amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1847. Mr. REID (for Mr. BOOZMAN (for himself and Mr. PRYOR)) proposed an amendment to the bill H.R. 886, to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

TEXT OF AMENDMENTS

SA 1832. Mrs. HAGAN (for herself and Mr. CORKER) submitted an amendment intended to be proposed by her to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—COVERED BONDS

SEC. 801. SHORT TITLE.

This title may be cited as the ''United States Covered Bond Act''.

SEC. 802. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) ANCILLARY ASSET.—The term ''ancillary asset'' means—

(A) any interest rate or currency swap associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(B) any credit enhancement or liquidity arrangement associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(C) any guarantee, letter-of-credit right, or other secondary obligation that supports any payment or performance of 1 or more eligible assets, substitute assets, or other assets in a cover pool; and

(D) any proceeds of, or other property incident to, 1 or more eligible assets, substitute assets, or other assets in a cover pool.

(2) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) COVER POOL.—The term ''cover pool'' means a dynamic pool of assets that is comprised of—

(A) in the case of any eligible issuer described in subparagraph (A), (B), (C), (D), or (E) of paragraph (9)—

(i) 1 or more eligible assets from a single eligible asset class; and

(ii) 1 or more substitute assets or ancillary assets; and

(B) in the case of any eligible issuer described in paragraph (9)(F)—

(i) the covered bonds issued by each sponsoring eligible issuer; and

(ii) 1 or more substitute assets or ancillary assets.

(4) COVERED BOND.—The term ''covered bond'' means any recourse debt obligation of an eligible issuer that—

(A) has an original term to maturity of not less than 1 year;

(B) is secured by a perfected security interest in or other perfected lien on a cover pool that is owned directly or indirectly by the issuer of the obligation;

(C) is issued under a covered bond program that has been approved by the applicable covered bond regulator;

(D) is identified in a register of covered bonds that is maintained by the Secretary; and

(E) is not a deposit (as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l))).

(5) COVERED BOND PROGRAM.—The term ''covered bond program'' means any program of an eligible issuer under which, on the security of a single cover pool, 1 or more series of covered bonds may be issued.

(6) COVERED BOND REGULATOR.—The term ''covered bond regulator'' means—

(A) for any eligible issuer that is subject to the jurisdiction of an appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the appropriate Federal banking agency;

(B) for any eligible issuer that is described in paragraph (9)(F), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by only 1 eligible issuer, the covered bond regulator for the sponsor;

(C) for any eligible issuer that is described in paragraph (9)(F), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by more than 1 eligible issuer, the covered bond regulator for the sponsor whose covered bonds constitute the largest share of the cover pool of the issuer; and

(D) for any other eligible issuer that is not subject to the jurisdiction of an appropriate Federal banking agency, the Board of Governors of the Federal Reserve System.

(7) ELIGIBLE ASSET.—The term ''eligible asset'' means—

(A) in the case of the residential mortgage asset class—

(i) any first-lien mortgage loan that is secured by 1-to-4 family residential property;

(ii) any mortgage loan that is insured under the National Housing Act (12 U.S.C. 1701 et seq.); and

(iii) any loan that is guaranteed, insured, or made under chapter 37 of title 38, United States Code;

(B) in the case of the commercial mortgage asset class, any commercial mortgage loan (including any multifamily mortgage loan);

(C) in the case of the public sector asset class—

(i) any security issued by a State, municipality, or other governmental authority;

(ii) any loan made to a State, municipality, or other governmental authority; and

(iii) any loan, security, or other obligation that is insured or guaranteed, in full or substantially in full, by the full faith and credit of the United States Government (whether or not such loan, security, or other obligation is also part of another eligible asset class);

(D) in the case of the auto asset class, any auto loan or lease;

(E) in the case of the student loan asset class, any student loan (whether guaranteed or nonguaranteed);

(F) in the case of the credit or charge card asset class, any extension of credit to a person under an open-end credit plan;

(G) in the case of the small business asset class, any loan that is made or guaranteed under a program of the Small Business Administration; and

(H) in the case of any other eligible asset class, any asset designated by the Secretary, by rule and in consultation with the covered bond regulators, as an eligible asset for purposes of such class.

(8) ELIGIBLE ASSET CLASS.—The term ''eligible asset class'' means—

(A) a residential mortgage asset class;

(B) a commercial mortgage asset class;

(C) a public sector asset class;

(D) an auto asset class;

(E) a student loan asset class;

(F) a credit or charge card asset class;

(G) a small business asset class; and

(H) any other eligible asset class designated by the Secretary, by rule and in consultation with the covered bond regulators.

(9) ELIGIBLE ISSUER.—The term ''eligible issuer'' means—

(A) any insured depository institution and any subsidiary of such institution;

(B) any bank holding company, any savings and loan holding company, and any subsidiary of any of such companies;

(C) any broker or dealer that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and is a member of the Securities Investor Protection Corporation, and any subsidiary of such broker or dealer;

(D) any insurer that is supervised by a State insurance regulator, and any subsidiary of such insurer;

(E) any nonbank financial company (as defined in section 102(a)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311(a)(4))) that is supervised by the Board of Governors of the Federal Reserve System under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323), including any intermediate holding company supervised as a nonbank financial company, and any subsidiary of such a nonbank financial company; and

(F) any issuer that is sponsored by 1 or more eligible issuers for the sole purpose of issuing covered bonds on a pooled basis.

(10) OVERSIGHT PROGRAM.—The term ''oversight program'' means the covered bond regulatory oversight program established under section 803(a).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(12) SUBSTITUTE ASSET.—The term ''substitute asset'' means—

(A) cash;

(B) any direct obligation of the United States Government, and any security or other obligation whose full principal and interest are insured or guaranteed by the full faith and credit of the United States Government;

(C) any direct obligation of a United States Government corporation or Government-sponsored enterprise of the highest credit quality, and any other security or other obligation of the highest credit quality whose full principal and interest are insured or guaranteed by such corporation or enterprise, except that the outstanding principal amount of these obligations in any cover pool may not exceed an amount equal to 20 percent of the outstanding principal amount of all assets in the cover pool without the approval of the applicable covered bond regulator;

(D) any other substitute asset designated by the Secretary, by rule and in consultation with the covered bond regulators; and

(E) any deposit account or securities account into which only an asset described in subparagraph (A), (B), (C), or (D) may be deposited or credited.

SEC. 803. REGULATORY OVERSIGHT OF COVERED BOND PROGRAMS ESTABLISHED.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall, by rule and in consultation with the covered bond regulators, establish a covered bond regulatory oversight program that provides for—

(A) covered bond programs to be evaluated according to reasonable and objective standards in order to be approved under paragraph (2), including any additional eligibility standards for eligible assets and any other criteria determined appropriate by the Secretary to further the purposes of this title;

(B) covered bond programs to be maintained in a manner that is consistent with this title and safe and sound asset-liability management and other financial practices; and

(C) any estate created under section 804 to be administered in a manner that is consistent with maximizing the value and the proceeds of the related cover pool in a resolution under this title.

(2) APPROVAL OF EACH COVERED BOND PROGRAM.—

(A) IN GENERAL.—A covered bond shall be subject to this title only if the covered bond is issued by an eligible issuer under a covered bond program that is approved by the applicable covered bond regulator.

(B) APPROVAL PROCESS.—Each covered bond regulator shall apply the standards established by the Secretary under the oversight program to evaluate a covered bond program that has been submitted by an eligible issuer for approval. Each covered bond regulator also shall take into account relevant supervisory factors, including safety and soundness considerations, in evaluating a covered bond program that has been submitted for approval. Each covered bond regulator, promptly after approving a covered bond program, shall provide the Secretary with the name of the covered bond program, the name of the eligible issuer, and all other information reasonably requested by the Secretary in order to update the registry under paragraph (3)(A). Each eligible issuer, promptly after issuing a covered bond under an approved covered bond program, shall provide the Secretary with all information reasonably requested by the Secretary in order to update the registry under paragraph (3)(B).

(C) EXISTING COVERED BOND PROGRAMS.—A covered bond regulator may approve a covered bond program that is in existence on the date of enactment of this Act. Upon such approval, each covered bond under the covered bond program shall be subject to this title, regardless of when the covered bond was issued.

(D) MULTIPLE COVERED BOND PROGRAMS PERMITTED.—An eligible issuer may have more than 1 covered bond program.

(E) CEASE AND DESIST AUTHORITY.—The applicable covered bond regulator may direct an eligible issuer to cease issuing covered bonds under an approved covered bond program if the covered bond program is not maintained in a manner that is consistent with this title and the oversight program and if, after notice that is reasonable under the circumstances, the issuer does not remedy all deficiencies identified by the applicable covered bond regulator.

(F) CAP ON THE AMOUNT OF OUTSTANDING COVERED BONDS.—

(i) IN GENERAL.—With respect to each eligible issuer that submits a covered bond program for approval, the applicable covered bond regulator shall set, consistent with safety and soundness considerations and the financial condition of the eligible issuer, the maximum amount, as a percentage of the eligible issuer's total assets, of outstanding covered bonds that the eligible issuer may issue.

(ii) REVIEW OF CAP.—The applicable covered bond regulator may, not more frequently than quarterly, review the percentage set under clause (i) and, if safety and soundness considerations or the financial condition of the eligible issuer has changed, increase or decrease such percentage. Any decrease made pursuant to this clause shall have no effect on existing covered bonds issued by the eligible issuer.

(3) REGISTRY.—Under the oversight program, the Secretary shall maintain a registry that is published on a Web site available to the public and that, for each covered bond program approved by a covered bond regulator, contains—

(A) the name of the covered bond program, the name of the eligible issuer, and all other information that the Secretary considers necessary to adequately identify the covered bond program and the eligible issuer; and

(B) all information that the Secretary considers necessary to adequately identify all outstanding covered bonds issued under the covered bond program (including the reports described in paragraphs (3) and (4) of subsection (b)).

(4) FEES.—Each covered bond regulator may levy, on the issuers of covered bonds under the primary supervision of such covered bond regulator, reasonably apportioned fees that such covered bond regulator considers necessary, in the aggregate, to defray the costs of such covered bond regulator carrying out the provisions of this title. Such funds shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law.

(b) MINIMUM OVER-COLLATERALIZATION REQUIREMENTS.—

(1) REQUIREMENTS ESTABLISHED.—The Secretary, by rule and in consultation with the covered bond regulators, shall establish minimum over-collateralization requirements for covered bonds backed by each of the eligible asset classes. The minimum over-collateralization requirements shall be designed to ensure that sufficient eligible assets and substitute assets are maintained in the cover pool to satisfy all principal and interest payments on the covered bonds when due through maturity and shall be based on the credit, collection, and interest rate risks (excluding the liquidity risks) associated with the eligible asset class.

