additional support for these efforts with the HOPE for Homeowners Act, this legislation goes a long way to contributing to that stability and that certainty.

Again, I am very pleased to have as my partner in this, as we have on many occasions, my colleague from Alabama, the former chairman of the committee, Senator RICHARD SHELBY, along with the members of my committee who have worked very hard on these matters as well. As I said at the outset, I regret the Durbin amendment is not part of this, but my colleagues have expressed their views on it and that is why it is no longer on this bill.

I know my colleagues have other ideas they wish to offer to this bill. I will include them if I can. If there is some reason I can't, I will explain why. If we can reach some compromise, I will try to do that as well. This is the background of this substitute proposal that Senator SHELBY and I are offering. Again, I wish to move quickly if we can on this. I think it would be an important message to send to the financial sector of our communities that we are stepping to the plate. These are matters that have been before us for some weeks now. They have been waiting patiently for us to move on these matters. We have a chance to do that. That is not to say that other people have ideas that don't have merit, but we have to make decisions about whether to move forward, and my hope is that we will, either by this evening or tomorrow. What better way to conclude this week than to conclude this bill and send a message to the citizens of this country that the Senate of the United States has moved to rise to the challenge of this crisis.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 1016 TO AMENDMENT NO. 1018

Mr. VITTER. Madam President, I ask unanimous consent to set aside the pending amendment and to call up Vitter amendment No. 1016 to the underlying bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 1016.

Mr. VITTER. Madam 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 authorize and remove impediments to the repayment of funds received under the Troubled Asset Relief Program, and for other purposes)

At the appropriate place, insert the following:

SEC. ___. REPAYMENT OF TARP FUNDS.

Section 111(g) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(g)) is amended—

(1) by striking ''Subject to'' and inserting the following:

''(1) REPAYMENT PERMITTED.—Subject to'';

(2) by inserting ''if, subsequent to such repayment, the TARP recipient is well capitalized (as determined by the appropriate Federal banking agency having supervisory authority over the TARP recipient)'' after ''waiting period,'';

(3) by striking '', and when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price''; and

(4) by adding at the end the following:

''(2) NO REPAYMENT PRECONDITION FOR WARRANTS.—A TARP recipient that exercises the repayment authority under paragraph (1) shall not be required to repurchase warrants from the Federal Government as a condition of repayment of assistance provided under the TARP. The Secretary shall, at the request of the relevant TARP recipient, repay the proceeds of warrants repurchased before the date of enactment of this paragraph.''.

Mr. VITTER. Madam President, this amendment is very simple. In fact, it is identical to an amendment I offered to a different bill last week which unfortunately we did not get to vote on because cloture was passed.

This amendment says that under the TARP, if a bank wants to repay its TARP money that it has taken from the taxpayer, with all of the penalties and interests that are relevant, it can do that immediately whenever it wants, as long as it remains perfectly sound and meets all of the liquidity, safety, and soundness requirements that the normal regulators impose on those sorts of institutions. I think that is very commonsensical and straightforward. If a bank wants to repay with interest, why shouldn't it be able to leave the program? That is the guarantee and the promise that was made to banks when TARP was originally instituted. Yet several banks are trying to do that now and are getting a different story: No, no, no, no. This isn't your decision alone. This is our decision, the Government's decision, even if it doesn't impact the safety and soundness of your institution.

Several folks in this institution mirror the concerns of citizens around the country. We are very concerned about the Federal Government getting ever more involved in the business of private business and institutions, in particular, of banks and financial institutions. This is a steady trend that began last September, and it is a very steady trend that the Government is becoming first a junior partner and seemingly a senior partner in more and more significant institutions in our private market. Now we see that it is expanding beyond banks and financial institutions into auto companies, insurance companies, and who knows what next.

Certainly, with all of these legitimate concerns we have about that trend, it should be an established principle of the TARP that if a bank wants to repay the money fully with interest and if that repayment does not impact its safety and soundness, if they meet all of the liquidity requirements put on them by the Federal regulators, they should be able to do that. Yet they are not. They have not been able to do that. Some have. I am very proud to say that IberiaBank, headquartered in Lafayette, LA, was the first bank to apply for repayment and to actually give all of its TARP money back. I am very happy to say that was successfully done. They were followed by six other smaller or regional banks: the Bank of Maine, Bancorp, Old National Bancorp, Signature Bank, Sun Bancorp, Shore Bancshares, and Centra Financial Holding, Inc. All of those banks followed Iberia's lead and gave that money back.

But more recently, unfortunately, the Federal Government has been singing a different tune and has said, Wait, wait. You can't decide this on your own. We are your new partner and we get to decide this, and we are going to decide it on our criteria, even if it is a perfectly reasonable and safe thing to do with regard to your liquidity and

your safety and soundness. That exemplifies what so many of us are concerned about, about expanding government authority.

Let me quote directly from Secretary Geithner. The Wall Street Journal reported an interview recently where he:

indicated that the health of individual banks won't be the sole criteria for whether financial firms will be allowed to repay bailout funds.

He also testified before Congress in the last few weeks and the bottom line of his testimony was: Stay tuned. We will give you guidelines on how to repay TARP funds in the future. We are not there yet, and we are not—we are certainly not willing to allow banks to make that decision. We are going to make that decision.

I have to say it sort of reminds me of the analogy of businesses that are infiltrated by the mob and they have as their new senior partner the mafia, and all of a sudden, if they want to get out, it is no longer their choice. Their new big brother partner is going to make the calls and is going to decide: No, no, no. We have our claws into you. That is not changing anytime soon.

Is that the new rule we want to establish for private market capitalism? Is that the amount of power and authority we want to give to the Federal Government over private institutions in the private sector? Even when they can repay the money and remain perfectly liquid, perfectly solvent, meeting all of the relevant safety and soundness criteria, do we want to say no, no, no, big brother government says no. We know best.

