the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, after line 21, add the following:

(3) NO INDEPENDENT MEMBER OF THE COUNCIL.—Notwithstanding any other provision of this section, there shall not be an independent member of the Council.

TEXT OF AMENDMENTS

SA 4006. Mr. PRYOR (for himself, Mr. ROBERTS, and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, strike line 16 and all that follows through page 21, line 23 and insert the following:

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company or a subsidiary thereof) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank holding company or a subsidiary thereof, or a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.)) that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

(5) OFFICE OF FINANCIAL RESEARCH.—The term ''Office of Financial Research'' means the office established under section 152.

(6) SIGNIFICANT INSTITUTIONS.—The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors.

(b) FOREIGN NONBANK FINANCIAL COMPANIES.—

SA 4007. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1522, between lines 6 and 7, insert the following:

Subtitle I—Appraisal Activities

SEC. 1111. PROPERTY APPRAISAL REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129B (as added by this Act) the following new section:

''SEC. 129C. PROPERTY APPRAISAL REQUIREMENTS.

''(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

''(b) APPRAISAL REQUIREMENTS.—

''(1) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

''(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

''(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

''(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

''(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term 'qualified appraiser' means a person who—

''(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

''(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

''(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

''(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

''(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

''(f) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term 'subprime mortgage' means a residential mortgage loan, other than a reverse mortgage loan insured by the Federal Housing Administration, secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

''(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

''(2) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

''(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B the following new item:

''129C. Property appraisal requirements.''.

SEC. 1112. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1111(a)) the following new section:

''SEC. 129D. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

''(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

''(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

''(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe,

or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

''(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

''(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

''(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

''(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

''(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

''(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

''(3) Correct errors in the appraisal report.

''(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

''(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

''(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

''(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

''(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and

''(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

''(h) PENALTIES.—

''(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

''(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

''(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C the following new item:

''129D. Unfair and deceptive practices and acts relating to certain consumer credit transactions.''.

SEC. 1113. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting ''and to provide the Appraisal Subcommittee with a consumer protection mandate'' before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking ''and'' at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

''(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer's principal dwelling; and''.

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: '', and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing''.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

''(5) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.''.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting ''in public session after notice in the Federal Register'' after ''shall meet''.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting ''prescribe regulations after notice and opportunity for comment,'' after ''hold hearings''; and

(2) at the end by inserting ''Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.''.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking ''In determining'' and inserting ''(a) IN GENERAL.—In determining'';

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: '', where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical''; and

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

''(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.''.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

''(1) monitor the requirements established by States—

''(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

''(B) for the registration and supervision of the operations and activities of an appraisal management company;''; and

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

''(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.''.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

''(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

''(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

''(2) verify that only licensed or certified appraisers are used for federally related transactions;

''(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

''(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

''(1) verify that only licensed or certified appraisers are used for federally related transactions;

''(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

''(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(c) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

''(d) REGULATIONS.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

''(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.''.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: ''The duties of such agency may additionally include the registration and supervision of appraisal management companies.''.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

''(11) APPRAISAL MANAGEMENT COMPANY.—The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

''(A) to recruit, select, and retain appraisers;

''(B) to contract with licensed and certified appraisers to perform appraisal assignments;

''(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

''(D) to review and verify the work of appraisers.''.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

''(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

''(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and''.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

''(4) collect—

''(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

''(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

''(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title; and

''(ii) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title.''; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

''Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.''.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the ''Appraisal Subcommittee Account''.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

''(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

''(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

''(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

''(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.''.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the ''Appraisal Subcommittee Account'' pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting ''whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers'' before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

''(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.''.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

''(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

''(2) processes complaints and completes investigations in a reasonable time period;

''(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

''(4) maintains an effective regulatory program; and

''(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.''.

(2) in subsection (b)(2), by inserting after ''authority'' the following: ''or sufficient funding''.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

''(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

''(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

''(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.''.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking ''shall not exclude'' and all that follows through the end of the subsection and inserting the following: ''may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.''.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

''(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.''.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

''(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.''.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

''(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.''.

(q) AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

''(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

''(1) ensure a high level of confidence in the estimates produced by automated valuation models;

''(2) protect against the manipulation of data;

''(3) seek to avoid conflicts of interest; and

''(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

''(b) ADOPTION OF REGULATIONS.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

''(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

''(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

''(2) with respect to other persons, the Appraisal Subcommittee.

''(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term 'automated valuation model' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.''.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following

new section (and amending the table of contents accordingly):

''SEC. 1126. BROKER PRICE OPINIONS.

''(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

''(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).''.

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: ''and the Federal Housing Finance Agency''; and

(2) by inserting at the end the following: ''At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.''.

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking ''council,'' and inserting ''Council,''.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking ''Corporations,'' and inserting ''Corporation,''.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking ''council'' and inserting ''Council''.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking ''Federal Financial Institutions Examination Council'' and inserting ''Financial Institutions Examination Council''; and

(ii) by striking ''the council's functions'' and inserting ''the Council's functions''.

SEC. 1114. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.

(a) STUDY.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration's views on how small businesses are affected by the Home Valuation Code of Conduct.

SEC. 1115. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

''(e) COPIES FURNISHED TO APPLICANTS.—

''(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

''(2) WAIVER.—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

''(3) REIMBURSEMENT.—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

''(4) FREE COPY.—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

''(5) NOTIFICATION TO APPLICANTS.—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

''(6) REGULATIONS.—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

''(7) VALUATION DEFINED.—For purposes of this subsection, the term 'valuation' shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

''(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

''(1) the fee paid directly to the appraiser by such company; and

''(2) the administration fee charged by such company.''.

SEC. 1117. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act, the Negotiated Rulemaking Act, and section 1022(b) of this title to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.

(b) CERTAIN REGULATION REQUIREMENTS.—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with the SAFE Mortgage Licensing Act of 2008; and

(B) subject to Federal or State laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;

(ii) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) SUNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

SA 4008. Mr. DORGAN (for himself, Mr. LEVIN, Ms. CANTWELL, Mr. FEINGOLD, Mr. SANDERS, and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 584, line 7, after the first period insert the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 808, line 8, after the first period, insert the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4009. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 893, after line 25, insert the following:

SEC. 774. STANDARDS OF CONDUCT FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

''(k) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Investment Advisers Act of 1940, the Commission shall issue rules to provide, in substance, that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers, shall be to act in the interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) EXCLUSION FOR LIMITED RANGE OF PRODUCTS OFFERED.—Paragraph (1) shall not apply with respect to any limited representative-investment company and variable contracts products, or for any other broker or dealer, as defined by the Commission, who sells only proprietary or other limited range of products.

''(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) RETAIL CUSTOMER DEFINED.—The term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(i) receives personalized investment advice about securities from a broker or dealer; and

''(ii) uses such advice primarily for personal, family, or household purposes.

''(B) LIMITED REPRESENTATIVE-INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS.—The term 'limited representative-investment company and variable contracts product' shall have the meaning given such term by rule of the Commission, and includes any person that is licensed by a registered security association pursuant to section 15A—

''(i) the activities of which in the investment banking and securities business are limited to the solicitation, purchase, and sale of—

''(I) redeemable securities of companies registered pursuant to the Investment Company Act of 1940;

''(II) securities of closed-end companies registered pursuant to the Investment Company Act of 1940, during the period of original distribution only; and

''(III) variable contracts and insurance premium funding programs and other contracts issued by an insurance company, other than any contract that is an exempt security pursuant to section 3(a)(8) of the Securities Act of 1933; and

''(ii) does not function as a representative in any financial instrument that is not described in clause (i).

''(l) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.

''(2) RULE OF CONSTRUCTION.—The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of the standard, under paragraph (1)(A), when applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

''(m) HARMONIZATION OF ENFORCEMENT AND REMEDY REGULATIONS.—The Commission shall issue regulations to ensure, to the extent practicable, that the enforcement options and remedies available for violations of the standard of conduct applicable to a broker or dealer providing investment advice to a customer are commensurate with those enforcement options and remedies available for violations of the standard of conduct applicable to investment advisers under the Investment Advisers Act of 1940.''.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended by adding at the end the following:

''(f) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Securities Exchange Act of 1934, the Commission shall promulgate rules to provide that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice to retail customers, shall be to act in the best interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(A) receives personalized investment advice about securities from a broker or dealer; and

''(B) uses such advice primarily for personal, family, or household purposes.

''(g) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.''.

SA 4010. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, strike line 9 and all that follows through page 1225, line 3 and insert the following:

(a) ANNUAL ASSESSMENTS.—

(1) IN GENERAL.—The Bureau shall establish, by rule, a system of assessments to fund the operations of the Bureau. Such rules shall apply only to those covered persons having total consolidated assets of more than $50,000,000,000, and shall require annual assessments from each such covered person.

(2) FUNDING CAP.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be collected by the Bureau through assessments in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors, equal to—

(A) 10 percent of such expenses in fiscal year 2011;

(B) 11 percent of such expenses in fiscal year 2012; and

(C) 12 percent of such expenses in fiscal year 2013, and in each fiscal year thereafter.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date, which amount may not exceed 8 percent of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors.

SA 4011. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 104, line 24, insert before the period the following: '', and shall require such companies to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses''.

SA 4012. Mrs. SHAHEEN (for herself, Mr. BROWN of Massachusetts, Mr. KERRY, Mr. GREGG, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 295, between lines 19 and 20, insert the following:

(t) TREATMENT OF CERTAIN NONBANK FINANCIAL COMPANIES NOT SUBJECT TO ORDERLY LIQUIDATION.—

(1) IN GENERAL.—Subsections (n) and (o) shall not apply to any nonbank financial company that is subject to liquidation or rehabilitation under State law, unless such company—

(A) is determined to be a nonbank financial company supervised by the Board of Governors pursuant to section 113; or

(B) is determined by the Corporation to have benefitted financially from the orderly liquidation of a covered financial company and the use of the Fund under this title by receiving payments or credit pursuant to subsection (b)(4), (d)(4), or (h)(5)(E).

