

S. 1233

At the request of Ms. LANDRIEU, the names of the Senator from California (Mrs. BOXER) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 1233, a bill to reauthorize and improve the SBIR and STTR programs and for other purposes.

S. 1241

At the request of Mr. INHOFE, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1241, a bill to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

S. 1371

At the request of Mr. NELSON of Florida, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 1371, a bill to amend the Internal Revenue Code of 1986 to provide for clean renewable water supply bonds.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1611, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1859

At the request of Mr. ROCKEFELLER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 1966

At the request of Mr. DODD, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1966, a bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes.

S. 2725

At the request of Mrs. FEINSTEIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2725, a bill to provide for fairness for the Federal judiciary.

S. 2737

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 2737, a bill to relocate to Jerusalem the United States Embassy in Israel, and for other purposes.

S. 2807

At the request of Mr. CORNYN, the name of the Senator from Nebraska (Mr. JOHANNIS) was added as a cosponsor of S. 2807, a bill to ensure that the victims and victims' families of the November 5, 2009, attack at Fort Hood, Texas, receive the same treatment, benefits, and honors as those Americans who have been killed or wounded in a combat zone overseas and their families.

S. 2869

At the request of Ms. LANDRIEU, the name of the Senator from Oregon (Mr.

MERKLEY) was added as a cosponsor of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

S. 2989

At the request of Ms. LANDRIEU, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2989, a bill to improve the Small Business Act, and for other purposes.

S. 3035

At the request of Mr. BAUCUS, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 3035, a bill to require a report on the establishment of a Polytrauma Rehabilitation Center or Polytrauma Network Site of the Department of Veterans Affairs in the northern Rockies or Dakotas, and for other purposes.

S. 3065

At the request of Mr. LIEBERMAN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 3065, a bill to amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as "Don't Ask, Don't Tell", with a policy of nondiscrimination on the basis of sexual orientation.

S. 3079

At the request of Mr. MERKLEY, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 3079, a bill to assist in the creation of new jobs by providing financial incentives for owners of commercial buildings and multifamily residential buildings to retrofit their buildings with energy efficient building equipment and materials and for other purposes.

S. 3106

At the request of Mrs. HAGAN, the name of the Senator from Nebraska (Mr. JOHANNIS) was added as a cosponsor of S. 3106, a bill to authorize States to exempt certain nonprofit housing organizations from the licensing requirements of the S.A.F.E. Mortgage Licensing Act of 2008.

S. 3117

At the request of Mr. WYDEN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 3117, a bill to strengthen the capacity of eligible institutions to provide instruction in nanotechnology.

S. 3165

At the request of Ms. LANDRIEU, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3165, a bill to authorize the Administrator of the Small Business Administration to waive the non-Federal share requirement under certain programs.

S. 3190

At the request of Ms. LANDRIEU, the names of the Senator from Oregon (Mr. MERKLEY) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 3190, a bill to reaffirm that the Small Business Reauthorization Act of

1997 does not limit a contracting officer's discretion regarding whether to make a contract available for award pursuant to any of the restricted competition programs authorized by the Small Business Act.

S. 3201

At the request of Mr. UDALL of Colorado, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3201, a bill to amend title 10, United States Code, to extend TRICARE coverage to certain dependents under the age of 26.

S. 3241

At the request of Mr. BROWN of Ohio, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 3241, a bill to provide for a safe, accountable, fair, and efficient banking system, and for other purposes.

S. 3244

At the request of Mr. FEINGOLD, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3244, a bill to provide that Members of Congress shall not receive a cost of living adjustment in pay during fiscal year 2011.

S. 3254

At the request of Mr. BROWN of Ohio, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 3254, a bill to amend the Fair Labor Standards Act of 1938 to require persons to keep records of non-employees who perform labor or services for remuneration and to provide a special penalty for persons who misclassify employees as non-employees, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself and Ms. LANDRIEU):

S. 3257. A bill to authorize the Department of Labor's voluntary protection program and to expand the program to include more small businesses; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce legislation with Senator LANDRIEU known as the Voluntary Protection Program Act. This bill will codify the Voluntary Protection Program, or VPP, expand it to include more small businesses, and incorporate recent GAO recommendations for program improvements.

No program has been more successful in creating such a culture of safety in the workplace than VPP. Since it was created in 1982, Republican and Democrat administrations alike have fostered its growth to now 2,284 worksites, a quarter of which are unionized, and it covers almost a million employees. The bipartisan support for VPP continues into this Congress. Last week, the Senate Budget Committee unanimously approved an amendment to preserve VPP budget authority and Chairman CONRAD noted that the program actually saves taxpayer dollars.

Worksites that pass the rigorous evaluation process and become VPP sites have an average Days Away Restricted or Transferred, DART, case rate of 52 percent below the average for its industry. In recent years, smaller worksites have made significant strides in VPP, increasing from 28 percent of VPP sites in 2003 to 39 percent in 2008.

The innovative program doesn't just keep employees safer; as I have noted, it also saves both the VPP companies and the taxpayers money. In 2007, Federal Agency VPP participants saved the government more than \$59 million by avoiding injuries and private sector VPP participants saved more than \$300 million. Additionally, when workplaces make the significant commitment to safety required by VPP, it allows OSHA to focus its resources where they are most needed. VPP Participant employers contribute a great deal to the VPP program expenditures. VPP participants have assigned approximately 1,200 of their own employees to act as OSHA Special Government Employees, SGEs, who conduct onsite evaluations for OSHA.

Despite the strong bipartisan support for VPP and its very positive results, the need for this legislation has become painfully clear. The administration's fiscal year 2011 Budget Request proposed eliminating the small amount it takes to administer VPP—\$3.125 million and sought to transfer the 35 FTEs it takes to run the program to other functions. The budget proposal stated that OSHA was seeking "alternative non-federal forms of funding" and working closely with stakeholders, but, to date, no plan to secure such funding has been offered by the administration or in either the House or Senate authorizing committee. To the extent such "alternative funding" is bureaucratic code for a fee-based system such a proposal is simply not workable and completely counterproductive. Participating employers already voluntarily absorb significant costs to participate in the current program. Asking businesses—particularly small businesses, and particularly in the current economic environment—to take on more costs will only result in them dropping out of the program. Further still, a fee-based system simply destroys the credibility and integrity of VPP participation for employees.

I would like to thank Senator LANDRIEU for working with me on this important legislation.

By Mr. REED:

S. 3258. A bill to amend the securities laws to modernize and strengthen investor protection, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, the recent lawsuit by the Securities and Exchange Commission, SEC, against Goldman Sachs underscores that much still needs to be done to improve transparency and restore confidence in our financial system. Indeed, that is why

we must have the debate on Wall Street reform. The nearly ½ of all U.S. households that own securities deserve a strong cop on the beat that has the tools it needs to go after swindlers and scam artists, and pursue the difficult cases arising from our increasingly complex financial markets. Our economy's success depends in no small part on restoring confidence in our capital markets and a smoothly operating capital formation process.

The bill I am introducing this afternoon, the Modernizing and Strengthening Investor Protection Act, would improve the ability of the SEC to protect investors by strengthening its ability to bring enforcement actions, addressing issues revealed by the recent Madoff fraud, and modernizing its ability to obtain critical information. In particular, it would enhance the ability of the SEC to hire market experts, strengthen oversight of fund custodians, modernize the SEC's ability to obtain information from the firms it oversees, and clarify and enhance SEC penalties and other authorities.