(2) ASSET COVERAGE TEST.—The eligible assets and the substitute assets in any cover pool shall be required, in the aggregate, to meet at all times the applicable minimum over-collateralization requirements.

(3) MONTHLY REPORTING.—On a monthly basis, each issuer of covered bonds shall submit a report on whether the cover pool that secures the covered bonds meets the applicable minimum over-collateralization requirements to—

(A) the Secretary;

(B) the applicable covered bond regulator;

(C) the applicable indenture trustee;

(D) the applicable covered bondholders; and

(E) the applicable independent asset monitor.

(4) INDEPENDENT ASSET MONITOR.—

(A) APPOINTMENT.—Each issuer of covered bonds shall appoint the indenture trustee for the covered bonds, or another unaffiliated entity, as an independent asset monitor for the applicable cover pool.

(B) DUTIES.—An independent asset monitor appointed under subparagraph (A) shall, on an annual or other more frequent periodic basis determined by the Secretary under the oversight program—

(i) verify whether the cover pool meets the applicable minimum over-collateralization requirements; and

(ii) report to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders on whether the cover pool meets the applicable minimum over-collateralization requirements.

(C) REMOVAL AND REPLACEMENT.—The independent asset monitor appointed under subparagraph (A) may be removed and replaced—

(i) by a covered bond regulator in any case in which such action is in the best interest of the covered bond investors; and

(ii) by covered bond holders who own a majority of the outstanding principal amount of the covered bonds secured by the applicable cover pool, at any time.

(5) NO LOSS OF STATUS.—Covered bonds shall remain subject to this title regardless of whether the applicable cover pool ceases to meet the applicable minimum over-collateralization requirements.

(6) FAILURE TO MEET REQUIREMENTS.—

(A) IN GENERAL.—If a cover pool fails to meet the applicable minimum over-collateralization requirements, and if the failure is not cured within the time specified in the related transaction documents, the failure shall be an uncured default for purposes of section 804(a).

(B) NOTICE REQUIRED.—An issuer of covered bonds shall promptly give the Secretary and the applicable covered bond regulator written notice if the cover pool securing the covered bonds fails to meet the applicable minimum over-collateralization requirements, if the failure is cured within the time specified in the related transaction documents, or if the failure is not so cured.

(c) REQUIREMENTS FOR ELIGIBLE ASSETS.—

(1) REQUIREMENTS.—

(A) LOANS.—A loan shall not qualify as an eligible asset for so long as the loan is delinquent for more than 60 consecutive days.

(B) SECURITIES.—A security shall not qualify as an eligible asset for so long as the security does not meet any credit-quality requirement under this title.

(C) ORIGINATION.—An asset shall not qualify as an eligible asset if the asset was not originated in compliance with any rule or supervisory guidance of a Federal agency applicable to the asset at the time of origination.

(D) NO DOUBLE PLEDGE.—An asset shall not qualify as an eligible asset for so long as the asset is subject to a prior perfected security interest or other prior perfected lien that has been granted in an unrelated transaction. Nothing in this title shall affect such a prior perfected security interest or other prior perfected lien, and the rights of such lien holders.

(2) FAILURE TO MEET REQUIREMENTS.—Subject to paragraph (1)(D), if an asset in a cover pool does not satisfy any applicable requirement described in paragraph (1) or any other applicable standard or criterion described in this title, the oversight program, or the related transaction documents, the asset shall not qualify as an eligible asset for purposes of the asset coverage test described in subsection (b)(2). A disqualified asset shall remain in the cover pool unless and until removed by the issuer in compliance with the provisions of this title, the oversight program, and the related transaction documents. No disqualified asset may be removed from the cover pool after an estate has been created for the related covered bond program under section 804(b)(1) or 804(c)(2), except in connection with the management of the cover pool under section 804(d)(1)(E).

(d) OTHER REQUIREMENTS.—

(1) BOOKS AND RECORDS OF ISSUER.—Each issuer of covered bonds shall clearly mark its books and records to identify the assets that comprise the cover pool securing the covered bonds.

(2) SCHEDULE OF ELIGIBLE ASSETS AND SUBSTITUTE ASSETS.—Each issuer of covered bonds shall deliver to the applicable indenture trustee and the applicable independent asset monitor, on at least a monthly basis, a schedule that identifies all eligible assets and substitute assets in the cover pool securing the covered bonds.

(3) SINGLE ELIGIBLE ASSET CLASS.—No cover pool described in section 802(3)(A) may include eligible assets from more than 1 eligible asset class. No cover pool described in section 802(3)(B) may include covered bonds backed by more than 1 eligible asset class.

SEC. 804. RESOLUTION UPON DEFAULT OR INSOLVENCY.

(a) UNCURED DEFAULT DEFINED.—For purposes of this section, the term ''uncured default'' means a default on a covered bond that has not been cured within the time, if any, specified in the related transaction documents.

(b) DEFAULT ON COVERED BONDS PRIOR TO CONSERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANKRUPTCY.—

(1) CREATION OF SEPARATE ESTATE.—If an uncured default occurs on a covered bond before the issuer of the covered bond enters conservatorship, receivership, liquidation, or bankruptcy, an estate shall be immediately and automatically created by operation of law and shall exist and be administered separate and apart from the issuer or any subsequent conservatorship, receivership, liquidating agency, or estate in bankruptcy for the issuer or any other assets of the issuer. A separate estate shall be created for each affected covered bond program.

(2) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (1) shall be comprised of the cover pool (including over-collateralization in the cover pool) that secures the covered bond. The cover pool shall be immediately and automatically released to and held by the estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer. The estate shall be fully liable on the covered bond and all other covered bonds and related obligations of the issuer (including obligations under related derivative transactions) that are secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. The estate shall not be liable on any obligation of the issuer that is not secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. No conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer may charge or assess the estate for any claim of the conservator, receiver, liquidating agent, or trustee in bankruptcy or the conservatorship, receivership, liquidating agency, or estate in bankruptcy and may not obtain or perfect a security interest in or other lien on the cover pool to secure such a claim.

(3) RETENTION OF CLAIMS.—Any holder of a covered bond or related obligation for which an estate has become liable under paragraph (2) shall retain a claim against the issuer for any deficiency with respect to the covered bond or related obligation. If the issuer enters conservatorship, receivership, liquidation, or bankruptcy, any contingent claim for such a deficiency shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(4) RESIDUAL INTEREST.—

(A) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (1), a residual interest in the estate shall be immediately and automatically issued by operation of law to the issuer.

(B) NATURE OF RESIDUAL INTEREST.—The residual interest under subparagraph (A) shall—

(i) be an exempted security as described in section 805;

(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and

(iii) be evidenced by a certificate executed by the trustee of the estate.

(5) OBLIGATIONS OF ISSUER.—

(A) IN GENERAL.—After the creation of an estate under paragraph (1), the issuer shall—

(i) transfer to or at the direction of the trustee for the estate all property of the estate that is in the possession or under the control of the issuer, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the estate; and

(ii) at the election of the trustee or a servicer or administrator for the estate, continue servicing the applicable cover pool for 120 days after the creation of the estate in return for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be payable from the estate as an administrative expense.

(B) OBLIGATIONS ABSOLUTE.—Neither the issuer, whether acting as debtor in possession or in any other capacity, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer may disaffirm, repudiate, or reject the obligation to turn over property or to continue servicing the cover pool as provided in subparagraph (A).

(c) DEFAULT ON COVERED BONDS UPON CONSERVATORSHIP, RECEIVERSHIP, LIQUIDATION, OR BANKRUPTCY.—

(1) CORPORATION CONSERVATORSHIP OR RECEIVERSHIP.—

(A) IN GENERAL.—If the Corporation is appointed as conservator or receiver for an issuer of covered bonds before an uncured default results in the creation of an estate under subsection (b), the Corporation as conservator or receiver shall have an exclusive right, during the 1-year period beginning on the date of the appointment, to transfer any cover pool owned by the issuer in its entirety, together with all covered bonds and related obligations that are secured by a perfected security interest in or other perfected lien on the cover pool, to another eligible issuer that meets all conditions and requirements specified in the related transaction documents. The Corporation as conservator or receiver may not remove any asset from the cover pool, except to the extent otherwise agreed by a transferee that has assumed the covered bond program pursuant to subparagraph (C).

(B) OBLIGATIONS DURING 1-YEAR PERIOD.—During the 1-year period described in subparagraph (A), the Corporation as conservator or receiver shall fully and timely satisfy all monetary and nonmonetary obligations of the issuer under all covered bonds and the related transaction documents and shall fully and timely cure all defaults by the issuer (other than its conservatorship or receivership) under the applicable covered bond program, in each case, until the earlier of—

(i) the transfer of the applicable covered bond program to another eligible issuer as provided in subparagraph (A); or

(ii) the delivery to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders of a written notice from the Corporation as conservator or receiver electing to cease further performance under the applicable covered bond program.

(C) ASSUMPTION BY TRANSFEREE.—If the Corporation as conservator or receiver transfers a covered bond program to another eligible issuer within the 1-year period as provided in subparagraph (A), the transferee shall take ownership of the applicable cover pool and shall become fully liable on all covered bonds and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(2) OTHER CIRCUMSTANCES.—An estate shall be immediately and automatically created by operation of law and shall exist and be administered separate and apart from an issuer of covered bonds and any conservatorship, receivership, liquidating agency, or estate in bankruptcy for the issuer or any other assets of the issuer, if—

(A) a conservator, receiver, liquidating agent, or trustee in bankruptcy, other than the Corporation, is appointed for the issuer before an uncured default results in the creation of an estate under subsection (b); or

(B) in the case of the appointment of the Corporation as conservator or receiver as described in paragraph (1)(A), the Corporation as conservator or receiver—

(i) does not complete the transfer of the applicable covered bond program to another eligible issuer within the 1-year period as provided in paragraph (1)(A);

(ii) delivers to the Secretary, the applicable covered bond regulator, the applicable indenture trustee, and the applicable covered bondholders a written notice electing to cease further performance under the applicable covered bond program; or

(iii) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults by the issuer (other than its conservatorship or receivership) under the applicable covered bond program.

A separate estate shall be created for each affected covered bond program.