(2) EXCLUSION OF ASSETS.—Any assets of a nonbank financial company described in paragraph (1) shall be excluded for purposes of calculating a financial company's total consolidated assets under subsection (o).

SA 4013. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, line 25, strike the period at the end and insert the following: ''.

SEC. 1077. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosures to consumers in connection with a reverse mortgage transaction that incorporate the requirements of section 138 of the Truth in Lending Act (15 U.S.C. 1648), and otherwise are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), with the disclosures required to be provided to consumers for home equity conversion mortgages under section 255 of the National Housing Act (12 U.S.C. 12 U.S.C. 1715z–20).

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of enactment of this Act.

SA 4014. Mrs. MCCASKILL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect

consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, line 25, strike the period at the end and insert the following: ''.

SEC. 1077. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the recommendation or offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for the purpose of—

(A) preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction (including the solicitation or recommendation of a reverse mortgage transaction);

(B) providing timely, appropriate, and effective disclosures to consumers in connection with a reverse mortgage transaction that incorporate the requirements of section 138 of the Truth in Lending Act (15 U.S.C. 1648), and otherwise are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(C) making a determination of the suitability of a reverse mortgage for a consumer—

(i) creating a presumption of unsuitability, if—

(I) the mortgagor plans to use the funds obtained from the reverse mortgage to purchase an annuity or make an investment;

(II) the mortgagor is married and the spouse of the mortgagor is not a party to the mortgage; or

(III) a person is removed from the title to the dwelling in the process of obtaining the reverse mortgage; and

(ii) taking into consideration—

(I) whether the mortgagor intends to reside in the property on a long-term basis;

(II) if the mortgagor is married or has a dependent, the potential impact of a reverse mortgage on the future economic security of the spouse or dependent of the mortgagor and all tenants of the home;

(III) whether a reverse mortgage will affect the eligibility of the mortgagor to receive Government benefits;

(IV) whether the mortgagor intends to pass the residence to an heir and the ability of such heir to repay the reverse mortgage loan;

(V) whether a resident of the home who is not the mortgagor could be displaced at the maturity of the reverse mortgage against the wishes of the mortgagor, and, if any such resident is disabled, the consequences of the displacement for such resident; and

(VI) any other circumstances, as the Director may require;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), with the disclosures required to be provided to consumers for home equity conversion mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20);

(4) prohibit any person from advertising a reverse mortgage in a manner that—

(A) is false or misleading;

(B) fails to present equally the risks and benefits of reverse mortgages; or

(C) fails to reveal—

(i) negative facts that are material to a representation made in such advertisement;

(ii) facts relating to the responsibilities of the mortgagor for property taxes, insurance, maintenance, or repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(iii) the consequences of obtaining a reverse mortgage; or

(iv) any forms of default that might lead to foreclosure;

(5) prohibit a person from requiring or recommending that a mortgagor purchase insurance (except for title, flood, and other peril insurance, as determined by the Director), an annuity, or other similar product in connection with a reverse mortgage;

(6) require that each reverse mortgage provide that prepayment, in whole or in part, may be made without penalty at any time during the period of the mortgage;

(7) require that any mortgagor under a reverse mortgage receive adequate counseling, including—

(A) in the case of a reverse mortgage in which a person was removed from the title to the dwelling, information about—

(i) the consequences of being removed from such title; and

(ii) the consequences upon the death of the mortgagor or a divorce settlement;

(B) general information about the potential consequences of borrowing more funds than are necessary to meet the immediate personal financial goals of the mortgagor;

(C) the responsibilities of the mortgagor relating to property taxes, insurance, maintenance, and repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(D) an explanation of the actions that would constitute a default under the terms of the reverse mortgage and how a default might lead to foreclosure;

(E) an explanation of the circumstances, if any, under which the mortgagor, an heir of the mortgagor, or the estate of the mortgagor, would be liable for any amount by which the amount of the indebtedness of the mortgagor under the reverse mortgage exceeds the appraised value of the dwelling securing the mortgage upon termination of the mortgage;

(F) an explanation of the circumstances, if any, under which the spouse, heir, or estate of the mortgagor would be prevented from purchasing the dwelling securing the mortgage upon termination of the mortgage; and

(G) any other information that the Director may require; and

(8) require that any person that provides counseling to a mortgagor under a reverse mortgage report to the Bureau any suspected mortgage-related fraud against a mortgagor.

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of enactment of this Act.

SA 4015. Mr. VITTER submitted an amendment intended to be proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. SUSPENSION OF THE HEALTH CARE ACT.

If at the beginning of any fiscal year OMB determines that the deficit targets set forth in the CBO budget report of March 20, 2010 will not be met, the provisions of Public Law 111–148 shall be suspended for that year.

SA 4016. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr. LAUTENBERG, Mr. BOND, Mr. BEGICH, Mr. SCHUMER, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, after line 25, insert the following:

SEC. 1077. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following:

''(2) provide to the consumer written or electronic disclosure—

''(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

''(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);''; and

(C) in paragraph (4) (as so redesignated), by striking ''paragraph (2)'' and inserting ''paragraph (3)''; and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting ''; and''; and

(C) by inserting at the end the following:

''(E) include a statement informing the consumer of—

''(i) a numerical credit score as defined in section 609(f)(2)(A), used by such person in connection with the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

''(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).''.

SA 4017. Mr. ENZI (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1257, after line 25, insert the following:

(g) WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, this section shall apply to any Federal contractor, agent, or employee involved in originating, servicing, debt collection, refinancing, or other consumer related activity relating to a loan under the William D. Ford Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.).

(2) DEFINITIONS.—For purposes of carrying out this title—

(A) the term ''covered person'' includes any person acting as a contractor, agent, or employee of the Federal Government in providing a loan under the William D. Ford Federal Direct Loan Program;

(B) the term ''enumerated consumer laws'' includes any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) relating to such program; and

(C) the term ''financial product or service'' includes a loan under such program.

SA 4018. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, any provision of the enumerated consumer laws, or any other provision of Federal law, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4019. Mr. DODD (for Mr. WYDEN (for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNET, Mr. UDALL of Colorado, Mr. BROWN of Ohio, Mr. MERKLEY, and Ms. COLLINS)) proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. ___. ELIMINATING SECRET SENATE HOLDS.

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(b) CALENDAR.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the Congressional Record under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—If a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

SA 4020. Mr. CRAPO (for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, Mrs. HUTCHISON, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIII—FANNIE MAE AND FREDDIE MAC

Subtitle A—Ending Bailouts

SEC. 1311. SHORT TITLE.

This subtitle may be cited as the ''Ending Bailouts of Fannie Mae and Freddie Mac Act''.

SEC. 1312. REESTABLISHING THE MAXIMUM AGGREGATE AMOUNT PERMITTED TO BE PROVIDED BY THE TAXPAYERS TO FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(L) REESTABLISHMENT OF TAXPAYER FUNDING CAPS.—The Agency, as conservator, shall prevent a regulated entity from requesting or receiving any funds from the United States Department of the Treasury, as part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United State Department of the Treasury and the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, that exceeds a maximum aggregate amount of $200,000,000,000.''.

SEC. 1313. REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity

does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''.

SEC. 1314. ENSURING CONGRESSIONAL REVIEW FOR AGREEMENTS INCREASING TAXPAYER RISK.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)), as amended by sections 1203 and 1204, is further amended by adding at the end the following new subparagraph:

''(N) AGREEMENTS.—

''(i) IN GENERAL.—The Agency, as conservator or receiver, may enter into agreements that are consistent with its appointment as conservator or receiver with the regulated entity and that expire prior to, or upon, the regulated entity's emergence from conservatorship or receivership provided—

''(I) the agreement does not expose the United States taxpayers to additional risk; and

''(II) the agreement was approved by Congress pursuant to clause (ii).

''(ii) PROCEDURE FOR CONGRESSIONAL APPROVAL.—

''(I) IN GENERAL.—Notwithstanding clause (i), the Agency may enter into, on an interim basis, an agreement, even if the agreement exposes the taxpayer to additional risk, including if such agreement exceeds the limitations established under subparagraphs (L) and (M), if such an agreement—

''(aa) is deemed necessary by the Agency, based upon the Agency's duties as conservator or receiver; and

''(bb) is approved by Congress through adoption of a concurrent resolution of approval, not more than 120 days after the later of—

''(AA) the signing of the agreement; or

''(BB) the date of enactment of the Ending Bailouts of Fannie Mae and Freddie Mac Act.

''(II) REQUIRED SUBMISSIONS FOR CONGRESSIONAL REVIEW.—During the 120-day period described under subclause (I), the Director shall submit to Congress—

''(aa) the text of the agreement;

''(bb) a certification and justification of how the agreement is consistent with the Agency's duties as conservator or receiver;

''(cc) budgetary projections demonstrating the cost to the taxpayer in a 1, 5, and 10-year window;

''(dd) independent risk analysis from the Government Accountability Office of the agreement, considering the risk to the short and long-term viability of the regulated entity and the United States taxpayer;

''(ee) a time table for the expiration of the agreement;

''(ff) a list and description of assets included within each enterprises portfolio, including gross size of each enterprises portfolio and a detailed explanation of the components;

''(gg) the prices that each enterprise is paying on delinquent mortgages, and what mechanism is being applied to protect the United States taxpayer;

''(hh) a list and description of risk management practices by each enterprise to protect United States taxpayer dollars, and the differences between each enterprises practices in such regard, including whether there are any investigations into the accounting practices of either enterprise;

''(ii) a list and description of any interaction between the Department of the Treasury and the mortgage portfolio of any other Government entity and its effect on each enterprise;

''(jj) an updated disclosure of any taxpayer funds provided for and at risk to each enterprise from the Department of the Treasury; and

''(kk) an updated disclosure of the debt activity by each enterprise and the sensitivity to any interest rate changes.