I am very disturbed by this policy that my amendment is counterpoised to. It does suggest that big government knows best and that big government is going to make the call, apart from the interests of that particular private firm. If that firm meets liquidity requirements, meets all the safety and soundness regulations in sight, then they should be able to do whatever the heck they want to determine their own future, and that includes repaying their TARP money to the government.

I urge all of my colleagues to support this commonsense, reasonable, pro-free market amendment.

AMENDMENT NO. 1017 TO AMENDMENT NO. 1018

Madam President, at this point I ask unanimous consent to set aside that amendment and call up the Vitter amendment No. 1017 to the underlying bill.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Madam President, reserving the right to object, let me say I am going to have to object at some point because we have too long a stack here. This is not aimed at my colleague from Louisiana, but I want to be careful and check with leadership as to how many amendments we can lay aside in terms of what their plans are for this evening and for tomorrow. I won't object to this particular one, but I want to use a moment here to express to my colleague that at some point we will have to put some limitation on this so we can start to grapple with the amendments before us.

I thank the Senator.

The PRESIDING OFFICER. Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from the Louisiana [Mr. VITTER] proposes an amendment numbered 1017.

Mr. VITTER. Madam 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 that the primary and foundational responsibility of the Federal Housing Administration shall be to safeguard and preserve the solvency of the Administration)

At the appropriate place, insert the following:

SEC. ___. DUTIES OF THE FHA.

(a) DUTY TO MAINTAIN SOLVENCY.—Notwithstanding any other provision of law or of this Act, the primary and foundational responsibility of the Federal Housing Administration shall be to safeguard and preserve the solvency of the Administration.

(b) SUSPENSION OF ACTIVITIES.—If in the determination of the Commissioner of the Federal Housing Administration, any existing Federal requirement, program, or law, or any amendment to such requirement, program, or law made by this Act, threatens the solvency of the Administration or makes the Administration reasonably likely to need a credit subsidy from Congress, the Commissioner shall—

(1) temporary suspend any such requirement, program, or law; and

(2) recommend legislation to the appropriate congressional committees to address such solvency issues.

Mr. VITTER. Madam President, I thank the distinguished chairman for his comments and for his forbearance. I will be very brief on this amendment, which goes directly to the bill and is very germane.

This amendment, again, is very simple and very straightforward but I also think very important. It would require that the Federal Housing Administration recognize as its first duty to maintain its own solvency. If the provisions of the underlying bill or any other existing requirement cause the FHA to be reasonably likely to need a credit subsidy from Congress, then it shall require the Commissioner, No. 1, to temporarily suspend any program that is threatening the solvency of the FHA; and No. 2, to recommend legislation to Congress to address those solvency issues.

I commend the motives of the distinguished chairman and others with regard to this bill. Clearly, they are trying to help homeowners in dire need, and there sure as heck are many of them around the country, including my State. But as we walk down this path, I think we all want to be careful that we don't create a new crisis, a new solvency crisis at the FHA. I believe we need to be very aware of that so we don't create another crisis there as congressional and other action has in the past at Fannie Mae, Freddie Mac, and elsewhere.

Recently, on April 23 at a nomination hearing for Mr. David Stevens, who is the designate for housing and Federal Housing commissioner, the person whom President Obama has chosen to run the FHA, I asked how he viewed the health of the FHA mortgage insurance fund and if he anticipated having to ask Congress for a credit subsidy. His answer on April 23 was:

At the present time, the FHA fund is solvent and meets actuarial requirements. Maintaining that solvency would be a top priority for me.

I am glad to hear that it is solvent as of now but, quite frankly, I don't want that solvency to be a top priority for him; I think it should be the top priority for him. I think we should be very cautious about expanding programs under the FHA if it could lead to a crisis of solvency there which could be a further rattling of the financial markets, just as similar crises have been in the past.

Unfortunately, there are significant signs that the FHA is a ticking timebomb now. According to the Mortgage Bankers Association National Delinquency Survey, for the fourth quarter of 2009 seasonally adjusted delinquency rate, 13.73 percent of FHA loans would present an increase of 81 basis points from the third quarter of 2008.

Similarly, in a report from J.P. Morgan Securities issued in January of this year, it says 70 percent of Ginnie Mae borrowers, those who are FHA borrowers and VA borrowers, would be underwater if home prices drop another 10 percent.

On March 8 of this year, a Washington Post investigation led many observers to view the FHA as a ticking timebomb. The article reports:

There has been a spike in quick defaults that seem to follow the pattern that preceded the collapse of the subprime market as some of the same flawed lending practices that contributed to the mortgage crisis are now eroding one of the main Federal agencies charged with addressing it.

Of course they were talking about the FHA.

According to the same article:

More than 9,200 of the loans insured by the FHA in the past 2 years have gone into default after no or only one payment.

So already we see very troubling signs.

On top of that, this bill, in some ways, erodes the stability of the FHA. It does things such as say that an individual receiving assistance under this program must verify their income, providing income tax return information but reducing the upfront fee for the program from 3 percent to 2 percent. It reduces the annual fee from 1.5 percent to 1 percent, and it adds incentives with $1,000 for each loan for folks to enter and service the program.

So I am concerned, No. 1, that the FHA right now shows real signs of a possible future crisis, and No. 2, that

this bill could unintentionally be making that worse and making that day come quicker.

I am not proposing we scrap the provisions of the bill, but my amendment would simply say that the first duty of the FHA is to maintain solvency, and secondly, if the provisions of this bill or any other requirement causes the FHA to be reasonably likely to need a credit subsidy from Congress, the Commissioner has the power to, No. 1, temporarily suspend that program, and No. 2, recommend legislation to Congress to address the solvency problem.

Let's not let the FHA be the next chapter in terms of this financial crisis. Let's not repeat the kinds of mistakes we have seen in other Federal Government or related entities. Let's be careful to avoid that, which would be an enormous rattling of the financial system and which would cause an enormous drop in confidence.