(3) ASSETS AND LIABILITIES OF ESTATE.—Any estate created under paragraph (2) shall be comprised of the cover pool (including over-collateralization in the cover pool) that secures the covered bonds. The cover pool shall be immediately and automatically released to and held by the estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer. The estate shall be fully liable on the covered bonds and all other covered bonds and related obligations of the issuer (including obligations under related derivative transactions) that are secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. The estate shall not be liable on any obligation of the issuer that is not secured by a perfected security interest in or other perfected lien on the cover pool when the estate is created. No conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer may charge or assess the estate for any claim of the conservator, receiver, liquidating agent, or trustee in bankruptcy or the conservatorship, receivership, liquidating agency, or estate in bankruptcy and may not obtain or perfect a security interest in or other lien on the cover pool to secure such a claim.

(4) CONTINGENT CLAIM.—Any contingent claim against an issuer for a deficiency with respect to a covered bond or related obligation for which an estate has become liable under paragraph (3) shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case for the issuer. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(5) RESIDUAL INTEREST.—

(A) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (2), and regardless of whether any contingent claim described in paragraph (4) becomes fixed or is estimated, a residual interest in the estate shall be immediately and automatically issued by operation of law to the conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer.

(B) NATURE OF RESIDUAL INTEREST.—The residual interest under subparagraph (A) shall—

(i) be an exempted security as described in section 805;

(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and

(iii) be evidenced by a certificate executed by the trustee of the estate.

(6) OBLIGATIONS OF ISSUER.—

(A) IN GENERAL.—After the creation of an estate under paragraph (2), the issuer and its conservator, receiver, liquidating agent, or trustee in bankruptcy shall—

(i) transfer to or at the direction of the trustee for the estate all property of the estate that is in the possession or under the control of the issuer or its conservator, receiver, liquidating agent, or trustee in bankruptcy, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the estate; and

(ii) at the election of the trustee or a servicer or administrator for the estate, continue servicing the applicable cover pool for 120 days after the creation of the estate in return for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be payable from the estate as an administrative expense.

(B) OBLIGATIONS ABSOLUTE.—Neither the issuer, whether acting as debtor in possession or in any other capacity, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer may disaffirm, repudiate, or reject the obligation to turn over property or to continue servicing the cover pool as provided in subparagraph (A).

(d) ADMINISTRATION AND RESOLUTION OF ESTATES.—

(1) TRUSTEE, SERVICER, AND ADMINISTRATOR.—

(A) IN GENERAL.—Upon the creation of any estate under subsection (b)(1) or (c)(2), the applicable covered bond regulator shall—

(i) appoint the trustee for the estate;

(ii) appoint 1 or more servicers or administrators for the cover pool held by the estate; and

(iii) give the Secretary, the applicable indenture trustee, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate.

(B) TERMS AND CONDITIONS OF APPOINTMENT.—All terms and conditions of any appointment under paragraph (1), including the terms and conditions relating to compensation, shall conform to the requirements of this title and the oversight program and otherwise shall be determined by the applicable covered bond regulator.

(C) QUALIFICATION.—The applicable covered bond regulator may require the trustee or any servicer or administrator for an estate to post in favor of the United States, for the benefit of the estate, a bond that is conditioned on the faithful performance of the duties of the trustee or the servicer or administrator. The covered bond regulator shall determine the amount of any bond required under this subparagraph and the sufficiency of the surety on the bond. A proceeding on a bond required under this subparagraph may not be commenced after two years after the date on which the trustee or the servicer or administrator was discharged.

(D) POWERS AND DUTIES OF TRUSTEE.—The trustee for an estate is the representative of the estate and, subject to the provisions of this title, has capacity to sue and be sued. The trustee shall—

(i) administer the estate in compliance with this title, the oversight program, and the related transaction documents;

(ii) be accountable for all property of the estate that is received by the trustee;

(iii) make a final report and file a final account of the administration of the estate with the applicable covered bond regulator; and

(iv) after the estate has been fully administered, close the estate.

(E) POWERS AND DUTIES OF SERVICER OR ADMINISTRATOR.—Any servicer or administrator for an estate—

(i) shall—

(I) collect, realize on (by liquidation or other means), and otherwise manage the cover pool held by the estate in compliance with this title, the oversight program, and the related transaction documents and in a manner consistent with maximizing the value and the proceeds of the cover pool;

(II) deposit or invest all proceeds and funds received in compliance with this title, the oversight program, and the related transaction documents and in a manner consistent with maximizing the net return to the estate, taking into account the safety of the deposit or investment; and

(III) apply, or direct the trustee for the estate to apply, all proceeds and funds received and the net return on any deposit or investment to make distributions in compliance with paragraphs (3) and (4);

(ii) may borrow funds or otherwise obtain credit, for the benefit of the estate, in compliance with paragraph (2) on a secured or unsecured basis and on a priority, pari passu, or subordinated basis;

(iii) shall, at the times and in the manner required by the applicable covered bond regulator, submit to the covered bond regulator, the Secretary, the applicable indenture trustee, the applicable covered bondholders, the owner of the residual interest, and any other person designated by the covered bond regulator, reports that describe the activities of the servicer or administrator on behalf of the estate, the performance of the cover pool held by the estate, and distributions made by the estate; and

(iv) shall assist the trustee in preparing the final report and the final account of the administration of the estate.

(F) SUPERVISION OF TRUSTEE, SERVICER, AND ADMINISTRATOR.—The applicable covered bond regulator shall supervise the trustee and any servicer or administrator for an estate. The covered bond regulator shall require that all reports submitted under subparagraph (E)(iii) do not contain any untrue statement of a material fact and do not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(G) REMOVAL AND REPLACEMENT OF TRUSTEE, SERVICER, AND ADMINISTRATOR.—If the covered bond regulator determines that it is in the best interests of an estate, the covered bond regulator may remove or replace the trustee or any servicer or administrator for the estate. The removal of the trustee or any servicer or administrator does not abate any pending action or proceeding involving the estate, and any successor or other trustee, servicer, or administrator shall be substituted as a party in the action or proceeding.

(H) PROFESSIONALS.—The trustee or any servicer or administrator for an estate may employ 1 or more attorneys, accountants, appraisers, auctioneers, or other professional persons to represent or assist the trustee or the servicer or administrator in carrying out its duties. The employment of any professional person and all terms and conditions of employment, including the terms and conditions relating to compensation, shall conform to the requirements of this title and the oversight program and otherwise shall be subject to the approval of the applicable covered bond regulator.

(I) APPROVED FEES AND EXPENSES.—Unless otherwise provided in the applicable terms and conditions of appointment or employment, all approved fees and expenses of the trustee, any servicer or administrator, or any professional person employed by the trustee or any servicer or administrator shall be payable from the estate as administrative expenses.

(J) ACTIONS BY OR ON BEHALF OF ESTATE.—The trustee or any servicer or administrator for an estate may commence or continue judicial, administrative, or other actions, in the name of the estate or in its own name on behalf of the estate, for the purpose of collecting, realizing on, or otherwise managing the cover pool held by the estate or exercising its other powers or duties on behalf of the estate.

(K) ACTIONS AGAINST ESTATE.—No court may issue an attachment or execution on any property of an estate. Except at the request of the applicable covered bond regulator or as otherwise provided in this subparagraph or subparagraph (J), no court may take any action to restrain or affect the resolution of an estate under this title. No person (including the applicable indenture trustee and any applicable covered bondholder) may commence or continue any judicial, administrative, or other action against the estate, the trustee, or any servicer or administrator or take any other act to affect the estate, the trustee, or any servicer or administrator that is not expressly permitted by this title, the oversight program, and the related transaction documents, except for a judicial or administrative action to compel the release of funds that—

(i) are available to the estate;

(ii) are permitted to be distributed under this title and the oversight program; and

(iii) are permitted and required to be distributed under the related transaction documents and any contracts executed by or on behalf of the estate.

(L) SOVEREIGN IMMUNITY.—Except in connection with a guarantee provided under paragraph (4) or any other contract executed by the applicable covered bond regulator under this section 804, the Secretary and the covered bond regulator shall be entitled to sovereign immunity in carrying out the provisions of this title.

(2) BORROWINGS AND CREDIT.—

(A) IN GENERAL.—Any servicer or administrator for an estate created under subsection (b)(1) or (c)(2) may borrow funds or otherwise obtain credit, on behalf of and for the benefit of the estate, from any person in compliance with this paragraph (2) solely for the purpose of providing liquidity in the case of timing mismatches among the assets and the liabilities of the estate. Except with respect to an underwriter, section 5 of the Securities Act of 1933, the Trust Indenture Act of 1939, and any State or local law requiring registration for an offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in a security does not apply to the offer or sale under this paragraph (2) of a security that is not an equity security.

(B) CONDITIONS.—A servicer or administrator may borrow funds or otherwise obtain credit under subparagraph (A)—

(i) on terms affording the lender only claims or liens that are fully subordinated to the claims and interests of the applicable indenture trustee and the applicable covered bondholders and all other claims against and interests in the estate, except for the residual interest, if the servicer or administrator certifies to the applicable covered bond regulator that, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; or

(ii) on terms affording the lender claims or liens that have priority over or are pari passu with the claims or interests of the applicable indenture trustee or the applicable covered bondholders or other claims against or interests in the estate, if—

(I) the servicer or administrator certifies to the applicable covered bond regulator that, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; and

(II) the applicable covered bond regulator authorizes the borrowing or credit.

(C) LIMITED LIABILITY.—A servicer or administrator shall not be liable for any error in business judgment when borrowing funds or otherwise obtaining credit under this paragraph (2) unless the servicer or administrator acted in bad faith or in willful disregard of its duties.

(D) STUDY ON BORROWINGS AND CREDIT.—The Comptroller General of the United States shall conduct a study on whether the Federal reserve banks should be authorized to lend funds or otherwise extend credit to an estate under this paragraph (2) and, if so, what conditions and limits should be established to mitigate any risk that the United States Government could absorb credit losses on the cover pool held by the estate. The Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study not later than 6 months after the date of enactment of this Act.

(3) DISTRIBUTIONS BY ESTATE.—All payments or other distributions by an estate shall be made at the times, in the amounts, and in the manner set forth in the covered bonds, the related transaction documents, and any contracts executed by or on behalf of the estate in compliance with this title and the oversight program. To the extent that the relative priority of the liabilities of the estate are not specified in or otherwise ascertainable from their terms, distributions shall be made on each distribution date under the covered bonds, the related transaction documents, or any contracts executed by or on behalf of the estate—

(A) first, to pay accrued and unpaid superpriority claims under paragraph (2)(B)(ii);

(B) second, to pay accrued and unpaid administrative expense claims under paragraph (1)(I), paragraph (2)(B)(ii), section 804(b)(5)(A), or section 804(c)(6)(A);

(C) third, to pay—

(i) accrued and unpaid claims under the covered bonds and the related transaction documents according to their terms; and

(ii) accrued and unpaid pari passu claims under paragraph (2)(B)(ii); and

(D) fourth, to pay accrued and unpaid subordinated claims under paragraph (2)(B)(i).