''(iii) TESTIMONY REQUIRED IF FUNDING LIMITATION EXCEEDED.—The Director shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives if either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association requests amounts from the Director in excess of the limitation established under subparagraphs (L) and (M).''.

SEC. 1315. CONGRESSIONAL TESTIMONY.

The Director of the Federal Housing Finance Agency and the Secretary shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives each time that $10,000,000,000 of funds are expended pursuant to the Amended and Restated Senior Preferred Stock Purchase Agreements, dated September 26, 2008, as amended May 6, 2009. The testimony required under this section shall include the reasons why such additional expenditure of taxpayer funds is necessary.

SEC. 1316. INTERNET POSTING BY THE SECRETARY.

The Secretary shall post, on the front page of the website of the Department of the Treasury—

(1) the aggregate portfolio holdings of each enterprise; and

(2) a weekly summary of taxpayer funds provided for and at risk to each enterprise, based on any interest rate changes.

Subtitle B—Fannie Mae and Freddie Mac in the Federal Budget

SEC. 1321. ON-BUDGET STATUS OF FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements, including the administrative expenses, of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the Budget of the United States Government as submitted by the President;

(2) the congressional budget;

(3) the Statutory Pay-As-You-Go Act of 2010; and

(4) the Balanced Budget and Emergency Deficit Control Act of 1985 (or any successor statute).

(b) EXPIRATION.—The budgetary treatment of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements under subsection (a) shall continue with respect to such entities until such entities are no longer under Federal conservatorship or receivership as authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1322. BUDGETARY TREATMENT OF FANNIE MAE AND FREDDIE MAC.

All costs to the Government of the activities of or under the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any functional replacements or any modification of such entities shall be determined on a fair value basis.

SEC. 1323. FANNIE MAE AND FREDDIE MAC DEBT SUBJECT TO PUBLIC DEBT LIMIT.

(a) IN GENERAL.—For purposes of section 3101(b) of chapter 31 of title 31, United States Code, the face amount of obligations issued by the Federal National Mortgage Association and by the Federal Home Loan Mortgage Corporation or any functional replacements and outstanding shall be treated as issued by the United States Government under that section.

(b) TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT.—The limit on the obligation in section 3101(b) of title 31, United States Code, shall be increased by the face amount of obligations issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and outstanding on April 15, 2010.

(c) EXPIRATION.—

(1) OBLIGATIONS.—The obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements shall continue to be treated as issued by the United States Government with respect to such entities until such entities no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

(2) DEBT LIMIT.—Any temporary increase in the public debt limit authorized in subsection (b) with respect to the obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall be reversed with respect to such entities when Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1324. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) FAIR VALUE.—The term ''fair value'' shall have the same meaning as the definition of fair value outlined in Financial Accounting Standards No. 157, or any successor thereto, issued by the Financial Accounting Standards Board.

(2) FUNCTIONAL REPLACEMENTS.—The term ''functional replacements'' means any organization, agreement, or other arrangement that would perform the public functions of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(3) MODIFICATION.—

(A) IN GENERAL.—The term ''modification'' means any government action that alters the estimated fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements.

(B) COST.—The cost of a modification is the difference between the current estimate of the fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements and the estimate of the fair value of such activities as modified.

SA 4021. Mr. GREGG submitted an amendment intended to be proposed to

amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 623, line 14, insert '', including price and volume,'' after ''transaction''.

On page 623, line 16, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 623, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 21, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, strike ''is'' and insert ''and the Securities and Exchange Commission are''.

On page 623, line 24, strike ''provide by rule'' and insert ''engage in joint rulemaking to jointly adopt rules providing''.

On page 624, line 1, insert '', volume,'' after ''transaction''.

On page 624, line 8, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 15, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 624, line 23, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 625, line 1, strike '', aggregate data on such swap trading volumes and positions''.

On page 625, strike lines 3 through 7.

On page 625, line 9, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 14, strike ''rule'' and insert ''rules''.

On page 625, line 16, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 625, line 17, strike ''rule'' and insert ''rules''.

On page 625, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 20, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the swap transactions, positions, or trading strategies of any market participant''.

On page 625, line 22, strike ''large notional''.

On page 625, line 23, strike the ''(block trade)'' and insert ''block trade''.

On page 626, line 2, strike ''large notional''.

On page 626, line 3, strike the ''(block trades)'' and insert ''block trades''.

On page 626, lines 5 through 6, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 626, line 13, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 626, after line 13 insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Securities and Exchange Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Securities and Exchange Commission; and

''(iii) by agreeing with the Commission or the Securities and Exchange Commission regarding the entirety of the matter or by determining a compromise position.''.

On page 800, line 15, insert '', including price and volume,'' after ''transaction''.

On page 800, line 18, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 800, line 20, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 1, insert ''and required to engage in joint rulemaking to jointly adopt rules providing'' after ''Commission''.

On page 801, line 2, strike ''to provide by rule''.

On page 801, line 3, insert '', volume,'' after ''transaction''.

On page 801, line 10, insert '' pursuant to (a)(10)'' after ''requirements)''.

On page 801, line 10, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 17, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 24, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 25, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 25, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 802, line 3, strike '', aggregate data on such swap trading volumes and positions''.

On page 802, strike lines 6 through 11.

On page 802, line 13, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 19, strike ''rule'' and insert ''rules''.

On page 802, line 21, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 802, line 22, strike ''rule'' and insert ''rules''.

On page 802, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 25, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the security-based swap transactions, positions, or trading strategies of any market participant''.

On page 803, line 2, strike ''large notional''.

On page 803, lines 3 and 4, strike the ''(block trade)'' and insert ''block trade''.

On page 803, line 7, strike ''large notional''.

On page 803, line 8 strike the ''(block trades)'' and insert ''block trades''.

On page 803, lines 10 through 12, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 803, line 19, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 803, between lines 19 and 20, insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Commodity Futures Trading Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Commodity Futures Trading Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Commodity Futures Trading Commission; and

''(iii) by agreeing with the Commission or the Commodity Futures Trading Commission regarding the entirety of the matter or by determining a compromise position.''.

SA 4022. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 558, strike line 8 and all that follows through page 559, line 14, and insert the following:

(d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

''(6) The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, swap, or transaction, or any class or classes of persons, swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

On page 892, strike line 23 and all that follows through page 893, line 2, and insert the following:

''(c) DERIVATIVES.—The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, security-based swap, or transaction, or any class or classes of persons, security-based swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

SA 4023. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 541, strike lines 13 through 24, and insert the following:

''(D) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such major swap participant; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 556, strike lines 11 through 21, and insert the following:

''(C) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such swap dealer; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 646, strike line 6, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the swaps activities of each registered swap dealer and major swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(B) whether the swap is used to offset or hedge another instrument or asset owned by such registered swap dealers and major swap participants; and

''(C) whether the swap is cleared.''.

On page 646, line 7, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 646, line 18, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 647, line 7, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 647, line 9, strike ''(2)'' and insert ''(4)''.

On page 648, line 5, strike ''(3)'' and insert ''(5)''.

On page 648, line 9, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 649, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 649, line 12, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 650, line 21, strike ''(4)'' and insert ''(6)''.

On page 651, line 4, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 651, line 13, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 651, line 22, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 651, line 23, strike ''(5)'' and insert ''(7)''.

On page 652, line 11, strike ''(6)'' and insert ''(8)''.

On page 653, line 5, strike ''(7)'' and insert ''(9)''.

On page 653, line 7, strike ''(4)(A)(i)'' and insert ''(6)(A)(i)''.

On page 653, line 8, strike ''(4)(A)(ii)'' and insert ''(6)(A)(ii)''.

On page 653, line 9, strike ''(4)(B)(i)'' and insert ''(6)(B)(i)''.

On page 653, line 10, strike ''(4)(B)(ii)'' and insert ''(6)(B)(ii)''.

On page 653, line 15, strike ''(8)'' and insert ''(9)''.

On page 653, line 16, strike ''(4)'' and insert ''(6)''.

On page 852, strike line 19, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the security-based swaps activities of each registered security-based swap dealer and major security-based swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each security-based swap, including whether such instrument is traded on a liquid market;

''(B) whether the security-based swap is used to offset or hedge another instrument or asset owned by such registered security-based swap dealers and major security-based swap participants; and

''(C) whether the security-based swap is cleared.''.

On page 852, line 20, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 853, line 8, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 853, line 22, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 854, line 1, strike ''(2)'' and insert ''(4)''.

On page 854, line 25, strike ''(3)'' and insert ''(5)''.

On page 855, line 5, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 855, line 25, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 856, line 7, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 857, line 13, strike ''(4)'' and insert ''(6)''.

On page 857, line 22, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 858, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 858, line 13, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 858, line 14, strike ''(5)'' and insert ''(7)''.

On page 859, line 3, strike ''(6)'' and insert ''(8)''.

On page 859, line 22, strike ''(7)'' and insert ''(9)''.

On page 859, line 24, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 860, line 1, strike ''(4)(B)'' and insert ''(6)(B)''.

On page 860, line 6, strike ''(8)'' and insert ''(10)''.

On page 860, line 7, strike ''(4) and (5)'' and insert ''(6) and (7)''.

SA 4024. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 577, line 24, after ''paragraph (9)'', insert '', or to any swap transaction that is a large notional swap transaction (block trade) for the particular market or contract''.

On page 793, line 23, strike ''or''.

On page 794, line 3, strike the period and insert ''; or''.

On page 794, between lines 3 and 4, insert the following:

''(iii) , or to any security-based swap transaction that is a large notional security-based swap transaction (block trade) for the particular market or contract.''.