With that, Madam President, I thank the Chair and the chairman for his forbearance, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RELEASE OF DOJ MEMOS

Mr. CHAMBLISS. Madam President, I rise today to express my disappointment with the Obama administration's decision to publicize the memorandums from the Office of Legal Counsel at the Department of Justice. The four memos released by the administration examine whether the CIA's enhanced interrogation techniques would violate U.S. statutes or international agreements prohibiting torture.

It is important to note that all four memos determined that the techniques did not violate U.S. constitutional or international law or U.S. criminal law. It is disappointing that the White House released to the public these highly sensitive memos. There is simply no productive or meaningful purpose in their release.

The memos describe in detail the CIA's interrogation program, the specific techniques that were used, psychological evaluations of detainees, and even detailed descriptions of some of the detainees themselves. All of this information raises questions about how seriously the President believes in protecting our national security as well as the confidentiality of legal counsel and the privacy of individuals. I believe the only reason the Obama administration chose to release these memos was for perceived political gain, and I also believe, based upon what I have heard in my home State, that the political gain has backlashed.

I think if Americans read these memos for themselves, they will agree that after the 9/11 attacks, the CIA program was necessary to detect and prevent additional American deaths. The program was designed to exploit information held by only the most senior, hardened, and dangerous al-Qaida figures who had perishable information about the attack's planning.

Since its inception in early 2002, fewer than 100 individuals were held in this program, which had significant safeguards, including detailed assessments to determine that the detainees were senior members of al-Qaida—not mere foot soldiers—who likely had actionable intelligence on terrorist threats and who posed a significant threat to U.S. interests before the CIA could detain them.

Out of the 100 or so detainees the CIA has held, only 3 were subjected to the most serious, yet legal, interrogation techniques. Those three were Khalid Shaikh Mohammed, the mastermind of the September 11 attacks, whose deadly plan resulted in the murder of some 3,000 innocent Americans; secondly, Abu Zubaydah, a senior member of al-Qaida, whom the CIA assessed to be the third or fourth ranking member of the terrorist group and who had been involved in aspects of every al-Qaida attack against America; and thirdly, Abd al-Rahim al-Nashiri, a key al-Qaida operational planner. Information obtained from these three detainees saved American lives by disrupting al-Qaida attacks and led to the capture or arrest of even more terrorists. These detainees, who have been in the inner circle of al-Qaida and who have occupied some of the most important positions in that group's hierarchy, held information that simply could not have been obtained from any other source.

In fact, the memos reveal some of the invaluable information we have gained from the CIA program. This includes prevention of numerous terrorist attacks, such as the west coast airliner plot, which sought to replicate the hijacking of airplanes and crash them into buildings on the west coast of the United States.

One memo describes the discovery of this plot by stating:

The interrogation of KSM—

Which is Khalid Shaikh Mohammed—

—once enhanced techniques were employed, led to the discovery of a KSM plot, the ''Second Wave,'' to use East Asian operatives to crash a hijacked airliner into a building in Los Angeles.

The same memo describes how interrogations provided information on two operatives who planned to build and detonate a dirty bomb in the Washington, DC, area. There is no doubt that the disruption of these attacks has saved American lives.

CIA detainees have also confirmed that al-Qaida continues to operate against the United States and its allies. Just recently, a statement from none other than the Director of National Intelligence, Dennis Blair, acknowledged that the high-value information came from this same CIA interrogation program and that al-Qaida continues to plan attacks against America.

As a member of the Senate Intelligence Committee, I have seen CIA assessments on the value of information the United States has gained from interrogations as well as intelligence on the continuing resolve of al-Qaida to attack the United States and to attack its citizens. However, much of this information remains classified, so only half of the story is being told. It is important that Americans have an opportunity to see what they were protected from as a result of the CIA interrogations—interrogations that were not only effective but were deemed by the Justice Department not to be torture under U.S. and international law.

The CIA's High Value Terrorist Detainee Program was a crucial pillar of U.S. counterterrorism efforts and was the largest source of insight into al-Qaida for the United States and its allies. Now, as a result of the release of these memos, the program is the largest source of information on U.S. operations to al-Qaida and our other enemies.

The administration claims it released these memos in an effort to be transparent, but the only transparency it has provided is to al-Qaida. The group now knows the outer boundaries of what the United States is capable of doing and that we are no longer using these methods or any others for interrogation.

Our enemies—traditional enemies and terrorists—now know that some interrogation methods were 100 percent effective on our own soldiers when used in what is called SERE training. I can only imagine how delighted our enemies are to learn how to gain secrets from our soldiers. However, I am sure our enemies will not have the same safeguards, medical and otherwise, in place when they conduct interrogations on our men and women in uniform who might be captured.

While giving transparency to al-Qaida and our other enemies, the release of these memos will deprive this administration and all future Presidents from receiving candid advice from Justice Department lawyers.

The Office of Legal Counsel is supposed to provide the President and the executive branch with thorough and frank legal analysis on a variety of topics. If these talented attorneys have to worry that their confidential and often classified legal advice is going to be released to the public and could result in their prosecution, I guarantee you they will not be able to offer the most straightforward opinions and alternative legal analysis necessary to guide policy. Instead, policy will now guide these lawyers' advice.

Finally, it is disingenuous for Members of Congress to say they were unaware of the CIA program. From its inception, CIA lawyers repeatedly obtained legal guidance regarding the program from the Department of Justice, as one can see from the four classified memos released and from other unclassified memos previously released. The CIA briefed congressional leaders early on about the details of the program and the specific interrogation techniques that could be used.

As a member of the Senate Intelligence Committee, I was aware that the CIA was holding high-valued detainees and was gaining extraordinary insight into al-Qaida's structure and operations. Also, information about the program was leaked to the public and press. Reports about it started to circulate as early as 2005. Yet Congress continued to fund the program for several years afterward.