This legislation mirrors a bill that Representative KANJORSKI introduced and worked to include in the House version of Wall Street reform. I urge my colleagues to take a look at my legislation during the next few days, as I plan to introduce it as an amendment to the Wall Street reform bill that is about to be considered by the Senate.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3258

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Modernizing and Strengthening Investor Protection Act of 2010".

#### SEC. 2. STRENGTHENING ENFORCEMENT BY THE COMMISSION.

(a) NATIONWIDE SERVICE OF SUBPOENAS.—

(1) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence."

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Fed-

eral Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence."

(3) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended by inserting after the fourth sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence."

(4) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by inserting after the third sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence."

(b) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h-1) is amended by adding at the end the following new subsection:

"(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

"(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

"(A) such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

"(B) such penalty is in the public interest.

"(2) MAXIMUM AMOUNT OF PENALTY.—

"(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$75,000 for a natural person or \$375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$150,000 for a natural person or \$725,000 for any other person, if—

"(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(ii) such act or omission directly or indirectly resulted in—

"(I) substantial losses or created a significant risk of substantial losses to other persons; or

"(II) substantial pecuniary gain to the person who committed the act or omission.

"(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence

of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.”

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(A) by striking the matter immediately following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the subparagraph margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(1) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(A) by striking the matter immediately following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest, and”;

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the clause margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(A) by striking the undesignated matter immediately following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the clause margins accordingly;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(C) FORMERLY ASSOCIATED PERSONS.—

(1) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged violation or abuse was, a member or employee”.

(2) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(c)) is amended—

(A) in paragraph (1)(C), by striking “any person associated, or seeking to become associated,” and inserting “any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(ii) in subparagraph (B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

(3) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “, or, as to any act or practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated”.

(4) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant.”

(5) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(A) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(B) by striking “such officer or director” and inserting “such person”.

(6) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended—

(A) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(B) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

(7) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley

Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following:

“(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of sections 3(c), 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

“(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

“(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

“(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

“(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.”

(B) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm”.

(8) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(A) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person”; and

(B) in subparagraph (B)—

(i) by striking “No associated person” and inserting “No current or former supervisory person”; and

(ii) by striking “any other person” and inserting “any associated person”.

(9) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

(d) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

“(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(A) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(B) by adding at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this title involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(3) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended—

(A) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(B) by adding at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 206 involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(e) CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after “controlled person is liable” the following: “(including to the Commission in any action brought under paragraph (1) or (3) of section 21(d))”.

(f) AIDING AND ABETTING UNDER THE SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(A) by striking “Every person who” and inserting “(a) CONTROLLING PERSONS.—Every person who”; and

(B) by adding at the end the following:

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

(2) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a-48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

“(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent

as the person to whom such assistance is provided.”.

(3) UNDER THE INVESTMENT ADVISERS ACT.—Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by inserting at the end the following new subsection:

“(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.”.

(4) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly” after “knowingly”.

### SEC. 3. ADDRESSING ISSUES REVEALED BY THE MADOFF FRAUD.

(a) REVISION TO RECORDKEEPING RULE.—

(1) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(A) in subsection (a)(1), by adding at the end the following: “Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.”; and

(B) in subsection (b), by adding at the end the following:

“(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.”.

(2) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended by adding at the end the following new subsection:

“(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.”.

(b) STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.—

(1) APPOINTMENT AUTHORITY.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

### “§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

“(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

“3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.”.

(3) PAY AUTHORITY.—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

(c) SIPC REFORMS.—

(1) REMOVING THE DISTINCTION BETWEEN CLAIMS FOR CASH AND CLAIMS FOR SECURITIES.—The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended—

(A) in section 8(e)(4)(B) (15 U.S.C. 78fff-2(e)(4)(B)), by striking “for cash or securities”;

(B) in section 9(a) (15 U.S.C. 78fff-3(a))—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(C) in section 16(2)(B) (15 U.S.C. 78lll(2)(B)), by striking “for cash or securities”.

(2) LIQUIDATION OF A CARRYING BROKER-DEALER.—Section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

(A) by striking the undesignated matter immediately following subparagraph (B);

(B) in subparagraph (A), by striking “any member of SIPC” and inserting “the member”;

(C) in subparagraph (B), by striking the comma at the end and inserting a period;

(D) by striking “If SIPC” and inserting the following:

“(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC”; and

(E) by adding at the end the following:

“(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC.”

**SEC. 4. ENHANCED ABILITY OF COMMISSION TO OBTAIN NEEDED INFORMATION.**

(a) INVESTMENT COMPANY EXAMINATION.—Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)(1)) is amended to read as follows:

“(1) IN GENERAL.—The following records shall be subject, at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors:

“(A) All records of a registered investment company.

“(B) All records of a underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a registered investment company.

“(C) All records required to be maintained and preserved by a investment adviser that is not a majority-owned subsidiary of a registered investment company.

“(D) All records required to be maintained and preserved by a depositor of a registered investment company.

“(E) All records required to be maintained and preserved by a principal underwriter for a registered investment company (other than a closed-end company).”

(b) EXPANDED ACCESS TO GRAND JURY INFORMATION.—Chapter 215 of title 18, United States Code, is amended by adding at the end the following:

**“§ 3323. Access to grand jury information**

“(a) DISCLOSURE.—

“(1) IN GENERAL.—Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of conduct that may constitute a violation of any provision of the securities laws to the Securities and Exchange Commission for use in relation to any matter within the jurisdiction of the Commission.

“(2) SUBSTANTIAL NEED REQUIRED.—A court may issue an order under paragraph (1) only upon a finding of a substantial need in the public interest.

“(b) USE OF MATTER.—A person to whom a matter has been disclosed under this section shall not use such matter, other than for the purpose for which such disclosure was authorized.

“(c) DEFINITIONS.—As used in this section—

“(1) the terms ‘attorney for the government’ and ‘grand jury information’ have the meanings given to those terms in section 3322 of title 18, United States Code; and

“(2) the term ‘securities laws’ has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934.”

(c) ENHANCED AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following:

“(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject, at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of

1940 (15 U.S.C. 80a-30(b)) is amended by adding at the end the following:

“(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”

(3) DOCUMENT REQUESTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended by adding at the end the following:

“(e) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”

(d) PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(A) in subsection (d), by striking “subsection (e)” and inserting “subsection (f)”; and

(B) by redesignating subsection (e) as subsection (f); and

(C) by inserting after subsection (d) the following:

“(e) RECORDS OBTAINED FROM REGISTERED PERSONS.—

“(1) IN GENERAL.—Except as provided in subsection (f), the Commission shall not be compelled to disclose records or information obtained pursuant to section 17(b), or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.

“(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(A) by striking subsection (c) and inserting the following:

“(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that

department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”

(B) by striking subsection (d); and

(C) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

“(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”

(e) EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.—Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PRODUCTION OF DOCUMENTS.—

“(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall—

“(A) produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board; and

“(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

“(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

“(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.”

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

“(d) SERVICE OF REQUESTS OR PROCESS.—

“(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

“(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, shall designate to the Commission or the Board an agent in the United States upon whom may be served any process, pleading, or other papers in any action brought to enforce this section or any request by the Commission or the Board under this section.

“(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

“(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.”.

(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), as amended by subsection (d)(1)(A), by striking “subsection (f)” and inserting “subsection (g)”;

(2) in subsection (e), as added by subsection (d)(1)(C), by striking “subsection (f)” and inserting “subsection (g)”;

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

“(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

“(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

“(A) any agency (as defined in section 6 of title 18, United States Code);

“(B) the Public Company Accounting Oversight Board;

“(C) any self-regulatory organization;

“(D) any foreign securities authority;

“(E) any foreign law enforcement authority; or

“(F) any State securities or law enforcement authority.

