could discuss that within that context. But as we know today, there has been a proliferation of nuclear technology to many countries, including Iran and North Korea. We know that other countries such as Pakistan have nuclear weapons. It is not unrealistic to suggest that within a few years there may be numerous countries that have capabilities to fire multiple missiles at the United States or one of our allies.

Americans need to know we are agreeing with this START treaty not to even attempt to develop a system to defend our citizens or our allies against multiple missiles. In the hearing, I made this very clear with a question: Is it our intent not to develop a missile defense system capable of defending against Russian missiles? Senator KERRY, Secretary Gates, and Secretary Clinton agreed that would destabilize our relationship with Russia. So everyone should be clear about what is happening here—that in order to enlist Russia's cooperation in other matters, we are agreeing to a continued strategy of mutually assured destruction not just with Russia but with any country that chooses to develop the ability to fire multiple missiles at one time.

I don't think this treaty is going to decrease proliferation. I think on its face it will increase the proliferation of nuclear weapons around the world. Our enemies will know we don't have the ability to defend against missiles, and our allies will develop their own nuclear weapons because they know we no longer have the capability to defend against not just Russia's missiles, not just strategic missiles, but against tactical nuclear weapons.

Russia has a 10-to-1 advantage right now with modern tactical nuclear weapons that are developed not as a deterrence but to be used on the battlefield. This treaty does not limit their ability to continue to develop these weapons. This treaty implicitly and I think explicitly says we are not going to develop any means to shoot down those shorter range missiles.

For us to be considering something of this gravity during the holidays, when Americans are rightly paying attention to things other than politics, and to rush this through with a few days of debate, when for the last treaty I looked at, we had 9 days with many amendments, a lot of debate, and finally agreement—we will not only have limited debate and limited amendments, but we are going to try to push this through before we leave to go home for Christmas. The process is wrong.

I would appeal to my colleagues to let this go until next year. Let's give a specific time agreement next year that we will debate this and we will have a vote on it and we will offer amendments and vote on those amendments and show the American people this was a full debate with full transparency about what is in this treaty and then let Senators vote on it, the Senators Americans have elected to speak for them here in the Senate.

I have heard folks say on the Senate floor that we need to rush into this because we can no longer go days, weeks, and months without verification. I think a close look at the verification of the last treaty shows we weren't very close to what was actually going on. There are big loopholes in the verification aspects of this treaty, loopholes that are big enough to hide missiles and nuclear warheads, and I don't think there is a lot of debate about that. A few more weeks is not going to put our country in any more jeopardy. In fact, I think rushing this through could make the world much more dangerous.

My hope is that my colleagues, particularly my Republican colleagues, those who have expressed an interest in voting for this, will say: Enough is enough. Pushing this legislation, along with repealing don't ask, don't tell, the DREAM Act and other bills we are doing at the same time, and all of these requests for unanimous consent to pass bills that people haven't read—there is just too much business, too many distractions to take on something of this gravity at this time in a lameduck Congress.

So I appreciate the opportunity to speak. I respect those who feel as though this treaty is something we should do. But it is my hope that those people will reflect on the importance of this treaty, the signal it sends to our allies all over the world, and work with us to get an open and honest debate on this treaty at the beginning of next year.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

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

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

THE GOLD STANDARD AMONG MORTGAGES

Mr. ISAKSON. Mr. President, on the 8th day of November of this year, I, along with Senator HAGAN from North Carolina and Senator LANDRIEU from Louisiana, sent a letter to Secretary Donovan, Chairman Bernanke, Acting Director DeMarco, Chairman Sheila Blair, Chairman Schapiro, and Acting Comptroller Walsh, asking them to look closely at the 941(b) requirements of the Dodd-Frank bill relating to risk retention and to urge them to complete their work on carrying out the intent of that legislation through the amendment that the three of us cosponsored to create the exemption for risk retention requirements by the definition of a qualified mortgage.

I rise today, on one of the final days in this Congress, to raise the importance of this issue because of the current fragile condition of the U.S. housing economy and, most importantly, to underscore what a handful of Senators in this body did last summer in the financial reform bill to begin to improve and strengthen the eroding lending standards that got us into this position in the first place.