In fact, as the vice chairman of the Senate Intelligence Committee noted, the fiscal year 2007 intelligence authorization bill included language which specifically acknowledged that the CIA's program had been important in collecting valuable intelligence on al-Qaida operatives and associates and on planned terrorist attacks against the United States and our allies.

This bill was voted out of the Senate Intelligence Committee unanimously by a 15-to-0 rollcall vote. I hope that in the future this administration places more emphasis on protecting our national security rather than on placating critics of the rules the United States used to prevent another attack on our domestic soil.

Madam President, I yield the floor and suggest the absence of a quorum. I am sorry, I did not see the Senator from South Carolina. I do not suggest a quorum call.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 1026

Mr. DEMINT. Madam President, in a moment I would like to bring up an amendment, but in deference to Senator DODD, I wish to wait for him to be back on the floor. In the meantime, I would like to explain amendment No. 1026 and talk about it briefly until the Senator returns.

We are all well aware of the bailout bill that was passed last October. It had one purpose, at least as that purpose was described to us, and that was to purchase what they called toxic assets that were clogging up the credit system. That $700 billion was then used in other ways, and I believe unconstitutionally, to loan money to banks, insurers, auto companies, and to actually turn those loans into preferred stock, in some cases.

It now appears the administration is going to take this a little bit further. We have seen the hiring and firing of executives. We have seen the Government, in effect, break contracts that were established in the private sector. We see the Government continuing to use this TARP money to gain more and more control over private sector industries, particularly the financial industries.

The administration appears now to have a plan that would swap this loan money in the form of preferred stock for common stock, which means we not only own but we have voting rights and, in some cases, controlling interests in General Motors. My amendment addresses specifically financial institutions, but we are talking about financial, auto companies, and other aspects of our economy using this TARP money in ways that were totally different than we ever imagined.

My amendment addresses specifically banks. It would prohibit the Federal Government from converting preferred stock to common stock and basically taking ownership and control of banks across the Nation.

Many banks that participated in the TARP funds suggest they were pressured to take it when they did not need it. Many banks now say they would like to give it back, and they are not allowed to give it back. We need to back the Federal Government out of our private sector financial system and set up a good system of laws and regulations so it can work in a way that is transparent, honest, and good for the American people. But we don't need the Federal Government to own our banks and to try to run the day-to-day business in our banks, just like we do not need the Federal Government to own General Motors and to run General Motors.

My amendment would address, specifically, the financial institutions in our country and prohibit the use of TARP funds to be translated into common stock ownership and voting rights.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DEMINT. 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. DEMINT. Madam President, I would like to bring up amendment No. 1026.

Mr. DODD. Madam President, it will take unanimous consent to temporarily lay aside the pending amendment; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DODD. Madam President, reserving the right to object, I say respectfully to my colleague and friend from South Carolina, a member of the Banking Committee, reluctantly I will object to that request at this point. We have amendments pending, and I will explain, as I did to him, the detail. At this very moment, I respectfully and reluctantly object to temporarily laying aside the pending amendment.

The PRESIDING OFFICER. Objection is heard.

Mr. DEMINT. I thank the Senator and yield the floor.

Mr. DODD. Madam President, as I said a moment ago, we already have a lot of amendments filed on this bill. I can tell my colleagues and those who are following this debate, this bill is critically important to our financial institutions. They have been waiting weeks for this bill that Senator SHELBY and I put together. I am not, in any way, suggesting the amendments being offered are not motivated by the best of intentions, but the net effect of it is to virtually bring down this bill. I say to my colleagues, I know they are hearing from others across the country who have been waiting for this bill to come up, to be considered, and moved along. There is no way we can spend the amount of days now that may be confronting us with the list of amendments to go forward.

The leadership—and I agree with them on this—needs some clarity. If I am going to be faced with a stack of amendments being offered, then I am going to have to, as the leadership said, take this bill down and maybe in the fall at some future date get back to it, if at all.

That is a tragedy and unfortunate because it is an important matter. It is widely supported across the country. It is essential in many ways we get it done. I wish for my colleagues to know it is not aimed at any particular amendment. It is not suggested their amendments are not well motivated. But when you load up a bill such as this with that many amendments, it makes it impossible to get the job done.

I objected to laying aside the pending amendment because we have several amendments now pending. We will try, over the coming day or so, to see if we can resolve some of those amendments, maybe accept some. I have to speak with, of course, my colleague from Alabama, Senator SHELBY, to see if there is agreement on some of the matters or some modification to make them acceptable.

I suggest to my colleagues, any additional people coming over to temporarily lay aside the pending amendments, that I will object to doing that until we get clarity and try to clear out the underbrush to determine whether we bring down the bill, which I will do, or to get a reasonable number of these amendments which we can handle to go forward. One or the other.

For those who are following this debate, the possibility of this bill being taken down is very real. I hope those who are interested in this bill will notify their respective Members who wish to offer amendments and suggest there may be a better time for those amendments to be offered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MERKLEY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MERKLEY. Mr. President, tonight I rise to speak on the Dodd-Shelby legislation and specifically on my amendment, No. 1015, which is at the desk.

First, I commend my chairman, the distinguished Senator from Connecticut, for his work on this legislation. This legislation will take important steps in addressing the very heart of our economic crisis, the housing market. But we can do more.

Tonight I rise to offer an amendment that will put an end to the deceptive and unfair mortgage practices that played a pivotal role in steering American families into accepting risky and unsustainable mortgages. As I have discussed before, two key factors drew families into unsustainable mortgages and paved the way for this recession. First, steering payments were paid to brokers who enticed unsuspecting borrowers into deceptive and expensive mortgages. These secret bonus payments, called yield spread premiums, turned home mortgages into a scam.

A family would go to a mortgage broker for advice in getting the best possible loan. The family would trust the broker to give good advice because, quite frankly, they were paying the broker for that advice. But what the borrower did not realize was that the broker would earn thousands of bonus dollars from the lender if the broker could convince the homeowner to take out a high-priced mortgage such as one with an exploding interest rate rather than a plain vanilla 30-year fixed-rate mortgage.