“(2) NONDISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

“(3) NONWAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

“(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities,

self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘privilege’ includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

“(B) the term ‘foreign law enforcement authority’ means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

“(C) the term ‘State securities or law enforcement authority’ means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.”.

#### SEC. 5. MODERNIZATION OF INVESTOR PROTECTIONS.

(a) MUNICIPAL SECURITIES.—Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) is amended—

(1) by striking “(b)(1) Not later” and all that follows through “succeed such initial members.” and inserting the following:

“(b) MUNICIPAL SECURITIES RULEMAKING BOARD.—

“(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than October 1, 2010, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the ‘Board’), shall—

“(A) be composed of members who shall perform the duties set forth in this section; and

“(B) shall consist of—

“(i) a majority of independent public representatives, at least 1 of whom shall be representative of investors in municipal securities and at least 1 of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as ‘public representatives’);

“(ii) at least 1 individual who is representative of municipal securities brokers and municipal securities dealers that are not banks or subsidiaries, departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’); and

“(iii) at least 1 individual who is representative of municipal securities dealers that are banks or subsidiaries, departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’).”;

(2) in paragraph (2), by amending subparagraph (B) to read as follows:

“(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules—

“(i) shall establish requirements regarding the independence of public representatives;

“(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of broker-dealer representatives and bank representatives;

“(iii) shall establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include prior work

experience in the securities, municipal finance, or municipal securities industries;

“(iv) shall specify the term members shall serve; and

“(v) may increase or decrease the number of members which shall constitute the whole Board, except that in no case may the number of members of the whole Board be an even number.”.

(b) BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.—

(1) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(A) in subsection (d)—

(i) in paragraph (1)—

(I) by inserting after “within ten days after such acquisition,” the following: “or within such shorter period as the Commission may establish, by rule,”; and

(II) by striking “send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange on which the security is traded, and”; and

(ii) in paragraph (2)—

(I) by striking “in the statements to the issuer and the exchange, and”; and

(II) by striking “shall be transmitted to the issuer and the exchange and”; and

(B) in subsection (g)—

(i) in paragraph (1), by striking “shall send to the issuer of the security and”; and

(ii) in paragraph (2)—

(I) by striking “sent to the issuer and”; and

(II) by striking “shall be transmitted to the issuer and”.

(2) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(A) in paragraph (1), by striking “(and, if such security is registered on a national securities exchange, also with the exchange)”; and

(B) in paragraph (2)(B), by inserting after “officer” the following: “, or within such shorter period as the Commission may establish, by rule”.

(c) ENHANCED APPLICATION OF ANTIFRAUD PROVISIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking “registered on a national securities exchange” each place that term appears and inserting “other than a government security”; and

(B) in subsection (b), by striking “by use of any facility of a national securities exchange,”; and

(C) in subsection (c), by inserting after “unlawful for any” the following: “broker, dealer, or”;

(2) in section 10(a)(1), by striking “registered on a national securities exchange” and inserting “other than a government security”; and

(3) in section 15(c)(1)(A), by striking “otherwise than on a national securities exchange of which it is a member”.

(d) DEFINITION OF “INTERESTED PERSON”.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following:

“(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

“(I) a material business or professional relationship with such company or any affiliated person of such company; or

“(II) a close familial relationship with any natural person who is an affiliated person of such company.”;

(2) by striking clause (vi);



(3) by redesignating clause (vii) as clause (vi); and

(4) in clause (vi), as so redesignated, by striking “two” and inserting “5”.

(e) LOST AND STOLEN SECURITIES.—Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

(f) FINGERPRINTING.—Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) in the first sentence, by striking “and registered clearing agency,” and inserting “registered clearing agency, registered securities information processor, national securities exchange, and national securities association”; and

(2) in the second sentence, by striking “or clearing agency,” and inserting “clearing agency, securities information processor, national securities exchange, or national securities association”.

#### SEC. 6. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission (in this section referred to as the “Commission”) shall hire an independent consultant of high caliber who has expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the Commission, as well as the relationship of the Commission with and the reliance by the Commission on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the oversight of the Commission.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the Commission;

(B) improving communications between offices and divisions of the Commission;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the Commission requires to monitor the effect of such trading and advances on the market;

(E) the hiring authorities, workplace policies, and personal practices of the Commission, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of Commission employees and whether the present skill set diversity efficiently and effectively fosters the mission of the Commission of investor protection; and

(iv) the application of civil service laws by the Commission;

(F) whether the oversight by the Commission of, and reliance by the Commission on, self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the reliance by the Commission on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than 150 days after the independent consultant is retained under subsection (a), the independent consultant shall submit a report to the Commission and to Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the independent consultant determines appropriate to enable the Commission and other entities on which the independent consultant reports to perform the missions of the Commission, whether mandated by statute or otherwise.

(c) COMMISSION REPORT.—Not later than 6 months after the date on which the consultant submits the report under subsection (b), and every 6 months thereafter during the 2-year period following the date on which the consultant submits the report under subsection (b), the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the implementation by the Commission of the regulatory and administrative recommendations contained in the report of the independent consultant under subsection (b).

By Mr. KOHL (for himself, Mr. LEAHY, and Mr. HATCH):

S. 3259. A bill to amend subtitle A of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to make the operation of such subtitle permanent law; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Antitrust Criminal Penalties Enforcement and Reform Act of 2004 Extension Act. This legislation makes permanent a critical component of the Antitrust Criminal Penalty Enforcement and Reform Act of 2004, set to expire on June 22, which encourages participation in the Antitrust Division's leniency program. As a result, the Justice Department will be able to continue to detect, investigate and aggressively prosecute price-fixing cartels which harm consumers.

The Antitrust Division of the Department of Justice has long considered criminal cartel enforcement a top priority, and its Corporate Leniency Policy is an important tool in that enforcement. Criminal antitrust offenses are generally conspiracies among competitors to fix prices, rig bids, or allocate markets of customers. The Leniency Policy creates incentives for corporations to report their unlawful cartel conduct to the Division, by offering the possibility of immunity from criminal charges to the first-reporting corporation, as long as there is full cooperation. For more than 15 years, this policy has allowed the Division to uncover cartels affecting billions of dollars worth of commerce here in the United States, which has led to prosecutions resulting in record fines and jail sentences.

An important part of the Division's Leniency Policy, added by the Antitrust Criminal Penalties Enforcement and Reform Act of 2004, limits the civil liability of leniency participants to the actual damages caused by that company—rather than triple the damages caused by the entire conspiracy, which is typical in civil antitrust lawsuits. This removed a significant disincentive to participation in the leniency program—the concern that, despite immunity from criminal charges, a participating corporation might still be on the hook for treble damages in any future antitrust lawsuits.

Maintaining strong incentives to make use of the Leniency Policy provides important benefits to the victims of antitrust offenses, often consumers who paid artificially high prices. It makes it more likely that criminal antitrust violations will be reported and, as a result, consumers will be able to identify and recover their losses from paying illegally inflated prices. The policy also requires participants to cooperate with plaintiffs in any follow-on civil lawsuits, which makes it more likely that the plaintiff consumers will be able to build strong cases against all members of the conspiracy.