(4) DISTRIBUTIONS ON RESIDUAL INTEREST.—After all other claims against and interests in an estate have been fully and irrevocably paid or defeased, the trustee shall or shall cause a servicer or administrator to distribute the remainder of the estate to or at the direction of the owner of the residual interest. No interim distribution on the residual interest may be made before that time, unless the applicable covered bond regulator—

(A) approves the distribution after determining that all other claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms; and

(B) provides an indemnity, for the benefit of the estate, assuring that all other claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms.

(5) CLOSING OF ESTATE.—After an estate has been fully administered, the trustee shall close the estate and, except as otherwise directed by the applicable covered bond regulator, shall destroy all records of the estate.

(6) NO LOSS TO TAXPAYERS.—Taxpayers shall bear no losses from the resolution of an estate under this title. To the extent that the Secretary and the Corporation jointly determine that the Deposit Insurance Fund incurred actual losses that are higher because the covered bond program of an insured depository institution was subject to resolution under this title rather than as part of the receivership of the institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Corporation may exercise the powers available under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) to recover an amount equal to those losses after consulting with the Secretary.

SEC. 805. SECURITIES LAW PROVISIONS.

(a) SECURITIES LAWS TREATMENT OF COVERED BONDS.—

(1) TREATMENT OF CERTAIN BANKS AND OTHER ENTITIES.—

(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued or guaranteed by a bank under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)), section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)), and section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applicable.

(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o–9).

(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—

(i) issued or guaranteed by a bank; or

(ii) issued by an eligible issuer described in section 802(9)(F) and sponsored solely by 1 or more banks for the sole purpose of issuing covered bonds.

(D) REGULATIONS.—Each covered bond regulator for 1 or more banks shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of covered bonds described in subparagraph (C), which regulations shall—

(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and

(ii) be consistent with existing regulations governing offers or sales of nonconvertible debt.

(2) TREATMENT OF CERTAIN ASSOCIATIONS AND COOPERATIVE BANKS.—

(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued by an entity under section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)), section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)), and section 304(a)(4)(A) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)(A)), as applicable.

(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o–9).

(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—

(i) issued by an entity described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)); or

(ii) issued by an eligible issuer described in section 802(9)(F) and sponsored solely by 1 or more such entities for the sole purpose of issuing covered bonds.

(D) REGULATIONS.—Each covered bond regulator for 1 or more entities described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of covered bonds described in subparagraph (C), which regulations shall—

(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and

(ii) shall be consistent with regulations governing offers or sales of nonconvertible debt.

(3) CONSTRUCTION.—No provision of this title, including paragraph (1) or (2), may be construed or applied in a manner that impairs or limits any other exemption that is available under applicable securities laws.

(b) EXEMPTIONS FOR ESTATES.—Any estate that is or may be created under section 804(b)(1) or 804(c)(2) shall be exempt from all State and Federal securities laws, except that such estate—

(1) shall be subject to all anti-fraud provisions of such securities laws;

(2) shall be subject to the reporting requirements established by the applicable covered bond regulator under section 804(d)(1)(E)(iii); and

(3) shall succeed to any requirement of the issuer to file such periodic information, documents, and reports in respect of the covered bonds, as specified in section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) or rules established by an appropriate Federal banking agency.

(c) EXEMPTIONS FOR RESIDUAL INTERESTS.—Any residual interest in an estate that is or may be created under section 804(b)(1) or 804(c)(2) shall be exempt from all State and Federal securities laws.

SEC. 806. AUTHORITY TO COLLECT FEES FROM FINANCIAL COMPANIES.

(a) IN GENERAL.—On the date immediately preceding the date that is 10 years after the date of enactment of this Act, if the Corporation previously has been appointed under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.) as receiver for a covered financial company with a covered bond program, and if the Secretary and the Corporation have jointly determined that the Orderly Liquidation Fund will incur actual losses

that are higher because of the covered bond program and that have not yet been recovered under subsection (n) or (o) of section 210 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390) or other applicable law, the Corporation may assess and collect from financial companies identified in section 210(o)(1)(D)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(o)(1)(D)(ii)) an amount equal to the cost estimate divided by 0.75.

(b) IMMEDIATE TRANSFER OF FUNDS REQUIRED.—The Corporation immediately transfer funds collected under subsection (a) to the Secretary for credit to the Orderly Liquidation Fund.

(c) REFUNDS.—If, within 180 days of the date of the imposition of fees under subsection (a), the Secretary determines that funds collected under subsection (a) are not needed for or used to repay actual losses incurred by the Orderly Liquidation Fund, as described in subsection (a), the Secretary shall refund the collected funds to the assessed financial companies.

SEC. 807. MISCELLANEOUS PROVISIONS.

(a) DOMESTIC SECURITIES.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(a)(1)) is amended—

(1) in subparagraph (C), by striking ''or'' at the end;

(2) in subparagraph (D), by adding ''or'' at the end; and

(3) by inserting after subparagraph (D) the following:

''(E) covered bonds (as defined in section 802 of the United States Covered Bond Act),''.

(b) NO CONFLICT.—The provisions of this title shall apply, notwithstanding any provision of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), title 11, United States Code, title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), or any other provision of Federal law with respect to conservatorship, receivership, liquidation, or bankruptcy. No provision of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), title 11, United States Code, title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), or any other provision of Federal law with respect to conservatorship, receivership, liquidation, or bankruptcy may be construed or applied in a manner that defeats or interferes with the purpose or operation of this title.

(c) ANNUAL REPORT TO CONGRESS.—The covered bond regulators shall, annually—

(1) submit a joint report to the Congress describing the current state of the covered bond market in the United States; and

(2) testify on the current state of the covered bond market in the United States before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SA 1833. Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Invigorate New Ventures and Entrepreneurs to Succeed Today in America Act of 2012'' or the ''INVEST in America Act of 2012''.

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

TITLE I—SMALL COMPANY CAPITAL FORMATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Small Company Capital Formation Act of 2012''.

SEC. 102. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

(a) IN GENERAL.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking ''(b) The Commission'' and inserting the following:

''(b) ADDITIONAL EXEMPTIONS.—

''(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commission''; and

(2) by adding at the end the following:

''(2) ADDITIONAL ISSUES.—The Commission shall, by rule or regulation, add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

''(A) The aggregate offering amount of all securities offered and sold by the issuer within the preceding 36-month period in reliance on such exemption, including the immediate offering, shall not exceed $50,000,000.

''(B) The securities may be offered and sold publicly.

''(C) The securities shall not be restricted securities, within the meaning of the Federal securities laws and the regulations promulgated thereunder.

''(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities.

''(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

''(F) The Commission shall require the issuer to file audited financial statements with the Commission as part of the offering statement and annually thereafter.

''(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

''(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements and a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

''(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Investor Protection and Securities Reform Act of 2010 (15 U.S.C. 77d note).

''(3) LIMITATION.—Only equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities, may be exempted under a rule or regulation adopted pursuant to paragraph (2).

''(4) PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and

for the protection of investors, the Commission, by rule or regulation, shall require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.''.

(b) TREATMENT AS COVERED SECURITIES FOR PURPOSES OF NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in subparagraph (C), by striking ''; or'' at the end and inserting a semicolon;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) a rule or regulation adopted pursuant to section 3(b)(2), and such security is—

''(i) offered or sold on a national securities exchange; or

''(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale; or''.

(c) CONFORMING AMENDMENT.—Section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)) is amended by striking ''section 3(b)'' and inserting ''section 3(b)(1)''.

SEC. 103. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGULATION A OFFERINGS.

Not later than 3 months after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study on the impact of State laws regulating securities offerings (commonly referred to as ''Blue Sky laws'') on offerings made under Regulation A of the Securities and Exchange Commission (17 C.F.R. 230.251 et seq.); and

(2) transmit a report on the findings of the study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 104. STUDY AND REPORT ON EFFECTS OF EXEMPTION.

The Commission, in consultation with State securities administrators with respect to issues over which they have jurisdiction, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committees on Commerce and Financial Services of the House of Representatives 5 years after the date of enactment of this Act on—

(1) the nature, timing, and extent of offerings and issuances in reliance on the exemption under paragraph (2) of section 3(b) of the Securities Act of 1933, as added by this title, during each year of that 5-year period;

(2) an assessment of the risks posed and protections available to investors related to offerings or issuances under such exemption;

(3) the incidence of errors, omissions, misstatements, or fraud associated with offerings in reliance on such exemption;

(4) the impact of such exemption on capital formation for small businesses;

(5) any adjustments to such exemption necessary to protect investors and promote capital formation;

(6) an analysis of the effectiveness and limitations of the civil liability provisions under the Federal securities laws applicable to offerings and issuances in reliance on such exemption, and to any reports or other filings required to be filed by the issuers of such securities with the Commission; and

(7) such other factors as the Commission determines appropriate for inclusion.

TITLE II—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Reopening American Capital Markets to Emerging Growth Companies Act of 2012''.

SEC. 202. DEFINITIONS.

(a) SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

''(19) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under this title shall continue to be deemed an emerging growth company until the earliest of—

''(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

''(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title occurs;

''(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

''(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating the second paragraph designated as paragraph (77) (relating to asset-backed securities) as paragraph (79); and

(2) by adding at the end the following:

''(80) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under the Securities Act of 1933 shall continue to be deemed an emerging growth company until the earliest of—

''(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

''(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 occurs;

''(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

''(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.''.

(c) OTHER DEFINITIONS.—As used in this title, the following definitions shall apply:

(1) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(2) INITIAL PUBLIC OFFERING DATE.—The term ''initial public offering date'' means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.

(d) EFFECTIVE DATE.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, as added by this section, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before the date of enactment of this Act.

SEC. 203. DISCLOSURE OBLIGATIONS.

(a) FINANCIAL DISCLOSURES.—

(1) SECURITIES ACT OF 1933.—Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)) is amended by adding at the end the following: ''An emerging growth company need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in a registration statement for an initial public offering and in registration statements to be filed with the Commission following an issuer's initial public offering, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any period prior to the earliest audited period presented in connection with its initial public offering.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended by adding at the end the following: ''In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this title or the Securities Act of 1933 (15 U.S.C. 77a et seq.).''.

(b) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations (or any successor thereto), by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to subsection (b). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000.

SEC. 204. INTERNAL CONTROLS AUDIT.

Section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) is amended by inserting '', other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934),'' before ''shall attest to''.

SEC. 205. AUDITING STANDARDS.