SA 4025. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 567, line 24, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 568, line 6, after ''5b(c)(2)'' insert '', taking into account the factors described in

clauses (I) through (vii) of subparagraph (4)(A)''.

On page 571, between lines 21 and 22, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of swaps, the resources of derivatives clearing organizations available to clear the group, category, type, or class of swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.''.

On page 571, line 22, strike ''(vi)'' and insert ''(vii)''.

On page 572, line 1, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 572, line 6, strike ''(vi)'' and insert ''(vii)''.

On page 577, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 577, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 577, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 577, after line 24, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular swap or class of swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

On page 783, line 22, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 784, line 3, after ''17A'' insert '', taking into account the factors described in clauses (i) through (vii) of subparagraph (4)(A)''.

On page 788, before line 1, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of security-based swaps, the resources of clearing agencies available to clear the group, category, type, or class of security-based swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.''.

On page 788, line 1, strike ''(vi)'' and insert ''(vii)''.

On page 788, line 5, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 788, line 10, strike ''(vi)'' and insert ''(vii)''.

On page 793, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 793, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 793, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 794, between lines 3 and 4, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular security-based swap or class of security-based swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

SA 4026. Mr. REID submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1309, lines 23 and 24, strike ''in State court having jurisdiction over the defendant'' and insert ''in a State court in that State''.

SA 4027. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1552, line 12, strike ''SELECTION OF THE PRESIDENT'' and insert ''CLASS B DIRECTORS''.

On page 1552, beginning on line 16, strike ''the President'' and all that follows through ''years'' on line 19 and insert the following: ''the Class B directors of the Federal Reserve Bank of New York shall be designated by the Board of Governors''.

On page 1552, line 21, insert ''OF NEW YORK'' after ''BANK''.

On page 1553, line 1, strike ''supervised by the Board'' and insert ''subject to enhanced supervision and prudential standards under section 115''.

On page 1553, beginning on line 2, strike ''a Federal reserve bank, and no past or'' and insert ''the Federal Reserve Bank of New York, and no''.

On page 1553, line 6, strike ''a Federal reserve bank'' and insert ''the Federal Reserve Bank of New York''.

SA 4028. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1552, strike line 8 and all that follows through page 1553, line 6.

SA 4029. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, insert the following:

TITLE XIII—FINANCIAL MARKETS OVERSIGHT CONSOLIDATION AND INVESTOR PROTECTION ACT OF 2010

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Financial Markets Oversight Consolidation and Investor Protection Act of 2010''.

SEC. 1302. PURPOSES.

The purposes of this title are—

(1) to establish a single Federal regulatory body with jurisdiction over securities and derivatives, including options, futures, swaps, and related markets and instruments and including over-the-counter derivatives;

(2) to consolidate and revise the authority for setting margin requirements;

(3) to coordinate the regulation of all financial markets;

(4) to strengthen investor protections in United States financial markets; and

(5) to ensure the competitiveness of United States markets.

SEC. 1303. DEFINITIONS.

As used in this title—

(1) the term ''Chairman'' means the Chairman of the Financial Markets Commission designated under section 1312;

(2) the term ''Commission'' means the Financial Markets Commission established by section 1311 of this title;

(3) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(4) the term ''transfer date'' means the date designated under section 1361.

SEC. 1304. EFFECT ON CONGRESSIONAL JURISDICTION.

It is the sense of Congress that this title should not be construed to affect the jurisdiction of any committee or subcommittee of the Congress with respect to any function transferred to the Commission by this title.

Subtitle A—Establishment of Commission

SEC. 1311. ESTABLISHMENT.

There is established in the executive branch an independent agency to be known as the ''Financial Markets Commission''.

SEC. 1312. MEMBERS: APPOINTMENT; TERMS.

(a) COMPOSITION OF COMMISSION.—

(1) NUMBER OF COMMISSIONERS.—The Commission shall be composed of 5 commissioners appointed by the President, by and with the advice and consent of the Senate.

(2) CHAIRMAN.—One of the commissioners shall be designated by the President as the Chairman of the Commission, who shall be the chief executive of the Commission.

(3) QUALIFICATIONS.—Each commissioner shall be selected solely on the basis of integrity and demonstrated knowledge of the operations of the markets that are subject to the jurisdiction of the Commission.

(4) POLITICAL AFFILIATION.—Not more than 3 of the commissioners shall be members of the same political party.

(b) TERMS.—

(1) IN GENERAL.—Except as provided in this subsection, each commissioner shall be appointed for a term of 5 years.

(2) SUCCESSION.—A commissioner may continue to serve after the expiration of such term until a successor is appointed and has qualified, but may not continue to so serve beyond the expiration of the next session of Congress beginning after the expiration of such term.

(3) FIRST COMMISSIONERS.—The terms of office of the commissioners first taking office after the enactment of this title shall expire, as designated by the President at the time of their appointment—

(A) 1 at the end of 1 year;

(B) 1 at the end of 2 years;

(C) 1 at the end of 3 years;

(D) 1 at the end of 4 years; and

(E) 1 at the end of 5 years.

(4) VACANCY.—

(A) IN GENERAL.—A commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term; and

(B) EFFECT OF VACANCY.—A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

(c) CONFLICTS OF INTEREST.—

(1) IN GENERAL.—No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any market operations or transactions of a character subject to regulation by the Commission pursuant to this title.

(2) REIMBURSEMENT FOR TRAVEL.—

(A) IN GENERAL.—Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission.

(B) PAYMENTS AND REIMBURSEMENTS CREDITED.—Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission.

(C) LIMITATION ON AMOUNT.—The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) FEES.—Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide, by rule—

(1) that the fee shall be paid in a manner other than in cash; and

(2) the time period within which the fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(e) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority—

(A) for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation under section 21(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(2)); or

(B) in providing any other assistance to a foreign securities authority.

(2) TREATMENT OF FUNDS.—Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

SEC. 1313. ORGANIZATION OF COMMISSION.

(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

(A) a subdivision with responsibility for functions relating to investor outreach and education; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(b) DIVISION OF TRADING.—

(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Trading—

(A) a subdivision with responsibility for functions relating to markets in physical commodities; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(c) DIVISION OF CORPORATE DISCLOSURE.—

(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

(d) DIVISION OF ECONOMIC ANALYSIS.—

(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

(B) a subdivision with responsibility for functions relating to international technical assistance.

(4) CHIEF ECONOMIST.—

(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

(B) CRITERIA.—The Chief Economist—

(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

(ii) shall report to and be under the general supervision of the Chairman; and

(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

(5) REPORTS.—

(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

(B) CONTENT.—Each report required by subparagraph (A)—

(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

(D) EXCEPTION.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

(e) DIVISION OF ENFORCEMENT.—

(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.

SEC. 1314. OFFICE OF THE CHAIRMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of the Chairman, which shall manage the resources and operations of the Commission.

(b) OFFICE OF THE EXECUTIVE DIRECTOR.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Executive Director.

(2) EXECUTIVE DIRECTOR AND DUTIES OF THE EXECUTIVE DIRECTOR.—The head of the Office of the Executive Director shall be the Executive Director, who shall oversee the compliance of the Commission with Federal law, including requirements imposed by the Director of Office of Management and Budget, the Government Accountability Office, and the Office of Personnel Management.

(c) OFFICE OF THE SECRETARY.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Secretary.

(2) SECRETARY AND DUTIES OF THE SECRETARY.—The head of the Office of the Secretary shall be the Secretary, who shall—

(A) be appointed by the Chairman; and

(B) oversee the procedural administration of meetings, rulemaking, practice, and procedure of the Commission.

(d) OFFICE OF EXTERNAL AFFAIRS.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of External Affairs.

(2) DIRECTOR OF EXTERNAL AFFAIRS.—The head of the Office of External Affairs shall be the Director of External Affairs, who shall—

(A) be appointed by the Chairman;

(B) serve as the formal liaison of the Commission with the Congress, the executive branch, State and local governments, and foreign governments and regulators; and

(C) coordinate the international regulatory policy initiatives of the Commission with the Secretary of the Treasury.

SEC. 1315. GENERAL COUNSEL.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of General Counsel.

(b) GENERAL COUNSEL.—

(1) IN GENERAL.—The head of the Office of the General Counsel shall be the General Counsel, who shall be appointed by the Chairman.

(2) DUTIES OF THE GENERAL COUNSEL.—The General Counsel shall—

(A) report directly to the Commission;

(B) serve as the legal advisor of the Commission;

(C) represent the Commission in all disciplinary proceedings pending before the Commission;

(D) represent the Commission in courts of law whenever appropriate;

(E) assist the Department of Justice in litigation concerning the Commission; and

(F) perform such other legal duties and functions as the Commission may direct.

(3) ADDITIONAL COUNSEL.—The Commission shall appoint such other attorneys as the Commission determines are necessary to assist the General Counsel in carrying out the duties under this section.

SEC. 1316. OMBUDSMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission the Office of the Ombudsman.

(b) OMBUDSMAN.—The head of the Office of the Ombudsman shall be the Ombudsman, who shall—

(1) be appointed by the Chairman;

(2) assist registrants, those seeking to be registered, and regulated entities in resolving problems with the Commission;

(3) identify areas in which registrants, those seeking to be registered, and regulated entities have problems in dealings with the Commission;

(4) to the extent possible, propose changes in the administrative practices of the Commission to mitigate problems identified under paragraph (3); and

(5) identify potential legislative changes that may be appropriate to mitigate problems identified under paragraph (3).

SEC. 1317. INSPECTOR GENERAL.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Financial Markets Commission,'' after ''the Federal Trade Commission,''.

Subtitle B—Transfers of Functions

SEC. 1321. TRANSFER OF FUNCTIONS.

(a) COMMODITY FUTURES TRADING COMMISSION.—All functions of the Commodity Futures Trading Commission and of any officer or component of the Commodity Futures Trading Commission are transferred to the Commission.