Since the passage of ACPERA, the Antitrust Division has uncovered a number of significant cartel cases through its leniency program, including the air cargo investigation, which so far has yielded over a billion dollars in criminal fines. In that investigation, several airlines pled guilty to conspiring to fix international air cargo rates and international passenger fuel surcharges. Not only were criminal fines levied but one high-ranking executive pled guilty and agreed to serve 8 months in prison. In fiscal year 2004, before the passage of ACPERA, criminal antitrust fines totaled \$350 million. Criminal antitrust fines in fiscal year 2009 surpassed \$1 billion. Scott Hammond, the Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division, has stated that the damages limitation has made its Corporate Leniency Program “even more effective” at detecting and prosecuting cartels. In fact, in the first 5 years after passage, leniency applications increased by 25 percent, and the Antitrust Division experienced “unprecedented” success in criminal enforcement.

ACPERA's damages limitation is set to expire in June, so we must act quickly to extend it. Otherwise, the Justice Department will lose an important tool that it uses to investigate and prosecute criminal cartel activity. The strong evidence that this program works means it is time to make it permanent. Permanence will give all parties—the government, potential amnesty applicants, and potential private litigants—a clear sign that criminal cartel enforcement continues to be a top priority, and that the amnesty program is a key and continuing component of that enforcement program.

This certainty is likely to lead to increased participation in the amnesty program, the discovery of more cases, the receipt of more criminal fines, and a higher likelihood of consumers being able to recover their losses in civil litigation.

Some have raised questions about whether the leniency program could be made more effective by changing the requirements for leniency applicants to cooperate in private litigation, or by increasing the incentive for whistleblowing. Currently, there is insufficient evidence to show that changes are needed and the Department of Justice is concerned that any changes could have the unintended consequence of reducing the incentives to use the Leniency Program. Therefore, at this time we are hesitant to tinker with success. However, in response to the concerns, the Antitrust Criminal Penalties Enforcement and Reform Act of 2004 Extension Act of 2010 requires a GAO study to consider the effectiveness of the incentives for leniency applicants to cooperate in private litigation, and specifically whether such cooperation is made in a timely fashion. The Antitrust Criminal Penalties Enforcement and Reform Act of 2004 is meant to facilitate both government and private enforcement of the antitrust laws, and the GAO study will shed some light on whether it strikes the correct balance. When we receive the study, we will review it and act accordingly, changing the law if necessary.

I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3259

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Antitrust Criminal Penalties Enforcement and Reform Act of 2004 Extension Act of 2010”.

#### SEC. 2. ELIMINATION OF SUNSET.

The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (15 U.S.C. 1 note) is amended by striking section 211.

#### SEC. 3. EFFECTIVE DATE OF AMENDMENT.

The amendment made by section 2 shall take effect immediately before June 22, 2010.

#### SEC. 4. GAO REPORT.

Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on the effectiveness of the Antitrust Criminal Penalties Enforcement and Reform Act of 2004, both in criminal investigation and enforcement by the Department of Justice and in private civil actions. Such report shall consider, inter alia, the effectiveness of incentives for cooperation, and the timeliness of that cooperation, in private civil actions.

By Mr. HARKIN (for himself, Ms. KLOBUCHAR, and Mr. FRANKEN):

S. 3260. A bill to enhance and further research into the prevention and treatment of eating disorders, to improve access to treatment of eating disorders, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, today I am joining with Senator KLOBUCHAR and Senator FRANKEN to introduce the Federal Response to Eliminate Eating Disorders, FREED, Act. This important bill is the first comprehensive legislative effort to confront eating disorders in the U.S.

Eating disorders such as anorexia nervosa and bulimia nervosa are widespread, insidious, and too often fatal diseases. Today, at least 5 million Americans suffer from eating disorders. Because these diseases often go undiagnosed and uncounted, the actual number is closer to 11 million Americans. Adolescent women are by no means the only people suffering from eating disorders; these diseases don't discriminate by gender, race, income, or age.

Eating disorders are dangerous conditions, but their consequences are often underestimated. These diseases can lead to serious heart conditions, kidney failure, osteoporosis, infertility, gastrointestinal disorders, and even death. The National Institute of Mental Health estimates that one in 10 people with anorexia nervosa will die of starvation, cardiac arrest, or some other medical complication. One in 10! That is deeply disturbing, and cries out for a much more aggressive Federal response. Moreover, fatalities resulting from eating disorders are grossly underreported, because deaths are typically recorded by listing the immediate cause of death, such as cardiac arrest, rather than the underlying cause, which is the eating disorder.

But, despite their prevalence and very serious impacts on health, research funding for eating disorders has lagged behind funding for research into similar diseases. We simply don't know enough about the causes and consequences of eating disorders, or how to stop them from developing in the first place. We have research suggesting that there's a genetic component to eating disorders, but we have got to learn more so we can effectively prevent these diseases before they start.

The good news is that eating disorders are treatable. With appropriate nutritional, medical, and psychotherapeutic interventions, they can be successfully and fully cured. But right now, only one in 10 people receive treatment.

The FREED Act takes a major step forward in promoting research, screening, treatment, and the prevention of eating disorders.

First, the FREED Act expands research efforts at the National Institutes of Health to examine the causes and consequences of eating disorders. We need to understand these diseases

to more effectively prevent and treat them. The FREED Act also improves surveillance and data collection systems at the Centers for Disease Control and Prevention so we'll have accurate information and epidemiological data on eating disorders.

Second, the FREED Act expands access to treatment services and screening for eating disorders for Medicaid beneficiaries, and creates a patient advocacy network that will help individuals with eating disorders find treatment. Furthermore, the FREED Act improves the training and education of health care providers and educators so they know how to identify and treat individuals suffering from eating disorders.

Finally, we need to step up efforts to prevent these diseases in the first place. As I have said so many times, we don't have a genuine health care system in America, we have a sick care system. In other words, if you get sick, you get treatment. But we can spend just pennies on the dollar to prevent disease and illness in the first place by placing a much more robust emphasis on wellness, nutrition, physical activity, and public health. With this in mind, the FREED Act authorizes grants to develop and implement evidence-based prevention programs and promote healthy eating behaviors in schools, athletic programs, and other community-based programs.

Sadly, eating disorders are not rare. These diseases touch the lives of so many of our families and friends. Nearly half of all Americans personally know someone with an eating disorder. We have got to do a better job at the Federal level of investing in research, treatment, and prevention. The FREED Act builds on the investments we made in prevention, wellness, and mental health in health reform and mental health parity.

I thank Senator KLOBUCHAR and Senator FRANKEN for partnering with me on this bill, and urge our colleagues to join us in dramatically stepping up the federal response to eating disorders.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3260

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Response to Eliminate Eating Disorders Act”.

#### SEC. 2. FINDINGS.

Congress finds as follows:

(1) Estimates, based on current research, indicate that at least 5,000,000 people in the United States suffer from eating disorders including anorexia nervosa, bulimia nervosa, binge eating disorder, and eating disorders not otherwise specified (referred to in this Act as “EDNOS”).

(2) Anecdotal evidence suggests that as many as 11,000,000 people in the United States, including 1,000,000 males, may suffer from eating disorders.



(3) Eating disorders occur in all nations and in all populations, and among people of all ages and races and of both genders.

(4) Eating disorders are diseases with grave health consequences and high rates of mortality.

(5) Health consequences associated with eating disorders include heart failure and other serious cardiac conditions, electrolyte imbalance, kidney failure, osteoporosis, debilitating tooth decay, and gastrointestinal disorders, including esophageal inflammation and rupture, gastric rupture, peptic ulcers, and pancreatitis.

(6) Anorexia nervosa has one of the highest overall mortality rates of any mental illness. According to the National Institute of Mental Health, 1 in 10 people with anorexia nervosa will die of starvation, cardiac arrest, or another medical complication.