Section 103(a)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)(3)) is amended by adding at the end the following:

''(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board requiring mandatory audit firm rotation shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any such additional rules requiring mandatory audit firm rotation that are adopted by the Board after the date of enactment of this

subparagraph shall not apply to an audit of any emerging growth company if the Commission determines that the application of such additional requirements to emerging growth companies is not necessary or appropriate in the public interest.''.

SEC. 206. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES.

(a) PROVISION OF RESEARCH.—Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended by adding at the end the following: ''The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of section 5(c) and paragraph (10) of this subsection not to constitute an offer for sale or offer to sell a security, provided that any research report published or distributed by a broker or dealer that is participating or will participate in the registered offering that is published or distributed in reliance on such exemption complies with such restrictions, disclosure, and filing requirements as the Commission shall determine, including that such research report does not contain any recommendations to purchase or sell such securities. As used in this paragraph, the term 'research report' means a written or electronic communication that includes an analysis of an equity security or an issuer.''

(b) EXPANDING PERMISSIBLE COMMUNICATIONS.—Section 5 of the Securities Exchange Act of 1933 (15 U.S.C. 77e) is amended—

(1) by redesignating subsection (d) as subsection (e); and

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

''(d) LIMITATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers, as such term is defined in section 230.144A of title 17, Code of Federal Regulations (or any successor thereto), to determine whether such investors might have an interest in a contemplated securities offering, prior to the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

''(2) WRITTEN COMMUNICATIONS.—All written communications (as such term is defined in section 203.405 of title 17, Code of Federal Regulations (or any successor thereto)) provided to potential investors in accordance with this subsection shall be—

''(A) filed by the issuer promptly with the Commission by the later of the date of the filing of the registration statement or the date on which the written communication is first used; and

''(B) deemed to be a prospectus for purposes of section 12(a)(2) (15 U.S.C. 77l(a)(2)).''.

SEC. 207. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

(b) SPECIAL RULE.—If an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

(1) shall—

(A) make such choice at the time at which the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934; and

(B) notify the Securities and Exchange Commission of such choice;

(2) may not select some standards to comply with in such manner and not others, but shall comply with all such standards, to the same extent that a non-emerging growth company is required to comply with such standards; and

(3) shall continue to comply with such standards, to the same extent that a non-emerging growth company is required to comply with such standards, for as long as the company remains an emerging growth company.

SEC. 208. REVIEW OF TICK SIZE ON MARKET LIQUIDITY.

Section 11A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)) is amended by adding at the end the following new paragraph:

''(6) TICK SIZE.—

''(A) STUDY AND REPORT.—

''(i) STUDY.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as 'decimalization', which shall examine—

''(I) the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation;

''(II) the impact that such change has had on liquidity for small and middle capitalization company securities; and

''(III) whether there is sufficient economic incentive to support trading operations in these securities in penny increments.

''(ii) REPORT.—Not later than 270 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study required by clause (i).

''(B) DESIGNATION.—If the Commission determines after the study under subparagraph (A) that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after the date of submission of the report under subparagraph (A)(ii), designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.''.

SEC. 209. OTHER MATTERS.

(a) CONFIDENTIAL SUBMISSION.—Section 6 of the Securities Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

''(e) EMERGING GROWTH COMPANIES.—

''(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 30 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations (or any successor thereto).

''(2) CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.

''(3) FEES.—The Commission may assess such fees and charges for the submission of a draft registration statement by an emerging growth company pursuant to this section as the Commission determines to be reasonable. Notwithstanding any other provision of law, such fees and charges shall be available for use by the Commission for the purpose of administering the provisions of this subsection.''.

(b) STUDY AND REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of, and 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 on, the implementation of the provisions of this title, as well as on the state of the public markets for initial public offerings, that includes an evaluation of—

(1) the effect of the framework established under this title on facilitating initial public offerings and, if appropriate, ways to improve such framework; and

(2) the adequacy of safeguards and protections for investors in emerging growth companies and, if appropriate, ways to improve such safeguards and protections.

TITLE III—CROWDFUNDING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012'' or the ''CROWDFUND Act''.

SEC. 302. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:

''(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

''(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

''(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

''(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

''(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

''(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

''(D) the issuer complies with the requirements of section 4A(b).''.

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 4 the following:

"SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

''(a) REQUIREMENTS ON INTERMEDIARIES.—A person engaged in the business of effecting transactions in securities for the account of others pursuant to section 4(6) shall—

''(1) register with the Commission as—

''(A) a broker; or

''(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

''(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);

''(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

''(4) ensure that each investor—

''(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

''(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

''(C) answers questions demonstrating—

''(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

''(ii) an understanding of the risk of illiquidity; and

''(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

''(5) take such measures to reduce the risk of fraud, money laundering, or other misconduct with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

''(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

''(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

''(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

''(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

''(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

''(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

''(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

''(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6), an issuer who offers or sells securities shall—

''(1) be organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

''(2) not be—

''(A) subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78p(d)); or

''(B) treated as—

''(i) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

''(ii) an issuer excluded from the Investment Company Act of 1940 (15 U.S.C. 80a et seq.); or

''(iii) such other company as the Commission, by rule or regulation, determines appropriate;

''(3) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

''(A) the name, legal status, physical address, and website address of the issuer;

''(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

''(C) a description of the business of the issuer and the anticipated business plan of the issuer;

''(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

''(i) $100,000 or less—

''(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

''(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

''(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

''(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

''(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

''(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

''(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

''(H) a description of the ownership and capital structure of the issuer, including—

''(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

''(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

''(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

''(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

''(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

''(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

''(4) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

''(5) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

''(6) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

''(7) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

''(c) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—

''(1) ACTIONS AUTHORIZED.—

''(A) IN GENERAL.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

''(B) LIABILITY.—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

''(2) APPLICABILITY.—An issuer shall be liable in an action under paragraph (1), if the issuer—

''(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

''(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

''(3) DEFINITION.—As used in this subsection, the term 'issuer' includes any person who is a director or partner of the issuer, and

the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

''(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

''(e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—

''(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

''(A) to the issuer of the securities;

''(B) to an accredited investor;

''(C) as part of an offering registered with the Commission; or

''(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

''(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

''(f) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

''(g) CERTAIN CALCULATIONS.—

''(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsections (a)(9) and (b)(2) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

''(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B)(ii) and subsection (a)(9) of this section shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.''.

(c) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the ''Commission'') shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this Act; and

(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) 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—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) 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 offer or sale; or

(ii) 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.

SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

''(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.''.

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

SEC. 304. FUNDING PORTAL REGULATION.

(a) EXEMPTION.—

(1) IN GENERAL.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

''(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

''(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

''(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

''(B) is a member of a national securities association registered under section 15A; and

''(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

''(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term 'broker or dealer' includes a funding portal and the term 'registered broker or dealer' includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.''.

(2) RULEMAKING.—The Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this subsection, not later than 270 days after the date of enactment of this Act.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as amended by title II of this Act, is amended by adding at the end the following:

''(81) FUNDING PORTAL.—The term 'funding portal' means any person engaged in the business of effecting transactions in securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

''(A) offer investment advice or recommendations;

''(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

''(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

''(D) hold, manage, possess, or otherwise handle investor funds or securities; or

''(E) engage in such other activities as the Commission, by rule, determines appropriate.''.

SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following:

''(C) section 4(6);''.

(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) of that Act.

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking ''with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.'' and inserting the following: '', in connection with securities or securities transactions

''(A) with respect to—

''(i) fraud or deceit; or

''(ii) unlawful conduct by a broker or dealer; and

''(B) in connection to a transaction described under section 4(6), with respect to—

''(i) fraud or deceit; or

''(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.''.

(c) NOTICE FILINGS PERMITTED.—Section 18(c)(2) of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is amended by adding at the end the following:

''(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50

percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term 'State' includes the District of Columbia and the territories of the United States.''.

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

''(2) FUNDING PORTALS.—

''(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

''(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

''(C) DEFINITION.—For purposes of this paragraph, the term 'State' includes the District of Columbia and the territories of the United States.''.

(2) STATE FRAUD AUTHORITY.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking ''or dealer'' and inserting '', dealer, or funding portal''.

SEC. 306. REPORTS TO CONGRESS.

(a) IN GENERAL.—The Commission, after consultation with the securities commission (or any agency or office performing like functions) of the States and State attorneys general, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 1 year after the date on which the Commission issues final rules under section 2(c), and every 2 years thereafter through the date that is 7 years after that date of issuance.

(b) REPORTS.—Each report provided pursuant to subsection (a) shall include—

(1) a description of the material risks posed to investors in securities issued pursuant to section 4(6) of the Securities Act of 1933, as added by this title, including risks related to valuations, subsequent corporate actions by the issuer, dilution of ownership interests or rights, and any other risks to investors that the Commission shall determine;

(2) a description of the performance of investments made in securities issued pursuant to that section 4(6), to the extent that such information is available to the Commission;

(3) a description of fraud or misconduct allegations related to issuances made pursuant to that section 4(6), including a description of actions by and complaints to the Commission involving material misstatements, material omissions, or other material problems associated with offerings in reliance on such exemption, provided that the description shall be limited to concluded enforcement actions or information that is otherwise publicly available;

(4) the approximate number of offerings made pursuant to that section 4(6);

(5) a summary of information relating to purchasers of securities offered pursuant to that section 4(6), including investor income and net worth levels, the number of investments in such offerings made by such investors, and the average sizes of such investments, to the extent that such information is available to the Commission;

(6) a summary of information relating to issuers of securities relying on that section 4(6), including their asset sizes, revenues, numbers of investors, and the amounts raised, to the extent that such information is available to the Commission;

(7) a description of any emerging trends in offerings or issuances made pursuant to that section 4(6);

(8) recommendations regarding enhancements, including additional issuer, broker, dealer, or funding portal requirements, regulatory oversight, or disclosures, that may improve protections for investors purchasing securities issued pursuant to that section 4(6); and

(9) any other information that the Commission deems necessary or appropriate.

(c) STATE REPORTS.—

(1) IN GENERAL.—If the securities commission (or any agency or office performing like functions) of a State or State attorney general issues a report in writing to the Commission identifying any emerging trends that have undermined investor protections, or other risks pertaining to investor protection, in offerings or issuances relying upon section 4(6) of the Securities Act of 1933, as added by this title, other than in connection with a review conducted by the Commission pursuant to this section, the Commission shall—

(A) conduct a preliminary review of such report; and

(B) respond in writing to such report, not later than 120 days after the date of receipt of such report, with the results of its preliminary review.

(2) COPIES OF REPORT.—The Commission shall provide a copy of any report of the securities commission (or any agency or office performing like functions) of a State or State attorney general described in paragraph (1) and the response of the Commission to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 90 days after the date on which such response is provided.