Prepayment penalties added insult to injury. After the homeowner realized he or she had been steered into an unsustainable mortgage, the homeowner soon discovered that a large prepayment penalty made it too costly for them to refinance into a lower cost loan. The homeowner was locked into a destructive mortgage. This scam had tremendous impact.

A study for the Wall Street Journal found that 61 percent of the subprime loans originated in 2006 went to families who qualified for prime loans, meaning that millions of American families were placed at risk. This is simply wrong—a publicly regulated process designed to create a relationship of trust between families and brokers but that leaves borrowers unaware of payments that place them in expensive and destructive mortgages.

I call my colleagues' attention to a New York Times editorial published on April 10 entitled ''Predatory Brokers,'' which highlighted this problem. The editorial pointed out a study by the Center for Responsible Lending that found that subprime borrowers who used a broker actually fared worse than those who went directly to lenders. Those borrowers paid $17,000 to $43,000 more for every $100,000 they borrowed. That is outrageous.

The Times concluded:

> The first step must be to outlaw the kickbacks that lenders pay brokers for steering clients into costlier loans.

The editorial went on:

> The most clearly unethical form of payment is the so-called yield-spread premium.

It is difficult to overestimate the damage that has been done by these expensive loans and secret steering payments. An estimated 20,000 Oregon families will lose their homes to foreclosure in 2009. Nationwide, an estimated 2 million families will lose their homes this year, and the total of foreclosed families is predicted to reach 9 million by 2012.

These practices didn't only hurt families on Main Street, they were also the prime enablers for the propagation of destructive subprime collateralized debt obligations, or CDOs, that have now brought Wall Street to its knees. Had these procedures been banned—steering payments, prepayment penalties—Wall Street would not have been able to engineer the tremendous bubble on the backs of unsuspecting homeowners and, accordingly, would not have had the billions in write-downs that caused this credit crisis and sent our economy into a terrible recession.

The problem is simple and the solution is simple. The costs of doing nothing are tremendous both for homeowners and for the financial system. By banning steering payments and prepayment penalties, this amendment will restore transparency to the mortgage lending process and help make home ownership a stable investment for families once again.

The time has come for us to make sure that secret steering payments and paralyzing prepayment penalties never again haunt American families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to begin by commending our colleague from Oregon for this proposal. We have had a chance to talk about it, and he is exactly right. He described it more adequately as to what happened, what goes on, what went on, that contributed so much to the overall economic mess we are in today. This is where it all began. This was not a natural disaster that occurred like Katrina, an act of God. These were intentional decisions made by people to abuse purchasers, borrowers, luring them into financial situations where they were fully aware that borrower could never meet the fully indexed cost of that mortgage as it matured.

In fact, I recall one of the early hearings we held in 2007, the Web site of the brokers. The first piece of advice to a broker was: Convince the borrower that you are their financial adviser.

Not that you were their financial adviser, but to convince them that you are so that you can then engage them in such a way as to convince them to enter arrangements that they could hardly afford. As we now know from a number of different studies, somewhere between 60 and 65 percent of the people who ended up with subprime mortgages actually qualified for conventional mortgages.

For those who may not understand the differentiation, the cost of a conventional mortgage is substantially less than a subprime mortgage.

The Presiding Officer, the Senator from Alaska, spent a good part of his career in this business, so he knows firsthand how all of this works and appreciates the proposal by our colleague from Oregon. Yield spread premiums were one of the key causes of the current crisis because these premiums create incentives for brokers to upsell borrowers; in other words, to convince them and to draw them into arrangements that would be more costly because that is how they got paid. It was nothing more complicated than that. You got a better fee if you could convince someone, talk them into a situation that cost the borrower more. The borrower could never meet those obligations, particularly people on fixed incomes.

One of the first witnesses I ever called before the committee as chairman in 2007 was a woman from Chicago whose husband had passed away. She worked for 30 or 40 years, had retired, was living in a home that she and her husband had bought years before, had $3,000 of consumer debt. A broker convinced her that she needed to refinance that home to meet that obligation. Of course, the fully indexed cost of that mortgage blew through her fixed income as a retiree. She came very close to losing the home. We stepped in. The bank stepped up, was embarrassed by what it had done. She ended up keeping the home but only because, candidly, she was a witness before a Senate committee. Had she been out there in Chicago without any other recognition or notoriety, I am not sure she would have fared as well as she did when she achieved some notoriety in appearing before the committee.

The bank in question was sitting at the table next to her, so they decided to work it out in her case. But literally hundreds of thousands of people across the country were not so fortunate. Again, they were lured into these arrangements our colleague has talked about.

I thank him for his amendment. We have had a lot of discussions about this matter. In the last Congress we put together a whole bill on predatory lending, and yield spread premiums was one of the key provisions.

What I would like to suggest, if he would be amenable, this is a matter that needs to be revived. We had a hearing almost 2 years ago now so it has gotten a little dated in terms of

the information. As chair of the committee, I would like to ask him, as a new member, whether he would be willing to chair a hearing on the subject matter of predatory lending, including yield spread premiums, and arrange that in the coming weeks. My intention would be that as we move forward to deal with the modernization of financial regulations, that this is an area we will want to include as part of our consideration of that larger bill.

I, for one, would look forward to some specific ideas that we could use to address this kind of problem. I thank him for bringing the matter to our attention this evening. I look forward to working with him on this matter as well.

Mr. MERKLEY. Mr. President, I deeply respect and appreciate the fact that the chairman has done so much to bring public attention to these important issues over the past several years. I would be delighted and honored to have the opportunity to assist with hearings as described on predatory lending and to refresh this conversation about how we, as a Congress, can reach out and assist working Americans to make sure that in the future they will not find that the dream of home ownership is turned into a nightmare, as it has been through steering payments, through prepayment penalties for so many in the near past. I would be deeply honored.