(7) The risk of death among adolescents with anorexia nervosa is 11 times greater than in disease-free adolescents.

(8) Anorexia nervosa has the highest suicide rate of all mental illnesses.

(9) New research suggests that bulimia nervosa has a much higher rate of mortality than is reflected in current statistics, because of the failure to identify the underlying eating disorder.

(10) Binge eating disorder is the most common eating disorder, with an estimated 3.5 percent of American women and 2 percent of American men expected to suffer from this disorder in their lifetime. Binge eating disorder is characterized by frequent episodes of uncontrolled overeating and is associated with obesity, heart disease, gall bladder disease, and diabetes.

(11) Research demonstrates that there is a significant genetic component to the development of eating disorders.

(12) Certain populations, including adolescent females and athletes of both genders, are at higher risk of developing an eating disorder.

(13) Different types of eating disorders may affect certain races and genders disproportionately.

(14) Despite the serious health consequences and the high risk of death, Federal research funding for eating disorders has lagged behind research concerning other diseases, when compared by the number of individuals affected by, and the relative health consequences of, the diseases.

(15) The ability of individuals suffering from eating disorders, particularly bulimia nervosa, binge eating disorder, and EDNOS to access appropriate treatment is unacceptably low.

(16) The development of an eating disorder is frequently preceded by unhealthy weight control behaviors commonly identified as disordered eating, including skipping meals, using diet pills, taking laxatives, self-induced vomiting, and fasting. Such disordered eating behaviors should be included in enhanced research prevention and training efforts.

### SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to expand research into the prevention of eating disorders;

(2) to expand research on effective treatment and intervention of eating disorders and to support evidence-based programs designed to prevent eating disorders;

(3) to expand research on the causes, courses, and outcomes of eating disorders;

(4) to increase the number of people properly screened and diagnosed with an eating disorder;

(5) to improve training and education of health care and behavioral care providers and of school personnel at all levels of elementary and secondary education;

(6) to improve surveillance and data systems for tracking the prevalence, severity, and economic costs of eating disorders; and

(7) to enhance access to comprehensive treatment for eating disorders.

### TITLE I—EATING DISORDER DETECTION AND RESEARCH

#### SEC. 101. EXPANSION AND COORDINATION OF THE ACTIVITIES OF THE NATIONAL INSTITUTE OF HEALTH AND THE NATIONAL INSTITUTE OF MENTAL HEALTH WITH RESPECT TO RESEARCH ON EATING DISORDERS.

Part B of title IV of the Public Health Service Act (42 U.S.C. 284 et seq.), as amended by section 4305(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), is further amended by adding at the end the following:

##### “SEC. 409K. EXPANSION AND COORDINATION OF ACTIVITIES WITH RESPECT TO RESEARCH ON EATING DISORDERS.

“(a) IN GENERAL.—The Director of NIH, pursuant to the general authority of such director, shall expand, intensify, and coordinate the activities of the National Institutes of Health with respect to research on eating disorders.

“(b) GRANTS.—The Director of NIH may award grants to public or private entities to pay all or part of the cost of planning, establishing, improving, and providing basic operating support for such entities to establish consortia in eating disorder research and to carry out the activities described in subsection (e).

“(c) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall—

“(1) be public or nonprofit private entity (including a health department of a State, a political subdivision of a State, or an institution of higher education); and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(d) REQUIREMENTS OF CONSORTIA.—

“(1) IN GENERAL.—Each consortium established as described in subsection (b) may use the facilities of a single lead institution, or may be formed from several cooperating institutions, meeting such requirements as may be prescribed by the Director of NIH.

“(2) COORDINATION OF CONSORTIA.—The Director of NIH—

“(A) may, as appropriate, provide for the coordination of information among consortia established under subsection (b); and

“(B) shall ensure regular communication between members of the various consortia established using grants awarded under this section.

“(3) REPORTS.—The Director of NIH shall require each consortium to periodically prepare and submit to such director reports on the activities of such consortium.

“(e) ACTIVITIES.—Each consortium receiving a grant under subsection (b) shall conduct basic, clinical, epidemiological, population-based, or translational research regarding eating disorders, which may include research related to—

“(1) the identification and classification of eating disorders and disordered eating;

“(2) the causes, diagnosis, and early detection of eating disorders;

“(3) the treatment of eating disorders, including the development and evaluation of new treatments and best practices;

“(4) the conditions or diseases related to, or arising from, an eating disorder; and

“(5) the evaluation of existing prevention programs and the development of reliable prevention and screening programs.

“(f) COLLABORATION.—The Secretary, acting through the Director of NIH and the Director of the National Institute of Mental

Health, shall identify relevant Federal agencies (including the other institutes and centers of the National Institutes of Health, the Centers for Medicare & Medicaid Services, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, the Substance Abuse and Mental Health Services Administration, the Health Resources and Services Administration, and the Office on Women's Health) that shall collaborate with respect to activities conducted under subsection (d).

“(g) PUBLIC INPUT.—The Director of NIH shall provide for a mechanism—

“(1) to educate and disseminate information on the existing and planned programs and research activities of the National Institutes of Health with respect to eating disorders; and

“(2) through which the Director of NIH may receive comments from the public regarding such programs and activities.

“(h) DISSEMINATION OF INFORMATION.—The Director of NIH shall provide for a mechanism for making the results and information generated by the consortia publicly available, such as through the Internet.

“(i) DEFINITION.—For purposes of this section, the term ‘eating disorder’ has the meaning given such term in section 3990O(e).

“(j) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2015.”.

#### SEC. 102. INTERAGENCY COORDINATING COUNCIL; SURVEILLANCE AND RESEARCH PROGRAM; STUDY ON ECONOMIC COST.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 4303 of the Patient Protection and Affordable Care Act (Public Law 111-148), is further amended by adding at the end the following:

##### “PART W—PROGRAMS RELATING TO EATING DISORDERS

#### “SEC. 3990O. INTERAGENCY EATING DISORDERS COORDINATING COUNCIL.

“(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services the Interagency Eating Disorders Coordinating Council (referred to in this section as the ‘Coordinating Council’).

“(b) RESPONSIBILITIES.—The Coordinating Council shall—

“(1) develop and annually update a summary of advances in eating disorder research concerning causes of, prevention of, early screening for, treatment and access to services related to, and supports for individuals affected by, eating disorders;

“(2) monitor Federal activities with respect to eating disorders;

“(3) make recommendations to the Secretary regarding any appropriate changes to such activities, and to the Director of NIH, with respect to the strategic plan developed under paragraph (4);

“(4) develop and annually update a strategic plan for the conduct of, and support for, eating disorder research, including proposed budgetary recommendations; and

“(5) submit to Congress the strategic plan developed under paragraph (4) and all updates to such plan.

“(c) MEMBERSHIP.—

“(1) CHAIRPERSON.—The Director of NIH shall serve as the chairperson of the Coordinating Council and shall be responsible for the leadership and oversight of the activities of the Coordinating Council.

“(2) MEMBERS IN GENERAL.—The Coordinating Council shall be composed of—

“(A) representatives of—

“(i) the Agency for Healthcare Research and Quality;

“(ii) the Substance Abuse and Mental Health Administration;

“(iii) the research institutes at the National Institutes of Health, as the Director of NIH determines appropriate;

“(iv) the Health Resources and Services Administration;

“(v) the Centers for Medicare & Medicaid Services;

“(vi) the Office of Women’s Health;

“(vii) the Centers for Disease Control and Prevention; and

“(viii) the Department of Education; and

“(B) the additional members appointed under paragraph (3).