(d) DEFINITION OF STATE.—For purposes of this section, the term ''State'' includes and territory of the United States and the District of Columbia.

TITLE IV—EXPORT-IMPORT BANK REAUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Export-Import Bank Reauthorization Act of 2012''.

SEC. 402. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2011'' and inserting ''2015''.

SEC. 403. FOREIGN CREDIT INSURANCE ASSOCIATION.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (F).

SEC. 404. TECHNICAL CORRECTION.

Section 2(b)(2)(B)(ii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by striking subclauses (I), (IV), and (VII) and by redesignating subclauses (II), (III), (V), (VI), (VIII), and (IX) as subclauses (I), (II), (III), (IV), (V), and (VI), respectively.

SEC. 405. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking ''2011'' and inserting ''2015''.

SEC. 406. AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking ''2011,'' at the end of subparagraph (E) and inserting ''2011, $100,000,000,000;''; and

(3) by adding at the end the following:

''(F) during fiscal year 2012, $110,000,000,000;

''(G) during fiscal year 2013, $120,000,000,000;

''(H) during fiscal year 2014, $130,000,000,000; and

''(I) during fiscal year 2015, $140,000,000,000.''.

SEC. 407. DUAL USE EXPORTS.

Section 4 of Public Law 109–438 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking ''2011'' and inserting ''2015''.

SEC. 408. MODIFICATIONS TO PROVISIONS RELATING TO TEXTILES.

(a) REPRESENTATION OF THE TEXTILE INDUSTRY ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(B)) is amended by striking ''and State government'' and inserting ''State government, and the textile industry''.

(b) ANNUAL REPORT REGARDING TEXTILE AND APPAREL GOODS.—Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end the following new subsection:

''(g) TEXTILE AND APPAREL SUPPLY CHAIN FINANCING.—The Bank shall include in its annual report to the Congress—

''(1) a description of the efforts of the Bank to provide financing to the United States textile and apparel industry for exports of textile and apparel goods manufactured in the United States that are used as components in global textile and apparel supply chains; and

''(2) the amount of support the Bank provided for the export of textiles and apparel goods for each of the 3 years preceding the report.''.

SEC. 409. REVIEW AND REPORT ON DOMESTIC CONTENT POLICY.

(a) IN GENERAL.—The Export-Import Bank of the United States shall conduct a review of its domestic content policy for medium- and long-term transactions. The review shall examine and evaluate the effectiveness of the Bank's policy—

(1) in maintaining and creating jobs in the United States; and

(2) in contributing to a stronger national economy through the export of goods and services.

(b) FACTORS TO CONSIDER.—In conducting the review under subsection (a), the Bank shall consider the following:

(1) Whether the domestic content policy accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning, engineering, design, development, production, return on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States.

(2) The ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies and the impact that such financing has in enabling companies with operations in the United States to contribute to a stronger United States economy by increasing employment through the export of goods and services.

(3) The effects of the domestic content policy on the manufacturing and service workforce of the United States.

(4) Any recommendations the members of the Bank's Advisory Committee have regarding the Bank's domestic content policy.

(5) The effect that changes to the Bank's domestic content requirements would have

in providing companies an incentive to create and maintain operations in the United States and to increase jobs in the United States.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Bank shall submit a report on the results of the review conducted under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

SEC. 410. STRATEGIC PLAN.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 408, is further amended by adding at the end the following new subsection:

''(h) STRATEGIC PLAN FOR THE BANK.—

''(1) IN GENERAL.—The Bank shall include in its annual report to the Congress under subsection (a) of this section, not less than every 4 years, beginning in 2012, a 5-year strategic plan that provides—

''(A) a comprehensive mission statement covering the major functions and operations of the Bank;

''(B) general goals and objectives, including outcome-oriented goals, for the major functions of the Bank;

''(C) a description of the Bank's highest-priority goals and how they can be achieved within the 5-year plan period, according to clearly defined milestones; and

''(D) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations;

''(2) PROGRESS.—The progress the Bank is making in meeting the milestones established by the strategic plan shall be updated in each annual report the Bank submits to the Congress.

''(3) AVAILABILITY OF ANNUAL REPORT.—The Bank shall make its annual report available on its public website.''.

SEC. 411. REVIEW AND REPORT ON BANK'S INFORMATION TECHNOLOGY INFRASTRUCTURE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall conduct a review of the Bank's information technology infrastructure and report to Congress on—

(1) how the Bank will modernize and continue to maintain the technology infrastructure, taking into consideration commercially available technologies or other cost-savings measures; and

(2) how modernization, maintenance, and other cost-saving measures will result—

(A) in improved service delivery to customers of the Bank;

(B) in generally improving the Bank's performance; and

(C) in mitigating taxpayer exposure to losses.

SEC. 412. STUDY BY THE COMPTROLLER GENERAL ON RISK MANAGEMENT.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report—

(1) on the financial position of the Bank and the risks it poses for American taxpayers; and

(2) that contains recommendations to the Bank on how to properly account for risk and ensure the solvency of the Bank.

(b) REPORT.—The report submitted under subsection (a) shall evaluate—

(1) the effectiveness of the Bank's risk management;

(2) the adequacy of the Bank's loan loss reserves;

(3) the exposure and potential for exposure to losses from each of the products offered by the Bank;

(4) the overall risk of the Bank's portfolio, taking into account—

(A) market risk;

(B) credit risk;

(C) political risk;

(D) industry-concentration risk;

(E) geographic-concentration risk;

(F) obligor-concentration risk; and

(G) foreign-currency risk;

(5) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (4);

(6) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (4), and how the fees are affected by United States participation in international agreements; and

(7) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (4).

(c) RECOMMENDATIONS AND REPORT BY THE BANK.—If the Bank does not adopt the recommendations provided under subsection (a) by the Comptroller General, the Bank shall submit to Congress, not later than 60 days after the Bank receives the report, a report on why the Bank has not adopted the recommendations.

SEC. 413. RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES.

(a) IN GENERAL.—The Export-Import Bank of the United States should work to increase the export of renewable energy technologies and end-use energy efficiency technologies with a goal of significantly expanding, year-after-year, the Bank's annual aggregate loan, guarantee, and insurance authorizations supporting those technologies.

(b) INCREASED REPORTING REQUIREMENTS.—The Export-Import Bank of the United States shall include in its annual report to the Congress an analysis of any barriers to realizing the Bank's congressional directive to increase the Bank's financing for renewable energy technology and end-use energy efficiency technology and any tools the Bank needs to assist the Bank in overcoming those barriers. The analysis shall include barriers such as—

(1) inadequate staffing;

(2) inadequate financial products;

(3) lack of capital authority; and

(4) limitations imposed by domestic markets.

SEC. 414. TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(3A) TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.—

''(A) PREAPPROVAL NOTICE.—Not later than 14 days before any meeting of the Board of Directors for final approval of a transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under paragraph (3) with respect to the transaction, the Bank shall post a notice on the Bank's website that includes—

''(i) a description of the transaction proposed to be financed;

''(ii) the identities of the obligor, principal supplier, and guarantor involved in the transaction; and

''(iii) a description of any item with respect to which Bank financing is being sought.

''(B) MANNER OF DISCLOSURE.—Any information required to be disclosed under subparagraph (A) shall be disclosed in a manner that does not disclose any information that is confidential or proprietary business information, that would violate section 1905 of title 18, United States Code (commonly referred to as the 'Trade Secrets Act'), or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.

''(C) POST CONSIDERATION.—Not later than 30 days after the final approval of a transaction the value of which exceeds $100,000,000, the Bank shall post a notice on the Bank's website that includes the information required under subparagraph (A) in a manner that complies with subparagraph (B).''.

SEC. 415. ANNUAL COMPETITIVENESS REPORT.

Section 8A(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the end the following:

''(11) CASE PROCESSING.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's processing of transactions, timeliness in reviewing transactions and processing applications, adherence to financial standards, clarity and ease of use of applications, and general customer service during the application and approval process for each of the Bank's major programs.

''(12) OPERATIONS.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's documentation requirements, certifications, and processing of applications for medium- and long-term program transactions compared to the processing of applications by other export credit agencies.

''(13) PROCESS IMPROVEMENT.—A description of the recommendations made by the Bank's Advisory Committee and the advisory committee on Sub-Saharan Africa established under section 2(b)(9)(B) regarding improving the Bank's processing of transactions and customer service. The Bank shall make every reasonable effort to act on the recommendations of the advisory committees and shall include a separate section detailing the actions taken by the Bank to comply with the recommendations.''.

SEC. 416. PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES WITH RESPECT TO IRAN.

(a) PROHIBITION ON FINANCING FOR PERSONS THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVITIES.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, to a person in connection with the exportation of any good or service unless the person makes the certification described in paragraph (2).

(2) CERTIFICATION DESCRIBED.—The certification described in this paragraph is a certification by a person—

(A) that neither the person nor any other person owned or controlled by the person—

(i) engages in any activity described in section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) for which the person may be subject to sanctions under that Act;

(ii) exports sensitive technology, as defined in section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515), to Iran; or

(iii) engages in any activity prohibited by part 560 of title 31, Code of Federal Regulations (commonly known as the ''Iranian Transactions Regulations''), unless the activity is disclosed to the Office of Foreign Assets Control of the Department of the Treasury when the activity is discovered; or

(B) if the person or any other person owned or controlled by the person has engaged in an activity described in subparagraph (A), that—

(i) in the case of an activity described in subparagraph (A)(i)—

(I) the President has waived the imposition of sanctions with respect to the person that engaged in that activity pursuant to section 4(c), 6(b)(5), or 9(c) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(II)(aa) the President has invoked the special rule described in section 4(e)(3) of that Act with respect to the person that engaged in that activity; or

(bb)(AA) the person that engaged in that activity determines, based on its best knowledge and belief, that the person meets the criteria described in subparagraph (A) of such section 4(e)(3) and has provided to the President the assurances described in subparagraph (B) of that section; and

(BB) the Secretary of State has issued an advisory opinion to that person that the person meets such criteria and has provided to the President those assurances; or

(III) the President has determined that the criteria have been met for the exception provided for under section 5(a)(3)(C) of the Iran Sanctions Act of 1996 to apply with respect to the person that engaged in that activity; or

(ii) in the case of an activity described in subparagraph (A)(ii), the President has waived, pursuant to section 401(b)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(b)(1)), the application of the prohibition under section 106(a) of that Act (22 U.S.C. 8515(a)) with respect to that person.

(b) PROHIBITION ON FINANCINGS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, in connection with a financing in which a person that is a borrower or controlling sponsor, or a person that is owned or controlled by such borrower or controlling sponsor, is subject to sanctions under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(c) ADVISORY OPINIONS.—

(1) AUTHORITY.—The Secretary of State is authorized to issue advisory opinions described in subsection (a)(2)(B)(i)(II).