Mr. DODD. I thank our colleague. He is, obviously, very knowledgable about this area, as is the Presiding Officer. It is tremendously important in this body. My two colleagues are relatively new Members, but believe me, they could not be here at a more opportune time with their backgrounds and experiences for this debate and discussion.

As a senior Member, I welcome their presence in the Senate. I look forward to working with our colleague from Oregon and to include his idea as part of a larger bill on predatory lending.

Mr. MERKLEY. I thank the Senator from Connecticut.

Mr. DODD. 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. THUNE. 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. THUNE. Mr. President, I ask unanimous consent to call up amendment No. 1025 to the pending bill, and I ask that amendment be made pending.

The PRESIDING OFFICER. Is there objection?

The Senator from Connecticut.

Mr. DODD. Mr. President, reserving the right to object—and I said to my friend, this is not a personal matter—we are trying to get a finite list of the amendments and get time agreements on all of them. I have had to object to other amendments being offered—laying aside temporarily the pending amendments—both on the minority side as well as the majority side. It is with reluctance, I say to my friend, that I will have to object.

My hope would be that he would let us have the amendment and the arguments, and so forth, so we could take a look at it—Senator SHELBY and I. If we could agree in some way or work on something together so we could possibly accommodate him or give him a clear indication of some time so we can debate it and discuss it and go forward, that is my intention.

With that, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. THUNE. Mr. President, if I might speak to the amendment for a few moments.

I offered a similar amendment last week to the fraud recovery bill and was told at the time—and, of course, cloture ultimately was invoked on that bill, and I was told it was not germane. So it fell postcloture.

In order to make it germane to this underlying bill—in fact, I was told at the time last week, when I brought it up, it would be germane to the housing bill, which would be considered next. So I decided I would offer this amendment again. But running into the same sort of question about whether this amendment would be germane postcloture, I have adapted the amendment so it is germane to the underlying bill.

I will tell you, I would have preferred keeping it in its original form because, essentially, it would have taken TARP moneys repaid to the Federal Treasury by lending institutions and applied them to debt reduction. That was the amendment in the form it was in last week when I offered it to the fraud recovery bill. I still think that is a good, sound idea: As TARP funds are paid back into the Federal Treasury, rather than being recycled or used on some other Government program, we apply it to debt reduction.

Lord knows we are spending and borrowing enormous amounts of money. The least we could do when these moneys are paid back is put them toward paying down the Federal debt so we are not handing this enormous—enormous—bill to our children and grandchildren.

But, as I said before, in order to get this amendment in a form that it would be germane postcloture, I have revised it. I will describe it in a minute. But I wish to start by saying, on October 7, 2008, we all know Congress passed the Troubled Asset Relief Program, or TARP, as part of the Emergency Economic Stabilization Act. It authorized $700 billion for the purchase of toxic assets from banks, with a goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

The Department of Treasury, however, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program, or CPP, rather than purchasing toxic assets.

Financial lending was not increased with the implementation of the CPP and the expenditure of $218 billion of TARP funds, despite the goal of the program.

Those receiving funds through CPP are now faced with additional restrictions related to accepting those funds. A number of community banks and large financial institutions have expressed their desire to return those CPP funds to the Department of Treasury. Treasury has, in fact, begun the process of accepting receipt of these funds. However, because of the financial stress test Treasury is currently conducting, it is possible Treasury will restrict some banks from returning funds they received from the CPP.

I mentioned last week when I offered the amendment to the fraud recovery bill that there were banks I was aware of that were not able at the time to return funds to the Treasury. They were told they couldn't. They had money from the TARP, they were banks that were in good financial standing, and they wanted to pay back that TARP money and couldn't do it. I believe now, at least, the Treasury is working with a number of banks to try and receive some of these monies that the banks want to pay back, but it is entirely possible, because of these stress tests, that some banks will be restricted from returning funds they received from the CPP.

In his testimony before the TARP congressional oversight panel on April 21, 2009, Secretary Geithner stated that Treasury estimates $134.6 billion of TARP funds are still available. What is interesting about that number is that in that figure, he includes $25 billion they expect to receive back from banks under CPP. Geithner also stated he believes that $25 billion is a conservative number and that private analysts, of course, are predicting that more—much more—is going to be returned. But the important point is that of the $134.6 billion that Treasury Secretary Geithner referred to in terms of TARP funds that will be available, $25 billion of that is in the form of payments they expect to receive back from banks under the CPP.

So my point is there is money coming in, and rather than using that to pay down the debt, which I think many of us assumed was going to be the use of those funds if they came back in, that they are sort of planning on, it looks like, recycling back into TARP or, perhaps—I hope not but perhaps—using them for some other purpose.

Section 120 of the Emergency Economic Stabilization Act terminates the authority for TARP funds on December 31, 2009, and the Secretary can request an extension to that deadline not later than 2 years after enactment, which would be October of 2010. But keep in

mind, that restriction only applies to Treasury's issuance of new loans and does not cover the reuse of previously issued assistance that was returned to the Treasury. So there is no prohibition on the Treasury using these recycled TARP funds.

The TARP Reduction Priority Act, which is the subject of my amendment, reduces TARP authority by any amount returned by a financial institution to Treasury. So instead of having TARP monies that are returned from the banks back into the Treasury applied to debt reduction, what I do now with this amendment—in order to have it fit within the confines of this bill and to remain germane should, in fact, cloture be invoked—is reduce the TARP authority by whatever amount is returned by a financial institution to the Treasury. In other words, the TARP amount—the amount that would be available for lending under TARP—as it is paid back, monies come back from the banks, the TARP lending amount is reduced commensurate with the amount that is returned, so that those monies cannot be recycled. Once they have been out there and returned by the banks, they can't be recycled and reused or put to some other purpose.