“(3) **ADDITIONAL MEMBERS.**—Not fewer than  $\frac{1}{3}$  of the total membership of the Coordinating Council shall be composed of non-Federal public members to be appointed by the Secretary, including representatives of—

“(A) academic medical centers or schools of medicine, nursing, or other health professions;

“(B) health care professionals who are actively involved in the treatment of eating disorders;

“(C) researchers with expertise in eating disorders; and

“(D) at least 2 individuals with a past or present diagnosis of an eating disorder or parents of individuals with a past or present diagnosis of an eating disorder.

“(d) **ADMINISTRATIVE SUPPORT; TERMS OF SERVICE; OTHER PROVISIONS.**—

“(1) **ADMINISTRATIVE SUPPORT.**—The Coordinating Council shall receive necessary and appropriate administrative support from the Secretary.

“(2) **TERMS OF SERVICE.**—Members of the Coordinating Council appointed under subsection (c)(2) shall serve for a term of 4 years, and may be reappointed for one or more additional 4 year-terms. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member’s term until a successor has taken office.

“(3) **MEETINGS.**—

“(A) **IN GENERAL.**—The Coordinating Council shall meet at the call of the chairperson or upon the request of the Secretary. The Coordinating Council shall meet not fewer than 2 times each year.

“(B) **NOTICE.**—Notice of any upcoming meeting of the Coordinating Council shall be published in the Federal Register.

“(C) **PUBLIC ACCESS.**—Each meeting of the Coordinating Council shall be open to the public and shall include appropriate periods of time for questions by the public.

“(4) **SUBCOMMITTEES.**—In carrying out its functions the Coordinating Council may establish subcommittees and convene workshops and conferences.

“(e) **EATING DISORDER.**—In this part, the term ‘eating disorder’ includes anorexia nervosa, bulimia nervosa, binge eating disorder, and eating disorders not otherwise specified, as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders or any subsequent edition.

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2015.

**“SEC. 39900-1. EATING DISORDER SURVEILLANCE AND RESEARCH PROGRAM.**

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants or cooperative agreements to eligible entities for the purpose of improving the collection, analysis and reporting of State epidemiological data on eating disorders.

“(b) **ACTIVITIES.**—An eligible entity shall assist with the development and coordination of eating disorder surveillance efforts within a region and may—

“(1) provide for the collection, analysis, and reporting of epidemiological data on eating disorders through the existing surveillance programs;

“(2) develop recommendations to enhance existing surveillance programs to more accurately collect epidemiological data on disordered eating and eating disorders, including the number, incidence, trends, correlates, mortality, and causes of eating disorders and the effects of eating disorders on quality of life;

“(3) develop recommendations to improve requirements for ensuring that eating disorders are accurately recorded as underlying and contributing causes of death; and

“(4) assist with the development and coordination of surveillance efforts within a region.

“(c) **ELIGIBLE ENTITIES.**—To be eligible to receive an award under this section, an entity shall—

“(1) be a public or nonprofit private entity (including a health department of a State, a political subdivision of a State, or an institution of higher education); and

“(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(d) **TECHNICAL ASSISTANCE.**—In making awards under this section, the Secretary may provide direct technical assistance in lieu of cash.

“(e) **REPORTS.**—Each entity awarded a grant or cooperative agreement under this section shall submit to the Secretary a report describing the activities conducted using grant funds and providing recommendations for improving the collection, analysis, and reporting of epidemiological data on eating disorders.

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2015.

**“SEC. 39900-2. STUDY REGARDING ECONOMIC COSTS OF EATING DISORDERS.**

“The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall conduct a study evaluating the economic costs of eating disorders. Such study may examine years of productive life lost, missed days of work, reduced work productivity, costs of medical and mental health treatment, costs to family, and costs to society as a result of eating disorders.”

**TITLE II—EATING DISORDER EDUCATION AND PREVENTION; STUDIES ON EATING DISORDERS AND BODY MASS INDEX; PUBLIC SERVICE ANNOUNCEMENTS**

**SEC. 201. GRANTS TO PREVENT EATING DISORDERS.**

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 102, is further amended by adding at the end the following:

**“SEC. 39900-3. GRANTS TO PREVENT EATING DISORDERS.**

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the Administrator of the Health Resources and Services Administration, shall award grants to eligible entities to plan, implement, and evaluate programs to prevent eating disorders and obesity and the acute and chronic medical conditions that accompany such conditions, and to promote healthy body image and appropriate nutrition-based eating behaviors.

“(b) **ELIGIBILITY.**—To be eligible to receive a grant under this section, an entity shall—

“(1) be a State, local or tribal educational agency, an accredited institution of higher education, a State or local health depart-

ment, or a community based organization; and

“(2) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(c) **USE OF FUNDS.**—An entity receiving a grant under this section shall fund development and testing of school-, clinic-, community-, or health department-based programs designed to promote healthy eating behaviors and to prevent eating disorders including—

“(1) developing evidence-based interventions to prevent eating disorders, including educational or intervention programs regarding nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem development, and life skills, that take into account cultural and developmental issues and the role of family, school, and community;

“(2) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors, physical activity, and emotional wellness, the connection between emotional and physical health, and the prevention of bullying based on body size, shape, and weight;

“(3) forming partnerships with parents and caregivers to educate adults about identifying unhealthy eating behaviors and promoting healthy eating behaviors, physical activity, and emotional wellness; and

“(4) integrating eating disorder prevention and awareness in physical education, health, education, athletic training programs, and after-school recreational sports programs, to the extent possible.

**“(d) REQUIREMENTS OF GRANT RECIPIENTS.**—

“(1) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—A recipient of a grant under this section shall not use more than 10 percent of the amounts received under a grant under this section for administrative expenses.

“(2) **CONTRIBUTION OF FUNDS.**—A recipient of a grant under this section, and any entity receiving assistance under the grant for training and education, shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the activities to be funded under the grant in an amount that is not less than 10 percent of the total cost of such activities.

“(3) **EVALUATION.**—Each recipient of a grant under this section shall provide to the Secretary, in such form and manner as the Secretary shall specify, relevant data and an evaluation of the activities of the grant recipient in promoting healthy eating behaviors and preventing eating disorders. Evaluation reports shall be made publicly available, such as through the Internet.

“(e) **TECHNICAL ASSISTANCE.**—The Secretary may set aside an amount not to exceed 1 percent of the total amount appropriated for a fiscal year to provide grantees with technical support in the development, implementation, and evaluation of programs under this section and to disseminate information about preventing and treating eating disorders and obesity.

**“SEC. 39900-4. STUDY OF EATING DISORDERS IN ELEMENTARY SCHOOLS, SECONDARY SCHOOLS, AND INSTITUTIONS OF HIGHER EDUCATION.**

“Not later than 18 months after the date of enactment of the Federal Response to Eliminate Eating Disorders Act, the National Center for Health Statistics of the Centers for Disease Control and Prevention and the National Center for Education Statistics of the Department of Education shall conduct a joint study, or enter into a contract to have a study conducted, on the impact eating disorders have on educational advancement and achievement. The study shall—

“(1) determine the incidence of eating disorders and disordered eating among students, and the morbidity and mortality rates associated with eating disorders;

“(2) evaluate the extent to which students with eating disorders are more likely to miss school, have delayed rates of development, or have reduced cognitive skills;

“(3) report on current State and local programs to increase awareness about the dangers of eating disorders among youth and to prevent eating disorders and the risk factors for eating disorders, and evaluate the value of such programs; and

“(4) make recommendations on measures that could be undertaken by Congress, the Department of Education, States, and local educational agencies to strengthen eating disorder prevention and awareness programs including development of best practices.