I ran a business for 22 years in residential housing in Atlanta. During that time, the average default rate, or delinquent rate, was about 3 percent on mortgages. The foreclosure rate was less than 1½. Things have changed dramatically in the last few years because of sloppy underwriting, no credit, and no documentation. We have seen some unbelievable new numbers. To give you some perspective, according to FDIC, in the third quarter of 2010, total mortgage delinquencies across the country were about 10 percent of the market, or 1 in 10. In Georgia, that number exceeded 12. In the 100-percent government-guaranteed FHA market, the delinquency rate is just above 13 percent and, sadly, in Georgia, in the third quarter that rose above 20 percent—1 in every 5.

We have mounting problems with growing housing inventory—problems that are only made worse with excessive fees currently charged by Freddie Mac and Fannie Mae, frankly, keeping many from being able to refinance into a more affordable mortgage, therefore, becoming delinquent and being foreclosed on.

I am extremely proud of the bipartisan provision that Senator HAGAN, Senator LANDRIEU, and myself added to the financial reform bill. Earlier this year, I began working with Senators LANDRIEU and HAGAN to develop the concept of a qualified residential mortgage, QRM or, as I call it, a ''new gold standard'' for residential mortgages, which ultimately was included in the credit risk retention title of 941(b) in the financial reform bill. While risk retention can serve as a strong deterrent to excessive risk taken by lenders, it also imposes the potential of a constriction of credit in the mortgage market.

I want to make this point clear. The risk retention provision of the Dodd-Frank bill would require an originator of a mortgage to retain 5 percent of that mortgage as risk retention. As we all know, tier one capital requirements by the banking system is only 8 percent for the solid footing for the entire bank, and we were going to add another 5 to it just because they make mortgages. What is going to happen is that very few mortgages will be made, and those that will be made will be only the most pristine ones, not necessarily the ones that meet the needs of middle America.

Likewise, our standard makes sure venturesome lending practice can never become qualified residential mortgages. We specifically delineate in the amendment that things such as balloon mortgages, no-doc loans, drive-by appraisals, and interest-only loans, loans with huge prepayment penalties, and negative amortization mortgages would never be considered a qualified mortgage. Against those loans, you

should require risk retention and additional security on the part of the lenders.

But in terms of mainstream America, we need to go back to the good old days of the 1960s, 1970s, and 1980s, where if you got a residential mortgage, you had to get a letter from your boss saying that you had a job, your bank had to certify that you had the money in the bank account to pay the downpayment, your credit report had to be a good one saying you could pay your mortgage, the appraiser had to use legitimate information to appraise the house, and the underwriters had to match your debt against your income to ensure that they weren't at too high a risk. That is why in those wonderful days we only had 1.5 percent in foreclosures and less than 3 percent in defaults.

But the easy underwriting that started in 2006, and then accelerated, caused us lots of problems. That is what we are here to try to stop today. I am optimistic that our amendment will be the first step to correct the lending practices of the past and will set on a better path in the future.

In the law, we instructed the regulators to use specific criteria in conjunction with loan performance data to define the contours of the quality residential mortgage exemption. As we said in our November 8 letter to the regulators responsible for writing these rules:

It was our clear legislative intent that, underwriting and product features that data indicate a lower risk of default must be considered. Prior to sponsoring the Amendment, we were provided with analyses of loan level data that demonstrated that loans that satisfy the elements set out in our Amendment default less frequently and cure more often than riskier loans. We understand that each of your agencies have been provided with this analysis, updated to reflect loan performance in 2010. In particular this analysis demonstrates that historically tested standards, including full documentation of borrower income and assets, reasonable total debt-to-income ratios and restrictions on riskier loan features, such as negative amortization and balloon payments, significantly reduce the risk of default. In addition, for loans with lower down payments that have combined loan-to-value ratios greater than 80 percent, the protections provided by mortgage insurance result in lower losses for lenders and investors and fewer foreclosures for borrowers than similar loans that lack insurance. The mortgage insurance provision ensures that the qualified residential mortgage exemption can serve those consumers that cannot afford a 20 percent down payment while putting substantial private capital at risk to drive underwriting discipline.