(b) SECURITIES AND EXCHANGE COMMISSION.—All functions of the Securities and Exchange Commission and of any officer or component of the Securities and Exchange Commission are transferred to the Commission.

SEC. 1322. ABOLISHMENT.

(a) COMMODITY FUTURES TRADING COMMISSION ABOLISHED.—Effective on [the transfer date], the Commodity Futures Trading Commission is abolished.

(b) SECURITIES AND EXCHANGE COMMISSION ABOLISHED.—Effective on [the transfer date], the Securities and Exchange Commission.

SEC. 1323. JURISDICTION OF MARGIN AUTHORITY.

(a) MARGIN AUTHORITY WITH RESPECT TO SECURITIES.—There are transferred to the Commission the functions of the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g).

(b) CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3(a)(15) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(15)) is amended by striking ''Securities and Exchange Commission established by section 4 of this title'' and inserting ''Financial Markets Commission''.

(2) MARGIN REQUIREMENTS.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(A) in subsection (a), by striking ''the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter,'' and inserting ''the Commission shall'';

(B) in subsection (b)—

(i) by striking ''the Board of Governors of the Federal Reserve System'' and inserting ''the Commission''; and

(ii) in subsection (b), by striking ''(1) prescribe'' and all that follows through ''and (2)'';

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking ''the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board')'' and inserting ''the Commission'';

(ii) in paragraph (2)—

(I) by striking subparagraph (A) and inserting the following:

''(A) COMPLIANCE WITH MARGIN RULES.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations which the Commission shall prescribe pursuant to subparagraph (B).''; and

(II) in subparagraph (B)—

(aa) by striking ''The Board'' and all that follows through ''jointly deem appropriate'' and inserting ''The Commission shall prescribe such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures products under such terms, and at such levels, as the Commission deems appropriate'';

(bb) by striking clause (ii); and

(cc) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(iii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(D) in subsection (d)—

(i) in paragraph (3), in the paragraph header, by striking ''BOARD'' and inserting ''COMMISSION''; and

(ii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(E) in subsection (e), by striking ''on or before July 1, 1937'' and all that follows through ''Federal Reserve Board'' and inserting ''on or before October 1, 2011, except to the extent that the Commission'';

(F) in subsection (f)(3), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Commission''; and

(G) in subsection (g), by striking ''Board of Governors of the Federal Reserve System'' each place that term appears and inserting ''Commission''.

(c) MARGIN AUTHORITY WITH RESPECT TO FUTURES.—The Commission may, as necessary to ensure the financial integrity of the contract markets—

(1) by order, direct a contract market to adjust the level of margin required on any contract; or

(2) by regulation, prescribe limits on the level of margin that a contract market may require on any class or category of contract.

(d) MARGIN AUTHORITY WITH RESPECT TO SWAPS.—The Commission may prescribe limits on the level of margin on non-cleared swaps—

(1) in accordance with section 15F(e) of the Securities Exchange Act of 1934, as added by the Wall Street Transparency and Accountability Act of 2010, for security-based swaps; and

(2) in accordance with section 4s(e) of the Commodity Exchange Act, as amended in the Wall Street Transparency and Accountability Act of 2010, for commodity-based swaps.

Subtitle C—Administrative Provisions

PART I—PERSONNEL PROVISIONS

SEC. 1331. OFFICERS AND EMPLOYEES.

(a) APPOINTMENT AND COMPENSATION.—The Commission may appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Commission, in accordance with title 5, United States Code.

(b) LIMITED-TERM APPOINTEES.—Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 10 limited-term appointees. The Commission shall appoint individuals to such positions as provided by section 3394 of title 5, United States Code. Such positions shall expire upon the later of 3 years after the transfer date or 3 years after the initial appointment to each position. Positions in effect under this subsection shall be taken into account in applying the limitations on positions prescribed under section 3134(e) and section 5108 of title 5, United States Code.

SEC. 1332. EXPERTS AND CONSULTANTS.

The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for SK–18 of the Special Rate Schedule under section 5332 of such title.

PART II—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 1333. GENERAL AUTHORITY.

In carrying out any function transferred by this title, the Commission, or any officer or employee of the Commission, may exercise any authority available by law (including appropriation Acts) with respect to such function to the official or agency from which such function is transferred, and the actions of the Commission in exercising such authority shall have the same force and effect as when exercised by such official or agency.

SEC. 1334. DELEGATION.

(a) IN GENERAL.—Except as otherwise provided in this title, the Commission may delegate any function to such officers and employees of the Commission as the Commission may designate, and may authorize such successive redelegations of such functions within the Commission as may be necessary or appropriate.

(b) AUTOMATIC SUNSET OF DELEGATIONS.—Each delegation of function shall automatically expire 3 years after the effective date of the delegation, unless renewed by the Commission.

(c) EXISTING DELEGATIONS.—Each delegation of function in effect on the date of enactment of this Act shall automatically expire 3 years after the date of enactment of this Act, unless renewed by the Commission.

(d) COMMISSION RESPONSIBILITY FOR ADMINISTRATION OF DELEGATED FUNCTIONS.—No delegation of functions by the Commission under this section or under any other provision of this title shall relieve the Commission of responsibility for the administration of such functions.

SEC. 1335. RULES.

(a) IN GENERAL.—The Commission may prescribe such rules, regulations, and orders as the Commission determines necessary or appropriate to administer and manage the functions of the Commission.

(b) COMPREHENSIVE REVIEW OF MAJOR RULES.—The Commission shall conduct a comprehensive review of each major rule (as that term is defined in section 804(2) of title 5, United States Code) issued by the Commission not later than 5 years after the effective date of the major rule, and every 5 years thereafter. The comprehensive review shall include a public comment period.

(c) STATUS REVIEW OF MINOR RULES.—The Commission shall conduct a status review for each rule of the Commission that is not a major rule (as that term is defined in section 804(2) of title 5, United States Code) not later than 5 years after the effective date of the rule, and every 5 years thereafter, to determine whether such rule should be designated as a major rule.

(d) REPORT ON EXISTING RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report containing a schedule for the review in accordance with this section of rules in effect on the date of enactment of this Act.

SEC. 1336. CONTRACTS.

(a) IN GENERAL.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Commission may—

(1) make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons; and

(2) make such payments, by advance or reimbursement, as the Commission may determine necessary or appropriate to carry out functions of the Commission.

(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts.

SEC. 1337. REGIONAL AND FIELD OFFICES.

The Commission may establish, alter, discontinue, or maintain such regional or other field offices of the Commission as the Commission determines necessary or appropriate to perform functions of the Commission.

SEC. 1338. USE OF FACILITIES.

(a) USE BY COMMISSION.—The Commission may, with or without reimbursement and with the consent of the entity concerned, use the research, equipment, services, or facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Commission.

(b) USE BY OTHERS.—

(1) IN GENERAL.—Except as provided in paragraph (4), the Commission may permit public and private agencies, corporations, associations, organizations, or individuals to use any real property, or any facilities, structures, or other improvements thereon, under the custody and control of the Commission for the purposes of the Commission.

(2) TERMS AND RATES.—The Commission shall permit the use of such property, facilities, structures, or improvements under this subsection under such terms and rates and for such period as may be in the public interest, except that the periods of such uses may not exceed 5 years.

(3) RECONDITIONING AND MAINTENANCE.—The Commission may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements used by such permittees under this subsection to a standard satisfactory to the Commission.

(4) EXCEPTION.—This subsection shall not apply to excess property, as that term is defined in section 102 of title 40, United States Code.

(c) PROCEEDS FROM REIMBURSEMENTS.—Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such equipment or facilities provided or to refund excess sums when necessary.

(d) TITLE TO PROPERTY.—Any interest in real property acquired pursuant to this title shall be acquired in the name of the United States Government.

SEC. 1339. FUNDS TRANSFER.

The Commission may, when authorized in an appropriation Act in any fiscal year, transfer funds from 1 appropriation to another within the Commission, except that no appropriation for any fiscal year shall be either increased or decreased pursuant to this section by more than 5 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

SEC. 1340. SEAL OF COMMISSION.

The Commission shall cause a seal of office to be made for the Commission of such design as the Commission shall approve. Judicial notice shall be taken of such seal.

SEC. 1341. ANNUAL REPORT.

(a) REPORT REQUIRED.—The Commission shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Commission during such fiscal year.

(b) CONTENTS.—Each report under subsection (a) shall include—

(1) a statement of goals, priorities, and plans of the Commission;

(2) an assessment of the progress made by the Commission toward—

(A) the attainment of the goals, priorities, and plans of the Commission; and

(B) the more effective and efficient management of the Commission and the coordination of its functions;

(3) recommendations, if any, for proposed legislation for the achievement of the goals, priorities, and plans of the Commission; and

(4) an estimate of—

(A) the number of the non-Federal personnel employed pursuant to contracts entered into by the Commission under section 1336 or under any other authority (including any subcontract thereunder);

(B) the number of such contracts and subcontracts pursuant to which non-Federal personnel are employed; and

(C) the total cost of such contracts and subcontracts.

Subtitle D—Transitional, Savings, and Conforming Provisions

SEC. 1351. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) TRANSFER OF EMPLOYEES.—All employees of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission under Federal law that relates to the functions transferred under section 1321, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Chairman.

(B) DECLINING TRANSFERS ALLOWED.—The Chairman may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive

service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this title shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS ACT.—If any provision of this title conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) STATUS AND ELIGIBILITY OF EMPLOYEES.—The transfer of functions and employees under this title, and the abolishment of the Securities and Exchange Commission and the Commodity Futures Trading Commission under section 1322, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee shall be placed in a position at the Commission with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Commission responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position in the Commission, if the examiner carries out examinations of the same type of institutions as an employee of the Commission as the examiner carried out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the transfer date, an employee holding a permanent position on the day before the date on which the employee was transferred shall not be involuntarily separated or involuntarily reassigned outside the locality pay area (as defined by the Office of Personnel Management) of the employee.