**“SEC. 39900-5. STUDY OF THE SUITABILITY OF MANDATING BODY MASS INDEX REPORTING IN ELEMENTARY SCHOOLS AND SECONDARY SCHOOLS.**

“Not later than 18 months after the date of enactment of the Federal Response to Eliminate Eating Disorders Act, the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Education, shall conduct a study on mandatory reporting of body mass index, including—

“(1) how many schools are currently conducting such measuring; and

“(2) the impacts on students of such measures, which may include student and parent reactions to such reports, including changes in physical activity, a focus on nutrition, a focus on body image, the use of weight control behaviors, eating disorder symptoms, and the incidence of teasing or bullying based on body size.

**“SEC. 39900-6. PUBLIC SERVICE ADVERTISEMENTS.**

“The Secretary, in consultation with the Director of the National Institutes of Health and the Secretary of Education, shall carry out a program to develop, distribute, and promote the broadcasting of public service announcements to improve public awareness of, and to promote the identification and prevention, of eating disorders.

**“SEC. 39900-7. AUTHORIZATION OF APPROPRIATIONS.**

“To carry out sections 39900-3, 39900-4, 39900-5, and 39900-6, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2011 through 2015.”.

**SEC. 202. SENSE OF THE SENATE.**

It is the sense of the Senate that critically necessary programs to reduce obesity in children may also unintentionally increase the unhealthy weight control behaviors that can lead to development of eating disorders, and that federally funded programs to combat obesity should take this connection into consideration.

**TITLE III—IMPROVING TRAINING IN HEALTH PROFESSIONS, EDUCATION, AND RELATED FIELDS**

**SEC. 301. GRANTS FOR HEALTH PROFESSIONALS.**

Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.), as amended by section 4305(c) of the Patient Protection and Affordable Care Act (Public Law 111-148), is further amended by adding at the end the following:

**“SEC. 760. GRANTS FOR HEALTH PROFESSIONALS.**

“(a) GRANTS.—The Secretary, acting through the Director of the Health Resources and Services Administration, shall award grants under this section to develop interdisciplinary training and education programs that provide undergraduate, graduate, post-graduate medical, nursing (including

advanced practice nursing students), dental, mental and behavioral health, pharmacy, and other health professions students or residents with an understanding of, and clinical skills pertinent to identifying and treating, eating disorders.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

“(1) be an accredited school of allopathic or osteopathic medicine, or an accredited school of nursing, public health, social work, dentistry, behavioral and mental health, or pharmacy, or an accredited medical, dental, or nursing residency program;

“(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

“(A) information to demonstrate that the applicant will employ an evidence-based approach for training health professionals on eating disorders;

“(B) strategies for the dissemination and sharing of curricula and other educational materials developed under the grant to other interested health professions schools, national resource repositories for materials on eating disorders, and health services continuing education providers;

“(C) a plan for consulting with community-based coalitions, treatment centers, or eating disorder research experts who have experience and expertise in issues related to eating disorders, for services provided under the program carried out under the grant; and

“(D) a plan for making the information and curricula publicly available to health professionals, such as through the Internet.

“(c) USE OF FUNDS.—

“(1) REQUIRED USES.—Amounts provided under a grant awarded under this section shall be used to fund interdisciplinary training and education projects that are designed to train medical, nursing, and other health professions students and residents to identify and provide appropriate health care services (including mental or behavioral health care services and referrals to appropriate community services) to individuals who have eating disorders.

“(2) PERMISSIVE USE.—Amounts provided under a grant under this section may be used to offer community-based training opportunities in rural areas for medical, nursing, and other health professions students and residents on eating disorders, which may include the use of distance learning networks and other available technologies needed to reach isolated rural areas.

“(d) REQUIREMENTS OF GRANTEES.—

“(1) LIMITATION ON ADMINISTRATIVE EXPENSES.—A grantee shall not use more than 10 percent of the amounts received under a grant under this section for administrative expenses.

“(2) CONTRIBUTION OF FUNDS.—A grantee under this section, and any entity receiving assistance under the grant for training and education, shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the activities to be funded under the grant in an amount that is not less than 10 percent of the total cost of such activities.

“(e) EATING DISORDER.—In this section, the term ‘eating disorder’ has the meaning given such term in section 39900(e).

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2011 through 2015.”.

**SEC. 302. TRAINING IN ELEMENTARY AND SECONDARY SCHOOLS.**

Section 5131(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7215(a)) is amended by adding at the end the following:

“(28) Programs to improve the identification of students with eating disorders (as de-

fined in section 39900 of the Public Health Service Act), increase awareness of such disorders among parents and students, and train educators (including teachers, school nurses, school social workers, coaches, school counselors, and administrators) on effective eating disorder prevention, screening, detection and assistance methods.”.

**TITLE IV—IMPROVING AVAILABILITY AND ACCESS TO TREATMENT**

**SEC. 401. MEDICAID COVERAGE FOR EATING DISORDER TREATMENT SERVICES.**

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d(a)), as amended by section 2301(a)(1) of the Patient Protection and Affordable Care Act (Public Law 111-148) and section 1202(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), is amended—

(1) in subsection (a)—

(A) in paragraph (28), by striking “and” at the end;

(B) by redesignating paragraph (29) as paragraph (30); and

(C) by inserting after paragraph (28) the following new paragraph:

“(29) eating disorder treatment services (as defined in subsection (ee)(1)); and”; and

(2) by adding at the end the following new subsection:

“(ee) EATING DISORDER TREATMENT SERVICES.—

“(1) DEFINITION.—The term ‘eating disorder treatment services’ means services relating to diagnosis and treatment of an eating disorder (as defined in section 39900 of the Public Health Service Act), including screening, counseling, pharmacotherapy (including coverage of drugs described in paragraph (2)), and other necessary health care services.

“(2) COVERAGE FOR PHARMACOLOGICAL TREATMENT OF EATING DISORDERS.—For purposes of paragraph (1), eating disorder treatment services shall include drugs provided as part of care in an inpatient setting, covered outpatient drugs (as defined in section 1927(k)(2)), and non-prescription drugs described in section 1927(d)(2)(A) that are prescribed, in accordance with generally accepted medical guidelines, for treatment of an eating disorder.”.

(b) INCREASED FMAP FOR EATING DISORDER TREATMENT SERVICES.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as amended by section 4106(b) of the Patient Protection and Affordable Care Act, is amended—

(1) by striking “and” before “(5)”; and

(2) by inserting before the period at the end the following: “, and (6) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance for eating disorder treatment services (as defined in subsection (ee)(1)) provided to an individual who is eligible for such assistance and has an eating disorder (as defined in section 39900 of the Public Health Service Act)”;.

(c) INCLUSION IN EPSDT SERVICES.—Section 1905(r)(1)(B) of such Act (42 U.S.C. 1396d(r)(1)(B)) is amended—

(1) in clause (iv), by striking “and” at the end;

(2) in clause (v), by striking the period at the end and inserting “; and”; and

(3) by inserting after clause (v) the following new clause:

“(vi) appropriate diagnostic services relating to eating disorders (as defined in section 39900 of the Public Health Service Act).”.

(d) EXCEPTION FROM OPTIONAL RESTRICTION UNDER MEDICAID DRUG COVERAGE.—Section 1927(d)(2)(A) of such Act (42 U.S.C. 1396r-8(d)(2)(A)) is amended by inserting before the period at the end the following: “, except for drugs that are prescribed, in accordance with generally accepted medical guidelines, for

the purpose of treatment of an individual who is eligible for medical assistance under the State plan and has an eating disorder (as defined in section 3990O of the Public Health Service Act)".