I am aware these agencies are actively engaged and meeting. I recently received a response from the regulators assuring me that they will be implementing our QRM legislation ''in a manner consistent with the language and purposes of that section.'' It is my hope that these regulators will follow the intent of the legislation, by ensuring a broad spectrum of qualified borrowers will fit under the umbrella of protection under the qualified residential mortgage safety and soundness provisions.

I look forward to continuing to work with my colleagues on the other side in the new Congress to help to continue to improve our system of housing finance. It is with great anticipation that we await the administration's plans to do with Freddie and Fannie.

I have my own ideas, which I have expressed on this floor. I look forward to working with Chairman TIM JOHNSON and Ranking Member SHELBY in the months ahead.

The crisis we have experienced in large foreclosures and defaults, the declines in housing values, and a protracted housing recession, will only be cured in time when we return to a strong and vibrant lending market, where qualified loans and borrowers come together to fuel the housing market once again. Until that happens, I fear that the recession and the recovery we are in will be protracted and will be slow, and the American dream will still be out of reach of too many Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

RARE EARTH ELEMENTS

Mr. BOND. Mr. President, I come to the floor today to talk about the biggest problem no one's ever heard of—America's 100 percent dependence on foreign countries for our rare earth needs—and to introduce legislation that is an essential part of the solution.

If you are at all like me, you may be scratching your head over what exactly are rare-earth metals?

To go back in time a little, more so for some than others, when you were studying the Periodic Table in high school chemistry, rare-earth elements are the metals you were told you would never have to worry about.

Unfortunately, that is the problem—until recently, no one was worrying about rare-earth elements.

But in fact, these metals are critical to U.S. economic and national security.

Back to that high school chemistry class again, rare-earth elements are metallic minerals that significantly enhance the performance of other materials.

These elements are used in small amounts in about every advanced industrial product—we are talking about a wide array of products that Americans depend on every day—from MRI machines to cell phones to computers.

In addition to being an essential component in everyday high-tech products, rare-earth elements are also necessary to our defense industrial base.

Precision guided missiles, secure communications, advanced jet engines, unmanned aerial systems, smart munitions, stealth technology and advanced armor all are rare-earth dependent systems and technologies.

Rare-earth elements also hold unique chemical, magnetic, electrical, luminescence, and radioactive shielding characteristics for environmental and ''green technology'' applications—like hybrid car engines.

Despite the importance of rare-earth elements, the United States is currently 100 percent import-dependent for our rare-earth needs.

Let me spell that out for you—while the United States today is the world's sole economic and military superpower, there is not a single U.S. or North American company actively producing rare-earth elements, metals, alloys or rare-earth magnets.

The United States Geological Survey, USGS, the National Academies, and the National Materials Advisory Board have all determined that rare earths are ''Strategic and Critical'' to U.S. Industry and National Defense.

Yet, the U.S. is 100 percent import dependent upon these materials?

How could we have let this happen?

How could we let a critical component of our economy become beholden to foreign entities?

Concerns about the world's dependence on rare-earth minerals are not just some attempt to read the tea leaves about some futuristic problem.

In fact, the problems for some of our allies have already started.

Over the past several months, Japan has sounded the alarm over their inability to acquire supplies of the rare earths to their companies.

What if our own Nation's ability to import rare-earth elements was restricted or stopped all together?

According to a Government Accountability Office report, GAO, earlier this year, it could take as long as 15 years to rebuild our rare-earth industry.

Common sense tells us that—considering our dependence on rare-earth metals—we don't have another day to waste.

That is what this bill I am cosponsoring today with my good friend, and fellow retiring colleague, Senator BAYH, is all about.

Our legislation will promote the domestic supply and refinement of rare-earth minerals.

It is time to take necessary actions to redevelop a domestic resource of rare-earth elements.

A domestic resource that will ensure we protect our national defense, technology-based industries, and the industrial competiveness of the United States.

Currently, there are no active rare-earth production facilities in the Western Hemisphere.