(2) EXCEPTIONS.—The Chairman may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this title, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the 2-year period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Chairman may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by the Commission.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Chairman to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Commission.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairman shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee transferred, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairman shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairman determines that the Commission will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee transferred, a transferred employee who is a member of the program may, before the decision of the Chairman takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairman determines that the Commission will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Chairman takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Chairman shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Chairman under this section.

(iii) FUNDS TRANSFER.—The Chairman shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairman and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this Act on the day before the transfer date shall be eligible for coverage by a life insurance plan under section 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Chairman, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Chairman shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Chairman shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairman and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, the Chairman immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the transfer date, the Chairman shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Chairman—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other transferred employee on the basis of prior employment by the Securities and Exchange Commission or the Commodity Futures Trading Commission; and

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee.

SEC. 1352. PROPERTY TRANSFERRED.

(a) PROPERTY DEFINED.—For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property (including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers and correspondence related to such reports, and any other information or materials).

(b) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Commission by this section shall be transferred to the Commission together with the property.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 1353. SAVINGS PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(a) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Securities and Exchange Commission, the Securities and Exchange Commission, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Commissioners of the Securities and Exchange Commission or the Securities and Exchange Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners or the Securities and Exchange Commission, as the case may be, as a party to any such action or proceeding as of the transfer date.

(b) COMMODITY FUTURES TRADING COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(b) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Commodity Futures Trading Commission, the Commodity Futures Trading Commission, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission, as the case may be, as a party to the action or proceeding as of the transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—

(1) SECURITIES AND EXCHANGE COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Securities and Exchange Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(2) COMMODITY FUTURES TRADING COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Commodity Futures Trading Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the transfer date, the Chairman shall—

(1) in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, identify the regulations continued under subsection (c) that will be enforced by the Commission; and

(2) publish a list of such regulations in the Federal Register.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Commission.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Commission according to the terms of the regulation.

SEC. 1354. SEVERABILITY.

If any provision of this title or the application thereof to any person or circumstance is held invalid, neither the remainder of this title nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 1355. REFERENCES IN FEDERAL LAW.

On and after the transfer date of this title, any reference in any other Federal law to any function of any department, commission, or agency, or any officer or office that is transferred under this title shall be deemed to be a reference to the Commission, or the official or component of the Commission to which this title transfers such functions.

SEC. 1356. AMENDMENTS.

(a) EXECUTIVE SCHEDULE SALARIES.—

(1) CHAIRMAN.—Section 5314 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Chairman, Securities and Exchange Commission.'' and inserting the following:

''Chairman, Financial Markets Commission.''; and

(B) by striking the item relating to ''Chairman, Commodity Futures Trading Commission.''.

(2) MEMBERS.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Members, Securities and Exchange Commission'' and inserting the following:

''Members, Financial Markets Commission''; and

(B) by striking the item relating to ''Members, Commodity Futures Trading Commission.''.

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT.—Sections 4 and 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78d and 78kk) are repealed.

(2) COMMODITY EXCHANGE ACT.—Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking paragraphs (2), (3), and (4).

SEC. 1357. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY.

(a) INTERIM AUTHORITY OF CHAIRMAN.—During the period beginning on the date on which the first Chairman is appointed under section 1312 and ending on the transfer date, the Chairman shall—

(1) consult and cooperate with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission to facilitate the orderly transfer of functions to the Commission;

(2) determine, from time to time—

(A) the amount of funds necessary to pay the expenses of the Commission (including expenses for personnel, property, and administrative services);

(B) which personnel are appropriate to facilitate the orderly transfer of functions under this title; and

(C) what property and administrative services are necessary to support the Commission; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) INTERIM RESPONSIBILITIES.—Before the transfer date, upon the request of the Chairman, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission shall each—

(1) pay to the Chairman, from funds appropriated to such agencies, such funds as the Chairman determines to be necessary under subsection (a)(2)(A);

(2) detail to the Commission such personnel as the Chairman determines to be appropriate under subsection (a)(2)(B); and

(3) make available to the Commission such property and provide to the Commission such administrative services as the Chairman determines to be necessary under subsection (a)(2)(C).

(c) NOTICE REQUIRED.—The Chairman shall give to the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission reasonable notice of any request that the Chairman intends to make under subsection (b).

Subtitle E—Transfer Date

SEC. 1361. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The President may designate a transfer date that is not later than 18 months after the date of enactment of this Act, if the President transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this Act, the President shall publish in the Federal Register notice of any date designated under paragraph (1).

SA 4030. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 965 and insert the following:

SEC. 965. ORGANIZATION OF COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 4D, as added by section 996 of this Act, the following:

''SEC. 4E. ORGANIZATION OF THE COMMISSION.

''(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

''(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

''(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

''(A) a subdivision with responsibility for functions relating to investor outreach and education; and

''(B) a subdivision with responsibility for functions relating to inspections and examinations.

''(b) DIVISION OF TRADING.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

''(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Trading a subdivision with responsibility for functions relating to inspections and examinations.

''(c) DIVISION OF CORPORATE DISCLOSURE.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

''(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

''(d) DIVISION OF ECONOMIC ANALYSIS.—

''(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

''(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

''(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

''(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

''(B) a subdivision with responsibility for functions relating to international technical assistance.

''(4) CHIEF ECONOMIST.—

''(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

''(B) CRITERIA.—The Chief Economist—

''(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

''(ii) shall report to and be under the general supervision of the Chairman; and

''(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

''(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

''(5) REPORTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

''(B) CONTENT.—Each report required by subparagraph (A)—

''(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

''(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

''(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

''(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

''(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

''(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

''(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

''(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

''(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

''(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

''(D) EXCEPTION.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

''(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

''(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

''(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

''(e) DIVISION OF ENFORCEMENT.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

''(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.''.

SA 4031. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1258, strike line 24 and all that follows through page 1267, line 12 and insert the following:

(B) obtaining information about the activities subject to such law and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau and the prudential regulators shall coordinate their supervisory activities for persons described in subsection (a), in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution or affiliate by each agency; and

(C) ensures that the depository institution or affiliate is not subject to conflicting supervisory demands by the agencies.

(3) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate supervisory activities in a manner consistent with paragraph (2).

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SA 4032. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2 of the amendment, strike line 21 and insert the following:

Act.

TITLE XIII—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2010''.

SEC. 1302. FINDINGS.

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than $200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

SEC. 1303. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

SEC. 1304. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1303, is further amended by inserting after section 803 the following:

''SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

''(a) IMPORTATION OF PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

''(A) the limitation on importation that is established in section 801(d)(1) is waived; and

''(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

''(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

''(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

''(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

''(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

''(A) by a registered importer; or

''(B) from a registered exporter to an individual.

''(4) DEFINITIONS.—

''(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

''(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

''(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

''(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

''(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

''(C) U.S. LABEL DRUG.—For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

''(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

''(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

''(iii) is approved under section 505(c); and

''(iv) is not—

''(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

''(aa) a therapeutic DNA plasmid product;

''(bb) a therapeutic synthetic peptide product;

''(cc) a monoclonal antibody product for in vivo use; and

''(dd) a therapeutic recombinant DNA-derived product;

''(III) an infused drug, including a peritoneal dialysis solution;

''(IV) an injected drug;

''(V) a drug that is inhaled during surgery;

''(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

''(VII) a sterile opthlamic drug intended for topical use on or in the eye.

''(D) OTHER DEFINITIONS.—For purposes of this section:

''(i)(I) The term 'exporter' means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by

the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

''(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

''(AA) the training of pharmacists;

''(BB) the practice of pharmacy; and

''(CC) the protection of the privacy of personal medical information; and

''(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

''(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(iv) The term 'pharmacy' means a person that—

''(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

''(II) employs 1 or more pharmacists.

''(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(vi) The term 'wholesaler'—

''(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

''(II) does not include a person authorized to import drugs under section 801(d)(1).

''(E) PERMITTED COUNTRY.—The term 'permitted country' means—

''(i) Australia;

''(ii) Canada;

''(iii) a member country of the European Union, but does not include a member country with respect to which—

''(I) the country's Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

''(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

''(iv) Japan;

''(v) New Zealand;

''(vi) Switzerland; and

''(vii) a country in which the Secretary determines the following requirements are met:

''(I) The country has statutory or regulatory requirements—

''(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

''(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

''(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

''(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

''(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

''(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

''(III) The importation of drugs to the United States from the country will not adversely affect public health.

''(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

''(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

''(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

''(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter:

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

''(iv) An agreement by the exporter to report to the Secretary—

''(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

''(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

''(J) In the case of an importer, an agreement by the importer to report to the Secretary—

''(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

''(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

''(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

''(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

''(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; and

''(B)(i) inspected by the Secretary; or

''(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

''(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

''(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

''(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(D) Monitoring the affixing of markings under paragraph (2).

''(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

''(F) Determining whether the exporter is in compliance with all other registration conditions.

''(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

''(A) the name and complete contact information of the person submitting the notice;

''(B) the name and complete contact information of the importer involved;

''(C) the identity of the drug, including the established name of the drug, the quantity of

the drug, and the lot number assigned by the manufacturer;

''(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

''(E) the country from which the drug is shipped;

''(F) the name and complete contact information for the shipper of the drug;

''(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

''(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

''(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

''(J) such other information as the Secretary may require by regulation.

''(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

''(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

''(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

''(C) Reviewing notices under paragraph (4).

''(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

''(E) Determining whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

''(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

''(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

''(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

''(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

''(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

''(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered

exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

''(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling); or

''(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling).