(2) NOTICE TO CONGRESS.—If the Secretary issues an advisory opinion pursuant to paragraph (1), the Secretary shall notify the appropriate congressional committees of the opinion not later than 30 days after issuing the opinion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES; PERSON.—The terms ''appropriate congressional committees'' and ''person'' have the meanings given those terms in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) CONTROLLING SPONSOR.—The term ''controlling sponsor'' means a person providing controlling direct private equity investment (excluding investments made through publicly held investment funds, publicly held securities, public offerings, or similar public market vehicles) in connection with a financing.

TITLE V—SMALL BUSINESS INVESTMENT COMPANIES AND LOAN REFINANCING EXTENSION

SEC. 501. MAXIMUM LEVERAGE UNDER TITLE III OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) AUTHORIZATION.—For fiscal year 2013, the Administrator of the Small Business Administration may make $4,000,000,000 in guarantees of debentures for programs under title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.).

(b) FAMILY OF FUNDS.—Section 303(b)(2)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)(B)) is amended by striking ''$225,000,000'' and inserting ''$350,000,000''

SEC. 502. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.

Section 1122(b) of the Small Business Jobs Act of 2010 (15 U.S.C. 696 note) is amended by striking ''2 years'' and inserting ''3 years''.

TITLE VI—PRIVATE COMPANY FLEXIBILITY AND GROWTH

SEC. 601. SHORT TITLE.

This title may be cited as the ''Private Company Flexibility and Growth Act''.

SEC. 602. THRESHOLD FOR REGISTRATION.

Section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)) is amended by striking ''shall—'' and all that follows through ''register such'' and inserting ''shall, not later than 120 days after the last day of any fiscal year of the issuer on which the issuer has total assets exceeding $10,000,000 and a class of equity securities (other than an exempted security) held of record by 750 persons, register such''.

SEC. 603. TREATMENT OF EMPLOYEE SECURITIES.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: ''For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of the term 'held of record' shall not include, subject to such limitations as the Commission shall determine, securities that are held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from or otherwise not subject to the registration requirements of section 5 of the Securities Act of 1933.''.

SEC. 604. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall, not later than one year after the date of enactment of this Act—

(1) revise its rules at section 240.12g5-1 of title 17, Code of Federal Regulations to implement the amendments made by sections 602 and 603;

(2) adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in a transaction that was exempt from the registration requirements of section 5 of the Securities Act of 1933; and

(3) revise the definition of the term ''held of record'' pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to include beneficial owners of such class of securities.

SEC. 605. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12G5–1.

The Securities and Exchange Commission shall examine its authority to enforce its rules in section 240.12g5-1 of title 17, Code of Federal Regulations, to determine if new enforcement tools are needed to enforce the anti-evasion provision contained in subsection (b)(3) of that rule, and shall, not later than 270 days after the date of enactment of this Act, transmit any recommendations to Congress.

TITLE VII—ACCESS TO CAPITAL FOR JOB CREATORS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Access to Capital for Job Creators Act''.

SEC. 702. MODIFICATION OF EXEMPTION.

(a) MODIFICATION OF RULES.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule or regulation, revise its rules—

(1) to permit the general solicitation of accredited investors, either by adopting a new exemption under the Securities Act of 1933 or by revising its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of that title 17 shall not apply to offers and sales of securities made pursuant to that section 230.506, provided that all purchasers of the securities are accredited investors;

(2) to require the offeror and issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as are determined by the Commission; and

(3) to include the terms and conditions relating to the forms of permissible solicitation and advertising.

(b) OTHER REQUIRED REVISIONS.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that—

(1) securities sold under such revised exemption may not be offered to persons other than qualified institutional buyers; and

(2) that securities are only sold to persons that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers.

(c) RULE OF CONSTRUCTION.—Offers and sales of securities under section 230.506 of title 17, Code of Federal Regulations, as revised by the rules and regulations required by this Act, shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

SA 1834. Mr. REID proposed an amendment to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following new section:

SEC. ___.

This Act shall become effective 7 days after enactment.

SA 1835. Mr. REID proposed an amendment to amendment SA 1834 proposed by Mr. REID to the amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE,

Mr. FRANKEN, Mr. HARKIN, and Mr. DURBIN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''7 days'' and insert ''6 days''.

SA 1836. Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following:

TITLE VIII—EXPORT-IMPORT BANK REAUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Export-Import Bank Reauthorization Act of 2012''.

SEC. 802. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2011'' and inserting ''2015''.

SEC. 803. FOREIGN CREDIT INSURANCE ASSOCIATION.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (F).

SEC. 804. TECHNICAL CORRECTION.

Section 2(b)(2)(B)(ii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by striking subclauses (I), (IV), and (VII) and by redesignating subclauses (II), (III), (V), (VI), (VIII), and (IX) as subclauses (I), (II), (III), (IV), (V), and (VI), respectively.

SEC. 805. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking ''2011'' and inserting ''2015''.

SEC. 806. AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking ''2011,'' at the end of subparagraph (E) and inserting ''2011, $100,000,000,000;''; and

(3) by adding at the end the following:

''(F) during fiscal year 2012, $110,000,000,000;

''(G) during fiscal year 2013, $120,000,000,000;

''(H) during fiscal year 2014, $130,000,000,000; and

''(I) during fiscal year 2015, $140,000,000,000.''.

SEC. 807. DUAL USE EXPORTS.

Section 4 of Public Law 109–438 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking ''2011'' and inserting ''2015''.

SEC. 808. MODIFICATIONS TO PROVISIONS RELATING TO TEXTILES.

(a) REPRESENTATION OF THE TEXTILE INDUSTRY ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(B)) is amended by striking ''and State government'' and inserting ''State government, and the textile industry''.

(b) ANNUAL REPORT REGARDING TEXTILE AND APPAREL GOODS.—Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end the following new subsection:

''(g) TEXTILE AND APPAREL SUPPLY CHAIN FINANCING.—The Bank shall include in its annual report to the Congress—

''(1) a description of the efforts of the Bank to provide financing to the United States textile and apparel industry for exports of textile and apparel goods manufactured in the United States that are used as components in global textile and apparel supply chains; and

''(2) the amount of support the Bank provided for the export of textiles and apparel goods for each of the 3 years preceding the report.''.

SEC. 809. REVIEW AND REPORT ON DOMESTIC CONTENT POLICY.

(a) IN GENERAL.—The Export-Import Bank of the United States shall conduct a review of its domestic content policy for medium- and long-term transactions. The review shall examine and evaluate the effectiveness of the Bank's policy—

(1) in maintaining and creating jobs in the United States; and

(2) in contributing to a stronger national economy through the export of goods and services.

(b) FACTORS TO CONSIDER.—In conducting the review under subsection (a), the Bank shall consider the following:

(1) Whether the domestic content policy accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning, engineering, design, development, production, return on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States.

(2) The ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies and the impact that such financing has in enabling companies with operations in the United States to contribute to a stronger United States economy by increasing employment through the export of goods and services.

(3) The effects of the domestic content policy on the manufacturing and service workforce of the United States.

(4) Any recommendations the members of the Bank's Advisory Committee have regarding the Bank's domestic content policy.

(5) The effect that changes to the Bank's domestic content requirements would have in providing companies an incentive to create and maintain operations in the United States and to increase jobs in the United States.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Bank shall submit a report on the results of the review conducted under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

SEC. 810. STRATEGIC PLAN.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 808, is further amended by adding at the end the following new subsection:

''(h) STRATEGIC PLAN FOR THE BANK.—

''(1) IN GENERAL.—The Bank shall include in its annual report to the Congress under subsection (a) of this section, not less than every 4 years, beginning in 2012, a 5-year strategic plan that provides—

''(A) a comprehensive mission statement covering the major functions and operations of the Bank;

''(B) general goals and objectives, including outcome-oriented goals, for the major functions of the Bank;

''(C) a description of the Bank's highest-priority goals and how they can be achieved within the 5-year plan period, according to clearly defined milestones; and

''(D) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations;

''(2) PROGRESS.—The progress the Bank is making in meeting the milestones established by the strategic plan shall be updated in each annual report the Bank submits to the Congress.

''(3) AVAILABILITY OF ANNUAL REPORT.—The Bank shall make its annual report available on its public website.''.

SEC. 811. REVIEW AND REPORT ON BANK'S INFORMATION TECHNOLOGY INFRASTRUCTURE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall conduct a review of the Bank's information technology infrastructure and report to Congress on—

(1) how the Bank will modernize and continue to maintain the technology infrastructure, taking into consideration commercially available technologies or other cost-savings measures; and

(2) how modernization, maintenance, and other cost-saving measures will result—

(A) in improved service delivery to customers of the Bank;

(B) in generally improving the Bank's performance; and

(C) in mitigating taxpayer exposure to losses.

SEC. 812. STUDY BY THE COMPTROLLER GENERAL ON RISK MANAGEMENT.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report—

(1) on the financial position of the Bank and the risks it poses for American taxpayers; and

(2) that contains recommendations to the Bank on how to properly account for risk and ensure the solvency of the Bank.

(b) REPORT.—The report submitted under subsection (a) shall evaluate—

(1) the effectiveness of the Bank's risk management;

(2) the adequacy of the Bank's loan loss reserves;

(3) the exposure and potential for exposure to losses from each of the products offered by the Bank;

(4) the overall risk of the Bank's portfolio, taking into account—

(A) market risk;

(B) credit risk;

(C) political risk;

(D) industry-concentration risk;

(E) geographic-concentration risk;

(F) obligor-concentration risk; and

(G) foreign-currency risk;

(5) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (4);

(6) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (4), and how the fees are affected by United States participation in international agreements; and

(7) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (4).

(c) RECOMMENDATIONS AND REPORT BY THE BANK.—If the Bank does not adopt the recommendations provided under subsection (a) by the Comptroller General, the Bank shall submit to Congress, not later than 60 days after the Bank receives the report, a report on why the Bank has not adopted the recommendations.

SEC. 813. RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES.

(a) IN GENERAL.—The Export-Import Bank of the United States should work to increase the export of renewable energy technologies and end-use energy efficiency technologies with a goal of significantly expanding, year-after-year, the Bank's annual aggregate loan, guarantee, and insurance authorizations supporting those technologies.