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to drugs and services furnished on or after October 1, 2010.

**SEC. 402. GRANTS TO SUPPORT PATIENT ADVOCACY.**

Subpart II of part D of title IX of the Public Health Service Act, as amended by section 6301(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), is further amended by adding at the end the following:

**"SEC. 938. GRANTS TO SUPPORT PATIENT ADVOCACY.**

"(a) **GRANTS.**—The Secretary, acting through the Director, shall award grants under this section to develop and support patient advocacy work to help individuals with eating disorders obtain adequate health care services and insurance coverage.

"(b) **ELIGIBILITY.**—To be eligible to receive a grant under this section, an entity shall—

"(1) be a public or nonprofit private entity (including a health department of a State or tribal agency, a community-based organization, or an institution of higher education);

"(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

"(A) comprehensive strategies for advocating on behalf of, and working with, individuals with eating disorders or at risk for developing eating disorders;

"(B) a plan for consulting with community-based coalitions, treatment centers, or eating disorder research experts who have experience and expertise in issues related to eating disorders or patient advocacy in providing services under a grant awarded under this section; and

"(C) a plan for financial sustainability involving State, local, and private contributions.

"(c) **USE OF FUNDS.**—Amounts provided under a grant awarded under this section shall be used to support patient advocacy work, including—

"(1) providing education and outreach in community settings regarding eating disorders and associated health problems, especially among low-income, minority, and medically underserved populations;

"(2) facilitating access to appropriate, adequate, and timely health care for individuals with eating disorders and associated health problems;

"(3) assisting in communication and cooperation between patients and providers;

"(4) representing the interests of patients in managing health insurance claims and plans;

"(5) providing education and outreach regarding enrollment in health insurance, including enrollment in the Medicare program under title XVIII of the Social Security Act, the Medicaid program under title XIX of such Act, and the Children's Health Insurance Program under title XXI of such Act;

"(6) identifying, referring, and enrolling underserved populations in appropriate health care agencies and community-based programs and organizations in order to increase access to high-quality health care services;

"(7) providing technical assistance, training, and organizational support for patient advocates; and

"(8) creating, operating, and participating in State or regional networks of patient advocates.

"(d) **REQUIREMENTS OF GRANTEEES.**—

"(1) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—A grantee shall not use more than

5 percent of the amounts received under a grant under this section for administrative expenses.

"(2) **CONTRIBUTION OF FUNDS.**—A grantee under this section, and any entity receiving assistance under the grant for training and education, shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the activities to be funded under the grant in an amount that is not less than 75 percent of the total cost of such activities.

"(3) **REPORTING TO SECRETARY.**—A grantee under this section shall submit to the Secretary a report, at such time, in such manner, and containing such information as the Secretary may require, including a description and evaluation of the activities described in subsection (c) carried out by such entity.

"(e) **EATING DISORDER.**—In this section, the term 'eating disorder' has the meaning given such term in section 3990O(e).

"(f) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015."

## SUBMITTED RESOLUTIONS

**SENATE RESOLUTION 500—EXPRESSING THE SINCERE CONDOLENCES OF THE SENATE TO THE FAMILY, LOVED ONES, UNITED STEELWORKERS, FELLOW WORKERS, AND THE ANACORTES COMMUNITY ON THE TRAGEDY AT THE TESORO REFINERY IN ANACORTES, WASHINGTON**

Mrs. MURRAY (for herself and Ms. CANTWELL) submitted the following resolution; which was considered and agreed to:

S. RES. 500

Whereas the State of Washington, the Tesoro Corporation, and the United Steelworkers experienced a tragedy on April 2, 2010, when a fire occurred at the Tesoro refinery in Anacortes, Washington;

Whereas 7 workers died as a result of the tragedy: Daniel J. Aldridge, Matthew C. Bowen, Donna Van Dreumel, Matt Gumbel, Darrin J. Hoines, Lew Janz, and Kathryn Powell;

Whereas Federal and State government agencies, including the Chemical Safety and Hazard Investigation Board, the Environmental Protection Agency, and the Washington State Department of Labor and Industries, are investigating the tragedy and reviewing current safety procedures and processes to prevent future tragedies from occurring; and

Whereas, to support the victims and the families involved in the tragedy, the United Steelworkers Local 12-591 has established the Tesoro Incident Family Fund and the Tesoro Corporation and the Skagit Community Foundation have partnered to establish the Tesoro Anacortes Refinery Survivors Fund: Now, therefore, be it

*Resolved*, That the Senate—

(1) expresses the sincere condolences of the Senate to the family, loved ones, United Steelworkers, fellow workers, and the Anacortes community on the tragedy at the Tesoro refinery in Anacortes, Washington; and

(2) honors Daniel J. Aldridge, Matthew C. Bowen, Donna Van Dreumel, Matt Gumbel, Darrin J. Hoines, Lew Janz, and Kathryn Powell.

**SENATE CONCURRENT RESOLUTION 60—SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2011, REVISING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEAR 2010, AND SETTING FORTH THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2012 THROUGH 2015**

Mr. CONRAD, from the Committee on the Budget, submitted the following concurrent resolution; which was placed on the calendar:

S. CON. RES. 60

*Resolved by the Senate (the House of Representatives concurring),*

**SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2011.**

(a) **DECLARATION.**—Congress declares that this resolution is the concurrent resolution on the budget for fiscal year 2011 and that this resolution sets forth the appropriate budgetary levels for fiscal years 2010 and 2012 through 2015.

(b) **TABLE OF CONTENTS.**—The table of contents for this concurrent resolution is as follows:

Sec. 1. Concurrent resolution on the budget for fiscal year 2011.

**TITLE I—RECOMMENDED LEVELS AND AMOUNTS**

Sec. 101. Recommended levels and amounts.

Sec. 102. Social Security.

Sec. 103. Postal Service discretionary administrative expenses.

Sec. 104. Major functional categories.

**TITLE II—RESERVE FUNDS**

Sec. 201. Deficit-neutral reserve fund to promote employment and job growth.

Sec. 202. Deficit-neutral reserve fund to further stabilize and improve the regulation of the financial and housing sectors.

Sec. 203. Deficit-neutral reserve fund for tax relief and reform.

Sec. 204. Deficit-neutral reserve fund to invest in clean energy and preserve the environment.

Sec. 205. Deficit-neutral reserve fund to assist working families and children.

Sec. 206. Deficit-neutral reserve fund for investments in America's infrastructure.

Sec. 207. Deficit-neutral reserve fund for America's veterans, and returning and wounded servicemembers.

Sec. 208. Deficit-neutral reserve fund for higher education.

Sec. 209. Deficit-neutral reserve fund for health care.

Sec. 210. Deficit-neutral reserve fund for investments in our Nation's counties and schools.

Sec. 211. Deficit-neutral reserve fund for the Federal judiciary.

Sec. 212. Deficit-reduction reserve fund for recommendations of the National Commission on Fiscal Responsibility and Reform.

Sec. 213. Deficit-reduction reserve fund for improper payments.

Sec. 214. Deficit-reduction reserve fund for terminated programs.

Sec. 215. Deficit-neutral reserve fund for small business tax relief.

Sec. 216. Deficit-neutral reserve fund for greater accountability for Recovery Act funding.

Sec. 217. Deficit-neutral reserve fund for greater accountability for health care reform.