Let me also say that until the December 31, 2009 expiration date, and possibly longer—again, if the Secretary is granted an extension—that without this legislation, Treasury can continue to use TARP funds, including those repaid in any manner they see fit. It is certainly not what Members of Congress envisioned when this legislation passed last year. These are taxpayer dollars. They should not become a discretionary slush fund for the administration. Under the Constitution, Congress controls the power of the purse, and I, as do many Members of Congress and others around the country, have major concerns regarding the Treasury's handling of TARP funding. If the new administration, the Obama administration, or the Treasury Department believes it needs additional funding to address problems in the financial sector, they should come to Congress for that authority.

Inspector General Neil Barofsky stated in his quarterly report to Congress that there are 12 separate programs being funded under TARP involving up to $3 trillion of government and public funds. Amazingly, that is the equivalent amount of the size of the entire Federal budget. It certainly wasn't what Congress was told the funding would be used for.

Mr. Barofsky also mentioned in his April 4, 2009 CBO report—he estimated that TARP would cost the Federal Government $356 billion, meaning that the Treasury will only be able to recover $344 billion or approximately 49 percent of the $700 billion that was originally allocated by the Congress.

When this program was initially pitched to Congress—and my colleagues in the Senate should remember—Secretary Paulson at the time argued that the Government would end up making money once those toxic assets were sold after the economy recovered. Clearly, this is no longer the case. Barofsky's report spans 247 pages. It says the very character of the bailout program makes it:

> Inherently vulnerable to fraud, waste, and abuse, including significant issues related to conflicts of interfacing fund managers, inclusion between participants, and vulnerabilities to money laundering.

So again, the point of the amendment is very simple; it is very straightforward. All I am trying to do is to make sure the TARP funds, as they come back in, when they are repaid by banks, are not recycled, they are not reused, they are not put into some program which the inspector general says in his report is inherently vulnerable to fraud, waste, and abuse; that it actually be used to reduce the amount of the TARP authority. It is the best solution we could come up with short of applying those repaid funds to deficit or to debt reduction which, as I said, was the original form of this amendment, but under the rules of the Senate, to make sure it is germane, this is the approach we have selected. I think it accomplishes the same purpose. It makes certain that the monies that come back in, that are paid back by banks that have received TARP funds are not reused, reallocated, put into some other purpose or some other fund, but it actually is reducing the amount of TARP authority that is available to be used and, therefore, protecting taxpayer interests and taxpayer dollars that were extended under this program in the first place.

So I hope my colleagues, when they are making final determinations about which amendments are going to be on the so-called list—and it seems to me, at least, that on a bill such as this, a housing bill, it ought to be wide open to amendments and we ought to be able to get votes on some of these amendments but evidently the leaders on the other side have concluded they are going to limit those amendments and try to come up with some finite list—I hope they will include this amendment on that list. I think it makes sense. It is perfectly fitting with the purpose of the underlying bill, which is a housing bill.

TARP funds, of course, were supposed to deal with the credit crisis, the housing crisis, and I would hope this amendment would be one that the other side, as they make those decisions about which amendments are going to be allowed to be debated and voted on with respect to the base bill, that this amendment will be on that list. I think it makes a lot of sense.

I hope some of the other amendments my colleagues have offered also will be allowed to be voted on. I think that is the way the Senate is intended to work and to function. All Members of the Senate are supposed to be able to come to the floor and offer amendments and have those amendments debated and voted upon. It seems to me that sort of arbitrarily putting in place a construct that limits amendments and picks and chooses ones that get voted on does not represent the heritage and the tradition of this body. I hope my colleagues who are managing the bill on the floor will decide what I think is in the best interests of this institution, and that is that these amendments all be offered, be debated, and be voted on, and I hope this certainly is the case with the amendment I put before the Senate right now.

With that, I yield back the balance of my time and I hope this amendment can be made pending and get voted on whenever we get back on the underlying bill.

Mr. GRASSLEY. Mr. President, it is no secret that I have worked for decades to bring greater transparency and accountability to all facets of government operations. If there is one thing that I have learned over those years it is that you cannot achieve the goal of greater transparency and accountability without access to information.

During this financial crisis, we hear daily about the need for many more billions in Federal funds to save this bank or that financial firm. In response to the crisis the Treasury Department is buying stakes in banks and other companies. That program is known as the Troubled Asset Relief Program or TARP. It is costing the American taxpayer nearly three quarters of a trillion dollars. Transparency and accountability has never been more important than with a program that big.

In an effort to provide some accountability to the American people for TARP funds, the Government Accountability Office, GAO, the investigative arm of Congress, was required by legislation to conduct oversight of the TARP program.

The GAO's mission is to look at the overall performance of the initiative and its impact on the financial system. The GAO is also required to prepare regular reports for Congress.

However, GAO cannot do its job effectively without access to information about how the funds are used. This should be obvious. Unfortunately, however, the bill that created the TARP and told GAO to oversee it, did not give them the authority to access books and records of the private firms that receive TARP money.

In January, Senator BAUCUS and I introduced a bill, S. 340, to provide the GAO the ability to access the books and records of firms who received money from the TARP. Senator SNOWE is also a cosponsor of the bill, known as the TARP Enhancement Act. Unfortunately, my colleagues on the Banking Committee have not yet taken any action on the bill.

Amendment No. 1020 is simply the text of S. 340. It would ensure that companies that receive assistance from the American taxpayer are required to

cooperate with requests for information from the Government Accountability Office about how they used taxpayer money.

The GAO is supposed to be the ''eyes and ears'' of Congress. Well it can't do that job wearing blinders and ear plugs. So I urge my colleagues to support amendment No. 1020, to ensure that GAO has access to TARP recipients' books and records.