However, the Pea Ridge mine in Sullivan, MO, is one of two permitted, but shuttered, mines in the United States.

It is here where, according to the U.S. Geological Survey, the greatest concentrations of both light and heavy rare-earth elements exist, particularly those needed for the defense industry.

Rare-earth ore, or oxides, extracted from these mines need to be reduced into a more pure elemental state before being used by industry.

Redeveloping our rare-earth capabilities will be no easy task—in fact, the hurdles for financing such a refinery are significant.

The cost to construct a modern rare-earth refinery capable of supplying a U.S. consumption of 20,000 tons per year is estimated at more than $1 billion.

I do not believe it is practical or desirable for the United States to depend upon any single rare-earth mining company to supply our Nation's rare-earth production or supply chain requirements.

This is why our legislation will require a feasibility study on building a U.S. cooperative refinery to process rare-earth ores from mines in the United States or other allied countries.

Such a cooperative, similar to our successful agricultural co-ops all across rural America, will set the stage for the U.S. Government to establish reserves and protect national security.

To brag on my home State for a minute—Missouri would be ideally suited for the location of a cooperative refinery, given the importance of the Pea Ridge deposit.

Missouri's experienced mining and minerals-processing workforce, its favorable access and costs to the utilities needed to operate a refinery and central location and transportation infrastructure all make Missouri well positioned to help preserve our Nation's strategic and economic security.

In dealing with the tremendous costs of establishing a production and refining facility, the legislation would also provide the Department of Defense $20 million to support the defense supply chain and also $30 million for the development of rare Earth magnets.

The time has come for our country to act and for this Congress—certainly the next Congress—to take the necessary steps to secure our economic and strategic future. By ensuring that our Nation has its own domestic supply of rare Earths and the ability to process them, we should be able to compete in the 21st century.

The bill Senator BAYH and I have introduced will do just that. While introducing legislation during the last days of the lameduck may seem like a ''Hail Mary,'' this issue is too important to continue to ignore, and we felt it was necessary to launch a ''Hail Mary'' in hopes there will be others of our colleagues who will catch it and run with the ball in the next session of Congress—to mix up the metaphors badly.

In fact, ignoring our growing rare Earth needs and the overseas dominance and China's monopoly is how we got into this mess. Senator BAYH and I have laid the groundwork for this bill, and I hope my colleagues in January will call it back up and see it passed.

The bottom line is this: Just as we cannot afford to be dependent solely on foreign oil cartels for our Nation's energy, counting on any one or a few countries to supply all of America's rare Earth needs crucial to our technological innovation and national security needs is too risky a bet.

I thank my colleagues for listening. I hope they will take up the ball in the next Congress and make sure we begin to deal with this very important problem very seriously.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me just say, at this point, to the Senator from Missouri, that I greatly appreciate the comments he made. This question of our dependence on a whole series of things which matter to our national security, including these rare minerals, is an enormously important one, and I think he has done a good service to the Senate to bring it to our attention. So I thank him for that.

Let me also say we are open for business. We would love to get going on some amendments on the START treaty, and I look forward to the opportunity to debate those amendments and, hopefully, have some votes on them in the course of the afternoon.

Until such time as that may become a reality, 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. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LEGISLATIVE SESSION

Mr. KERRY. Mr. President, I ask unanimous consent to proceed as if in legislative session for the purpose of processing some cleared legislative items.

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

REAL ESTATE JOBS AND INVESTMENT ACT OF 2010

Mr. KERRY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 505, H.R. 5901.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5901) to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investment in United States real property interests, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I ask unanimous consent that the amendment at the desk be considered and agreed to, the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that the title amendment which is at the desk be considered and agreed to, and that any statements relating to the measure be printed in the RECORD.

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

The amendment (No. 4834) was agreed to as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORITY OF TAX COURT TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 of the Internal Revenue Code of 1986 (relating to employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) JUDGE-APPOINTED EMPLOYEES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint employees, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such employee shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the law clerk's credit as of the effective date of this subsection shall remain credited to the law clerk and shall be available to the law clerk upon separation from the Federal Government.

''(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in courts established under Article III of the Constitution of the United States.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,