''(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

''(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

''(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

''(iv) FEE.—

''(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

''(aa) for the first fiscal year in which no fee amount under such section in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

''(bb) for each subsequent fiscal year in which no fee amount under such section is effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

''(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

''(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

''(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

''(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

''(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

''(aa) such inspection by the Secretary shall be authorized; and

''(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

''(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

''(I) vacate the order under clause (ii), if any;

''(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

''(III) permit importation of the qualifying drug under subsection (a); and

''(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

''(ii) may not order that the importation of the qualifying drug involved cease; and

''(iii) shall promptly notify registered exporters and registered importers.

''(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

''(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

''(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application for the drug approved under section 505(b); and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

''(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer;

''(IV) the name, location, and registration number of the importer; and

''(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

''(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

''(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

''(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

''(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

''(B) IMPORTATION BY INDIVIDUAL.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

''(I) directions for use by the consumer;

''(II) the lot number assigned by the manufacturer;

''(III) the name and registration number of the exporter;

''(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

''(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(bb) a list of the ingredients of the drug as would be required under section 502(e); and

''(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

''(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

''(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

''(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

''(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

''(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(A) The drug is not a qualifying drug.

''(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

''(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

''(D) The drug does not comply with paragraph (3) or (4).

''(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(F) The Secretary becomes aware that—

''(i) the drug may be counterfeit;

''(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

''(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(H) The Secretary has under section 505(e) withdrawn approval of the drug.

''(I) The manufacturer of the drug has instituted a recall of the drug.

''(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

''(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

''(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(ii) The markings on the shipping container appear to be counterfeit.

''(iii) The shipping container or markings appear to have been tampered with.

''(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—

''(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

''(A) maintain records required under this section for not less than 2 years; and

''(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

''(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

''(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

''(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

''(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

''(l) DRUG LABELING AND PACKAGING.—

''(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

''(A) The lot number assigned by the manufacturer.

''(B) The name and registration number of the importer.

''(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

''(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(ii) a list of the ingredients of the drug as would be required under section 502(e).

''(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

''(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

''(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

''(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 1304(e) of the Pharmaceutical Market Access and Drug Safety Act of 2010, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

''(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

''(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

''(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

''(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

''(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

''(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

''(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

''(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

''(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

''(3) AFFIRMATIVE DEFENSE.—

''(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

''(i) the person exporting or importing a qualifying drug into the United States under this section; or

''(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

''(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

''(i) the difference was required by the country in which the drug is distributed;

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

''(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

''(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.''.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after ''import into the United States'' the following: '', including a drug that is, or may be, imported or offered for import into the United States under section 804,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so

long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) REPORT.—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be $3,000,000,000.

(C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has

the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(f) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

SEC. 1305. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1304, is further amended by adding at the end the following section:

''SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.

''(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

''(1) the shipment has a declared value of less than $10,000; and

''(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

''(B) the Secretary has requested delivery of such shipment of drugs.

''(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

''(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

''(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

''(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 1306. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 1304.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish

the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of nonvisible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

SEC. 1307. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

"SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be

brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(f) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

''(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503C.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

SEC. 1308. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

''(h) RESTRICTED TRANSACTIONS.—

''(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

''(2) PAYMENT SYSTEM.—

''(A) IN GENERAL.—The term 'payment system' means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

''(i) a credit card system;

''(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

''(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

''(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

''(i) a creditor;

''(ii) a credit card issuer;

''(iii) a financial institution;

''(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

''(v) a money transmitting business; or

''(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

''(3) RESTRICTED TRANSACTION.—The term 'restricted transaction' means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

''(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

''(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

''(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

''(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

''(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term 'unlawful drug importation request' means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

''(5) UNREGISTERED FOREIGN PHARMACY.—The term 'unregistered foreign pharmacy' means a person in a country other than the United States that is not a registered exporter under section 804.

''(6) OTHER DEFINITIONS.—

''(A) CREDIT; CREDITOR; CREDIT CARD.—The terms 'credit', 'creditor', and 'credit card' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms 'access device' and 'electronic fund transfer'—

''(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

''(ii) the term 'electronic fund transfer' also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

''(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

''(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meaning given the terms in section 5330(d) of title 31, United States Code.

''(E) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

''(A) REGULATIONS.—The Board shall promulgate regulations requiring—

''(i) an operator of a credit card system;

''(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

''(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

''(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system.

''(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

''(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

''(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

''(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

''(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

''(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

''(D) ENFORCEMENT.—

''(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

''(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

''(I) The extent to which the payment system or person knowingly permits restricted transactions.

''(II) The history of the payment system or person in connection with permitting restricted transactions.

''(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

''(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

''(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

''(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

''(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

''(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

''(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

''(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

''(ii) such entity is in compliance with such regulations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

SEC. 1309. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking ''not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.'' and inserting ''import into the United States not more than 10 dosage units combined of all such controlled substances.''.

SEC. 1310. SEVERABILITY.

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SA 4033. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COMMISSION ON ECONOMIC SECURITY.

(a) FINDINGS.—Congress finds that—

(1) the recent financial crisis could serve as a road map for actors seeking to destabilize economic systems;

(2) the economy's growing interconnectedness increases vulnerabilities;

(3) the ability of malevolent actors to rapidly network and mask their activities undermines the fundamentals of the financial markets and economy;

(4) as it is reported that a recent war game of the Department of Defense—

(A) exposed the seriousness of threats to our economy;

(B) was won by a group representing the Government of China; and

(C) indicated a significant lack of understanding of these issues across the divides between the national security and financial communities;

(5) a leading financial executive recently noted that the financial crisis, sparked by the September 15th, 2008, collapse of Lehman Brothers, could serve as a road map for actors seeking to destabilize economic systems;

(6) prominent counterterrorism expert Professor Bruce Hoffman of Georgetown University has stated that al Qaeda and other terrorists groups were devoting new attention to derailing our financial system in the wake of that crisis;

(7) foreign governments have developed economic warfare capabilities or organizations, such as an economic warfare bureau in China; and

(8) former Directors of National Intelligence and other top experts have warned of

cyber-security and other threats capable of disrupting our financial institutions or critical infrastructure, such as the national power grid.

(b) ESTABLISHMENT.—There is established a commission to be known as the ''Security Threats to Financial Markets and Economic Recovery Commission'' (referred to in this section as the ''Commission'').

(c) DUTIES OF COMMISSION.—

(1) MANDATORY LEGISLATIVE RECOMMENDATIONS.—The Commission shall examine the threats and vulnerabilities to the United States financial markets and to develop legislative recommendations designed to address—

(A) potential threats to financial markets and economies from state actors and non-state actors;

(B) vulnerabilities in financial markets with substantial economic implications;

(C) the divide between national security concerns and economic concerns; and

(D) national security vulnerabilities associated with current Federal debt levels.

(2) POLICY SOLUTIONS.—Legislative recommendations developed to address the issues described in paragraph (1) may include—

(A) reforms necessary to address gaps in government and private capabilities to combat threats to financial markets;

(B) reforms that strengthen the security of financial markets;

(C) reforms that address financial systemic weakness; and

(D) any other reforms designed to address the issues described in paragraph (1).

(d) REPORT.—

(1) IN GENERAL.—The Commission shall, not later than September 5, 2010, submit an interim report to Congress and, not later than 1 year after the date of the enactment of this Act, shall submit a full report to Congress and the President containing—

(A) a detailed description of the activities of the Commission;

(B) a detailed statement of any findings of the Commission as to public preferences regarding the issues, policies, and tradeoffs presented in the town hall style public hearings;

(C) a list of policy options for addressing those problems; and

(D) criteria for the legislative recommendations to be developed by the Commission.

(2) FORM.—The reports submitted under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

(e) LEGISLATIVE RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 60 days after the date on which the full report is submitted under subsection (d)(1) and by a vote of at least 10 of the members, the Commission shall submit legislative recommendations to Congress and the President designed to address the issues described in subsection (c).

(2) PROPOSAL REQUIREMENTS.—The proposal under paragraph (1) shall, to the extent feasible, be designed—

(A) to achieve financial market and systemic security;

(B) to address the comments and suggestions of the consulted non-governmental experts and government officials; and

(C) to meet the criteria set forth in the Commission report.

(f) MEMBERSHIP AND MEETINGS.—

(1) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be composed of 12 voting members appointed pursuant to subparagraph (B) and 3 non-voting members described in subparagraph (C).

(B) VOTING MEMBERS.—The Commission shall be composed of 12 voting members, of whom not fewer than 4 members should be currently in the private sector, or have significant experience in the private sector, of whom—

(i) 3 shall be appointed by the Speaker of the House of Representatives;

(ii) 3 shall be appointed by the minority leader of the House of Representatives;

(iii) 3 shall be appointed by the majority leader of the Senate; and

(iv) 3 shall be appointed by the minority leader of the Senate.

(C) EXECUTIVE BRANCH CONSULTATION.—The Director of National Intelligence, the Secretary, and the Chairman of the Board of Governors shall advise and assist the Commission, at the request of the Commission.

(D) CHAIR AND CO-CHAIR.—The Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall designate 2 co-chairpersons of the Commission from the members appointed under subparagraph (B), one of whom must be a Republican and one of whom must be a Democrat.

(2) LIMITATIONS AS TO MEMBERS OF CONGRESS.—

(A) MEMBERS OF CONGRESS ON COMMISSION.—Each appointing authority described in paragraph (1)(B) shall appoint not more than 2 Members of Congress, nor fewer than 1 member of Congress, to the Commission.

(B) CONTINUATION OF VOTING MEMBERSHIP.—In the case of an individual appointed pursuant to paragraph (1)(A) who was appointed as a Member of Congress under subparagraph (A), if such individual ceases to be a Member of Congress, that individual shall cease to be a member of the Commission.

(3) DATE FOR ORIGINAL APPOINTMENT.—The appointing authorities described in paragraph (1)(B) shall appoint the initial members of the Commission not later than 30 days after the date of enactment of this Act.