Mr. President, in March the Finance Committee held a hearing on the progress and oversight of the Troubled Assets Relief Program, TARP. At that hearing, we heard testimony from acting Comptroller General, the head of the Government Accountability Office, GAO. He testified that in addition to the problem that S. 340 is intended to fix, there is another major gap in GAO's access to information about the TARP. It is not just firms that take taxpayer money who can say ''no'' to GAO's requests for information. The Federal Reserve can too.

The GAO is prohibited by law from auditing the the Federal Reserve. Perhaps that restriction was defensible back when the Federal Reserve focused on monetary policy. However, today it is routinely exercising extraordinary emergency powers to subsidize financial firms far above the levels Congress is willing to authorize through legislation. The Federal Reserve is taking on more and more risk in complicated and unprecedented ways. That risk is ultimately borne by the American taxpayer, but the elected representatives of the taxpayers have not had a say in the Federal Reserve's activities or even a reasonable level of transparency to make sure we understand how much risk taxpayers are on the hook for.

The GAO testified at our hearing that the Federal Reserve is heavily involved in two new TARP programs announced since March of this year. It is also responsible for managing huge portfolios of troubled assets it took on in the bailouts of Bear Stearns and AIG. According to GAO testimony, as of March 27, 2009, Treasury has announced initiatives that are projected to use $590.4 billion of the $700 billion in TARP funds authorized by Congress. However, the projected assistance in these initiatives by the Federal Reserve could be up to $2.9 trillion by GAO estimates. In addition, the Federal Reserve has a variety of other facilities it has established to address the financial crisis adding up to another $1.5 trillion.

Despite these enormous numbers, there is a statutory limitation prohibiting GAO from examining the Federal Reserve. That provision is now in direct conflict with the mission that Congress gave GAO to monitor and report on the TARP.

Amendment No. 1021 would fix this conflict by allowing the GAO to provide Congress a complete and independent view of all the TARP programs, including those with Federal Reserve involvement, such as the Term Asset Loan Facility, TALF, and the Public Private Investment Partnership, PPIP. It would also allow the GAO to examine other extraordinary Federal Reserve actions, such as its acceptance of risky assets from Bear Stearns and AIG.

I urge my colleagues to support amendment No. 1021. Let's not give GAO an important mission to do with a blindfold on. Let's take off the blindfold and let the professionals at GAO take a good hard look on behalf of the American people at what the Federal Reserve is doing.

MORNING BUSINESS

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

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

PARTY AFFILIATION CHANGE

Mr. REID. Mr. President, I have a letter addressed to the Vice President from Senator SPECTER notifying the Senate of his decision to switch his party affiliation from Republican to Democrat and that he will now caucus with Senate Democrats. While the letter is dated April 29, it was just received today, Thursday, April 30. I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 29, 2009.

The Hon. JOSEPH R. BIDEN, Jr.,
Vice-President and President of the U.S. Senate, Washington, DC.

DEAR VICE-PRESIDENT BIDEN: I write to inform you that I will be changing my party affiliation from Republican to Democrat. I will be caucusing with the Democrats, effective immediately.

Sincerely,

ARLEN SPECTER.

HONORING OUR ARMED FORCES

CORPORAL WILLIAM CRAIG COMSTOCK

Mr. PRYOR. Mr. President, today, I come to the floor to honor Cpl William Craig Comstock of Van Buren, AR. His life and service to our country embody the full measure of the Marine Corps motto, ''Semper Fidelis,'' meaning ''always faithful.''

We lost Corporal Comstock when he paid the ultimate sacrifice while serving in Iraq's Anbar Province. Comstock was on his second tour with the 2nd Supply Battalion, Combat Logistics Regiment 25, 2nd Marine Logistics Group, II Marine Expedition Force, Camp Lejeune, NC. Working as an ammunition technician on his first tour in Iraq, he earned a Purple Heart for his bravery after sustaining a gunshot wound in the knee. Ever faithful to his Corps, he volunteered in January to return to Iraq a second time. He told his family he wanted to make that sacrifice for his fellow marines who he knew were eager to return home to see their own.

Coporal Comstock was loved by many. Those who knew him remember him for his wide smile, independent spirit, and warm heart. He was proud to be a U.S. marine, and the Marines were proud to have him. His awards include the Sea Service Deployment Ribbon, the Iraq Campaign Medal, the Global War on Terrorism Service Medal, and the National Defense Service Medal.

Even before joining the Marines, family, colleagues, and friends say Coporal Comstock lived by the ''Semper Fidelis'' motto. As an Alma High School football star, he played on despite an injured shoulder, refusing to let his teammates down. One of his football teammates, Nick Harrison, will graduate from Marine Corps basic training next month. Harrison's mother said it was Coporal Comstock that inspired her son to enlist.

Coporal Comstock was a loyal teammate to his fellow U.S. marines and planned to make a career in military service. Coporal Comstock's memory will live on through his friend Nick Harrison and others like him who selflessly serve our country in Iraq and Afghanistan. We are grateful for his service and my prayers are with his family during this difficult time.

A DECADE OF INACTION

Mr. LEVIN. Mr. President, last Monday marked the tenth anniversary of the tragic shooting at Columbine High School. The prior Thursday was the second anniversary of the tragic shooting at Virginia Tech. These horrific anniversaries have become far too common. Since the shooting at Columbine, I have spoken regularly on the Senate floor about the pressing need for common sense gun safety legislation. Unfortunately, Congress has failed to act.

Even a decade later, the very mention of Columbine High School strikes a nerve with those who hear it. Many of us can still recall with eerie detail the chaotic scenes of hundreds of terrified children running from their school as SWAT-teams descended on the building, searching for two adolescents who, before taking their own lives, murdered 12 innocent students, a teacher, and wounded two dozen others.

In the years that have followed, those closest to the event have recounted how they are constantly reminded of that day by the fragments of ammunition in their bodies or the physical scars from wounds suffered that day. Many victims have described shuddering at the sight of a trench coat or being instantly transported back to the incident from the sound or smell of fireworks. The physical and emotional pain these victims have endured should be intolerable to us. Yet