(4) TERMS.—

(A) IN GENERAL.—The term of each member is for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled not later than 30 days after such vacancy occurs and in the manner in which the original appointment was made.

(5) PAY AND REIMBURSEMENT.—

(A) NO COMPENSATION FOR MEMBERS OF COMMISSION.—Except as provided in subparagraph (B), a member of the Commission may not receive pay, allowances, or benefits by reason of their service on the Commission.

(B) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5, United States Code.

(6) MEETINGS.—The Commission shall meet upon the call of the chairperson or a majority of its voting members.

(7) QUORUM.—Six voting members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) STAFF OF COMMISSION.—

(1) STAFF.—In accordance with rules agreed upon by the Commission, subject to paragraph (2), and to the extent provided in advance in appropriation Acts, the co-chairpersons of the Commission may appoint and fix the pay of no more than 3 staff persons, subject to paragraph (3).

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(3) COMPENSATION.—A staff person of the Commission may not be paid at a rate of pay that exceeds the maximum rate of pay for a position at GS–14 of the General Schedule.

(4) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of their regular employment without interruption.

(5) EXPERTS AND CONSULTANTS.—In accordance with rules agreed upon by the Commission and to the extent provided in advance in appropriation Acts, the director may procure the services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates not to exceed the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(h) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subsection.

(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(5) CONTRACT AUTHORITY.—To the extent provided in advance in appropriation Acts, the Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(i) FUNDING.—There are authorized to be appropriated to the Commission, such sums as may be necessary to carry out this section. Funding for the Commission shall be provided through discretionary appropriations.

(j) TERMINATION.—The Commission shall terminate 60 days after the date of submission of its legislative proposal to Congress under this section.

SA 4034. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1315, strike line 18, and all that follows through page 1325, line 20 and insert the following:

''(B) the State consumer financial law is preempted in accordance with the legal standards of the decision of the Supreme Court in Barnett Bank v. Nelson (517 U.S. 25 (1996)), and any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, on a case-by-case basis, in accordance with applicable law; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(j) VISITORIAL POWERS.—

''(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C., 5 (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action in a court of appropriate jurisdiction to enforce an applicable nonpreempted State law against a national bank, as authorized by such law, and to seek relief as authorized by such law.

''(2) EXCLUSION.—The powers granted to State attorneys general and State regulators under section 1042 of the Restoring American Financial Stability Act of 2010 shall not apply to any national bank, or any subsidiary thereof, regulated by the Office of the Comptroller of the Currency.

''(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—The provisions of sections 5136C(j) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

SA 4035. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers

from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 525, between lines 9 and 10, insert the following:

SEC. 719. PROHIBITION ON REGISTRATION, DESIGNATION, OR APPROVAL.

(a) PROHIBITION.—Neither the Commodity Futures Trading Commission nor the Securities and Exchange Commission may register, designate, approve, or otherwise permit an entity to operate within the United States as one or more of the following, if that entity has been, plans to be, or later is established outside the United States, in whole or in part, in a manner which permits that entity to avoid or assist others to avoid the payment of United States taxes—

(1) a derivatives clearing organization;

(2) a swap execution facility;

(3) a board of trade as a contract market under section 5 of the Commodity Exchange Act (7 U.S.C. 7);

(4) a clearing agency;

(5) a security-based swap execution facility; or

(6) an exchange as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(b) DEFINITIONS.—For purposes of this section, the terms ''derivatives clearing organization,'' ''swap execution facility'' and ''board of trade'' have the meanings given the terms in Section1a of the Commodity Exchange Act (7 U.S.C. 1a), and the terms ''clearing agency'', ''security-based swap execution facility'', and ''exchange'' have the meanings given the terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SA 4036. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 431, line 22, strike ''3'' and insert ''2''.

SA 4037. Mr. BOND (for himself, Mr. WARNER, Mr. BROWN of Massachusetts, and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, the net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offering statement; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SA 4038. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2010''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter $98,050,000 for fiscal year 2011 and $98,050,000 for fiscal year 2012. Such sums shall remain available until expended.''.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) of such title is amended to read as follows:

''(c) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.

''(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;

''(B) shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and

''(C) shall remain available until expended.

''(3) RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).

''(4) REFUNDS.—The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 1101 of title 49, United States Code, is amended by striking ''otherwise.'' and inserting ''otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.''.

(b) GENERAL ORGANIZATION.—Section 1111(d) of title 49, United States Code, is

amended by striking ''absent'' and inserting ''unavailable''.

(c) ADMINISTRATIVE.—Section 1113 of title 49, United States Code, is amended—

(1) by inserting ''or depositions'' in paragraph (a)(1) after ''hearings''; and

(2) by inserting ''In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.'' after ''(2)'' in subsection (a)(2).

(d) DISCLOSURE, AVAILABILITY, AND USE OF INFORMATION.—Section 1114 of title 49, United States Code, is amended—

(1) by striking the heading for subsection (b) and inserting ''(b) TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.—'';

(2) by inserting ''submitted to the Board in the course of a Board investigation or study and'' in subsection (b)(1) after ''information'' the first place it appears;

(3) by striking ''title 18'' in subsection (b)(1) and inserting ''title 18, or commercial or financial information,'';

(4) by striking ''safety'' in subsection (b)(1)(D) the first place it appears and inserting ''safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations,'';

(5) by inserting ''subparagraphs (A) through (C) of'' after ''under'' in subsection (b)(2);

(6) by adding at the end of subsection (b) the following:

''(4) Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.'';

(7) by striking ''shall'' in paragraph(1)(A) of subsection (f) and inserting ''may'';

(8) by striking ''information'' in paragraph (2) of subsection (f) and inserting ''information, or other relevant information authorized for disclosure under this chapter,''; and

(9) by adding at the end thereof the following:

''(g) ONGOING BOARD INVESTIGATIONS.—(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

''(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

''(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

''(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

''(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

''(3) In this subsection, the term 'ongoing investigation' means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.''.

(e) REPORTS AND STUDIES—Section 1116(b) of title 49, United States Code, is amended—

(1) by striking ''carry out'' in paragraph (1) and inserting ''conduct''; and

(2) by striking paragraph (3) and inserting the following:

''(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;''.

(f) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—Section 1154(a)(1)(A) of title 49, United States Code, is amended by striking ''and'' and inserting ''or''.

SEC. 4. AUTHORITY OF THE BOARD.

(a) EVALUATION AND AUDIT.—Section 1138(a) of title 49, United States Code, is amended by striking ''conducted at least annually, but may be''.

(b) TRAINING OF BOARD EMPLOYEES AND OTHERS.—Section 1115(d) of title 49, United States Code, is amended—

(1) by striking ''investigation.'' and inserting ''investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.'';

(2) by striking ''training.'' and inserting ''training or who influence transportation safety through support or adoption of Board safety recommendations.''; and

(3) by striking ''collections.'' and inserting ''collections under the provisions of section 1118 of this chapter.''.

(c) ACCIDENT INVESTIGATION AUTHORITY.—Section 1131 of title 49, United States Code, is amended—

(1) by striking subsection (a)(1)(C) and inserting the following:

''(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(E);

(3) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(1)(F);

(4) by striking ''chapter.'' in subsection (a)(1)(F) and inserting ''chapter;'';

(5) by adding at the end of subsection (a)(1) the following:

''(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

''(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.'';

(6) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(3);

(7) by inserting ''or relevant to'' after ''developed about'' in subsection (a)(3);

(8) by inserting ''AND INCIDENT'' after ''ACCIDENT'' in the heading for subsection (e); and

(9) by inserting ''and incident'' in subsection (e) after ''each accident''.

(d) CIVIL AIRCRAFT AND MARITIME ACCIDENT INVESTIGATIONS.—

(1) IN GENERAL.—Section 1132 of title 49, United States Code, is amended—

(A) by inserting ''or have investigated'' in subsection (a)(1) after ''investigate'';

(B) by striking ''aircraft;'' in subsection (a)(1)(A) and inserting ''aircraft or a commercial space launch vehicle;''; and

(C) by adding at the end the following:

''(e) AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

''(f) MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1132 of title 49, United States Code, is amended to read as follows:

''§ 1132. Civil aircraft and maritime accident investigations''.

(B) The table of contents for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1132 and inserting the following:

''1132. Civil aircraft and maritime accident investigations''.

(e) INSPECTIONS AND AUTOPSIES.—Section 1134 of title 49, United States Code, is amended—

(1) by striking ''officer or employee of the National Transportation Safety Board—'' in subsection (a) and inserting ''officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—'';

(2) by adding at the end of subsection (b)(1) the following: ''The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''; and

(3) by inserting after ''component.'' in subsection (c) the following: ''The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''.

SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) of title 49, United States Code, is amended by striking ''months.'' and inserting ''months

and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) of title 49, United States Code, is amended by striking ''accident.'' and inserting ''accident and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

SEC. 6. ACCIDENT-RELATED INFORMATION RELEASE POLICY REPORT.

Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report describing the policies, procedures, and guidelines used by the Board in the expedited release of factual accident-related information to victims and their families, Federal, State, and local accident investigators and agencies, private or third party investigation partners, the public, and other stakeholders.

SA 4039. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

Amend the title so as to read ''A Bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.''

SA 4040. Mrs. MCCASKILL (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4041. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, between lines 22 and 23, insert the following:

''(G) to coordinate with other Federal agencies (including the Federal Emergency Management Agency), States (including State insurance regulators), and insurance companies efforts to facilitate the timely processing of flood insurance claims by insurance companies and agents (including through recommending best practices such as telephone hotlines for victims or deployment of personnel of the Office to flood areas) in any area for which the President declares a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) relating to flooding; and

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AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on May 13, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Judiciary be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on May 13, 2010, at 2:30 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Nominations.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

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

VIRGIN ISLAND NATIONAL PARK LEASE ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 296, H.R. 714, the Virgin Islands National Park.

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