(b) INCREASED REPORTING REQUIREMENTS.—The Export-Import Bank of the United States shall include in its annual report to the Congress an analysis of any barriers to realizing the Bank's congressional directive to increase the Bank's financing for renewable energy technology and end-use energy efficiency technology and any tools the Bank needs to assist the Bank in overcoming those barriers. The analysis shall include barriers such as—

(1) inadequate staffing;

(2) inadequate financial products;

(3) lack of capital authority; and

(4) limitations imposed by domestic markets.

SEC. 814. TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(3A) TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.—

''(A) PREAPPROVAL NOTICE.—Not later than 14 days before any meeting of the Board of Directors for final approval of a transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under paragraph (3) with respect to the transaction, the Bank shall post a notice on the Bank's website that includes—

''(i) a description of the transaction proposed to be financed;

''(ii) the identities of the obligor, principal supplier, and guarantor involved in the transaction; and

''(iii) a description of any item with respect to which Bank financing is being sought.

''(B) MANNER OF DISCLOSURE.—Any information required to be disclosed under subparagraph (A) shall be disclosed in a manner that does not disclose any information that is confidential or proprietary business information, that would violate section 1905 of title 18, United States Code (commonly referred to as the 'Trade Secrets Act'), or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.

''(C) POST CONSIDERATION.—Not later than 30 days after the final approval of a transaction the value of which exceeds $100,000,000, the Bank shall post a notice on the Bank's website that includes the information required under subparagraph (A) in a manner that complies with subparagraph (B).''.

SEC. 815. ANNUAL COMPETITIVENESS REPORT.

Section 8A(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the end the following:

''(11) CASE PROCESSING.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's processing of transactions, timeliness in reviewing transactions and processing applications, adherence to financial standards, clarity and ease of use of applications, and general customer service during the application and approval process for each of the Bank's major programs.

''(12) OPERATIONS.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's documentation requirements, certifications, and processing of applications for medium- and long-term program transactions compared to the processing of applications by other export credit agencies.

''(13) PROCESS IMPROVEMENT.—A description of the recommendations made by the Bank's Advisory Committee and the advisory committee on Sub-Saharan Africa established under section 2(b)(9)(B) regarding improving the Bank's processing of transactions and customer service. The Bank shall make every reasonable effort to act on the recommendations of the advisory committees and shall include a separate section detailing the actions taken by the Bank to comply with the recommendations.''.

SEC. 816. PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES WITH RESPECT TO IRAN.

(a) PROHIBITION ON FINANCING FOR PERSONS THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVITIES.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, to a person in connection with the exportation of any good or service unless the person makes the certification described in paragraph (2).

(2) CERTIFICATION DESCRIBED.—The certification described in this paragraph is a certification by a person—

(A) that neither the person nor any other person owned or controlled by the person—

(i) engages in any activity described in section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) for which the person may be subject to sanctions under that Act;

(ii) exports sensitive technology, as defined in section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515), to Iran; or

(iii) engages in any activity prohibited by part 560 of title 31, Code of Federal Regulations (commonly known as the ''Iranian Transactions Regulations''), unless the activity is disclosed to the Office of Foreign Assets Control of the Department of the Treasury when the activity is discovered; or

(B) if the person or any other person owned or controlled by the person has engaged in an activity described in subparagraph (A), that—

(i) in the case of an activity described in subparagraph (A)(i)—

(I) the President has waived the imposition of sanctions with respect to the person that engaged in that activity pursuant to section 4(c), 6(b)(5), or 9(c) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(II)(aa) the President has invoked the special rule described in section 4(e)(3) of that Act with respect to the person that engaged in that activity; or

(bb)(AA) the person that engaged in that activity determines, based on its best knowledge and belief, that the person meets the criteria described in subparagraph (A) of such section 4(e)(3) and has provided to the President the assurances described in subparagraph (B) of that section; and

(BB) the Secretary of State has issued an advisory opinion to that person that the person meets such criteria and has provided to the President those assurances; or

(III) the President has determined that the criteria have been met for the exception provided for under section 5(a)(3)(C) of the Iran Sanctions Act of 1996 to apply with respect to the person that engaged in that activity; or

(ii) in the case of an activity described in subparagraph (A)(ii), the President has waived, pursuant to section 401(b)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(b)(1)), the application of the prohibition under section 106(a) of that Act (22 U.S.C. 8515(a)) with respect to that person.

(b) PROHIBITION ON FINANCINGS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, in connection with a financing in which a person that is a borrower or controlling sponsor, or a person that is owned or controlled by such borrower or controlling sponsor, is subject to sanctions under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(c) ADVISORY OPINIONS.—

(1) AUTHORITY.—The Secretary of State is authorized to issue advisory opinions described in subsection (a)(2)(B)(i)(II).

(2) NOTICE TO CONGRESS.—If the Secretary issues an advisory opinion pursuant to paragraph (1), the Secretary shall notify the appropriate congressional committees of the opinion not later than 30 days after issuing the opinion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES; PERSON.—The terms ''appropriate congressional committees'' and ''person'' have the meanings given those terms in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) CONTROLLING SPONSOR.—The term ''controlling sponsor'' means a person providing controlling direct private equity investment (excluding investments made through publicly held investment funds, publicly held securities, public offerings, or similar public market vehicles) in connection with a financing.

SA 1837. Mr. REID proposed an amendment to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

At the end, add the following new section:

SEC. ___.

This title shall become effective 5 days after enactment.

SA 1838. Mr. REID proposed an amendment to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

SEC. ___.

This Act shall become effective 3 days after enactment.

SA 1839. Mr. REID proposed an amendment to amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''3 days'' and insert ''2 days''.

SA 1840. Mr. REID proposed an amendment to amendment SA 1839 proposed by Mr. REID to the amendment SA 1838 proposed by Mr. REID to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; as follows:

In the amendment, strike ''2 days'' and insert ''1 day''.

SA 1841. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—FOREIGN EARNINGS REINVESTMENT

SEC. _01. SHORT TITLE.

This title may be cited as the ''Foreign Earnings Reinvestment Act''.

SEC. ___. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM A CONTROLLED FOREIGN CORPORATION.

(a) APPLICABILITY OF PROVISION.—

(1) IN GENERAL.—Subsection (f) of section 965 is amended to read as follows:

''(f) ELECTION; ELECTION YEAR.—

''(1) IN GENERAL.—The taxpayer may elect to apply this section to—

''(A) the taxpayer's last taxable year which begins before the date of the enactment of the Foreign Earnings Reinvestment Act, or

''(B) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

''(C) ELECTION YEAR.—For purposes of this section, the term 'election year' means the taxable year—

''(i) which begins after the date that is one year before the date of the enactment of the Foreign Earnings Reinvestment Act, and

''(ii) to which the taxpayer elects under paragraph (1) to apply this section.''.

(2) CONFORMING AMENDMENTS.—

(A) EXTRAORDINARY DIVIDENDS.—Section 965(b)(2) of such Code is amended—

(i) by striking ''June 30, 2003'' and inserting ''September 30, 2011'', and

(ii) by adding at the end the following new sentence: ''The amounts described in clauses (i), (ii), and (iii) shall not include any amounts which were taken into account in determining the deduction under subsection (a) for any prior taxable year.''.

(B) DETERMINATIONS RELATING TO RELATED PARTY INDEBTEDNESS.—Section 965(b)(3)(B) of such Code is amended by striking ''October 3, 2004'' and inserting ''September 30, 2011''.

(C) APPLICABLE FINANCIAL STATEMENT.—Section 965(c)(1) of such Code is amended by striking ''June 30, 2003'' each place it appears and inserting ''September 30, 2011''.

(D) DETERMINATIONS RELATING TO BASE PERIOD.—Section 965(c)(2) of such Code is amended by striking ''June 30, 2003'' and inserting ''September 30, 2011''.

(b) DEDUCTION INCLUDES CURRENT AND ACCUMULATED FOREIGN EARNINGS.—

(1) IN GENERAL.—Paragraph (1) of section 965(b) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the sum of the current and accumulated earnings and profits described in section 959(c)(3) for the year a deduction is claimed under subsection (a), without diminution by reason of any distributions made during the election year, for all controlled foreign corporations of the United States shareholder.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 965(c) of such Code, as amended by subsection (a), is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5), as paragraphs (1), (2), (3), and (4), respectively.

(B) Paragraph (4) of section 965(c) of such Code, as redesignated by subparagraph (A), is amended to read as follows:

''(4) CONTROLLED GROUPS.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.''.

(c) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (1) of section 965(a) of the Internal Revenue Code of 1986 is amended by striking ''85 percent'' and inserting ''75 percent''.

(2) BONUS DEDUCTION IN SUBSEQUENT TAXABLE YEAR FOR INCREASING JOBS.—Section 965 of such Code is amended by adding at the end the following new subsection:

''(g) BONUS DEDUCTION.—

''(1) IN GENERAL.—In the case of any taxpayer who makes an election to apply this section, there shall be allowed as a deduction for the first taxable year following the election year an amount equal to the applicable percentage of the cash dividends which are taken into account under subsection (a) with respect to such taxpayer for the election year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is the amount which bears the same ratio (not greater than 1) to 10 percent as—

''(A) the excess (if any) of—

''(i) the qualified payroll of the taxpayer for the calendar year which begins with or within the first taxable year following the election year, over

''(ii) the qualified payroll of the taxpayer for calendar year 2010, bears to

''(B) 10 percent of the qualified payroll of the taxpayer for calendar year 2010.''

''(3) QUALIFIED PAYROLL.—For purposes of this paragraph:

''(A) IN GENERAL.—The term 'qualified payroll' means, with respect to a taxpayer for any calendar year, the aggregate wages (as defined in section 3121(a)) paid by the corporation during such calendar year.

''(B) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—

''(i) ACQUISITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer acquires the trade or business of a predecessor, then the qualified payroll of such taxpayer for any calendar year shall be increased by so much of the qualified payroll of the predecessor for such calendar year as was attributable to the trade or business acquired by the taxpayer.

''(ii) DISPOSITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer disposes of a trade or business, then—

''(I) the qualified payroll of such taxpayer for calendar year 2010 shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer, and

''(II) if the disposition occurs after the beginning of the first taxable year following the election year, the qualified payroll of such taxpayer for the calendar year which begins with or within such taxable year shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer.

''(C) SPECIAL RULE.—For purposes of determining qualified payroll for any calendar year after calendar year 2011, such term shall not include wages paid to any individual if such individual received compensation from the taxpayer for services performed—

''(i) after the date of the enactment of this paragraph, and

''(ii) at a time when such individual was not an employee of the taxpayer.''.

(3) REDUCTION FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—Paragraph (4) of section 965(b) of such Code (relating to limitations) is amended to read as follows:

''(4) REDUCTION IN BENEFITS FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—

''(A) IN GENERAL.—If, during the period consisting of the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1) and the succeeding 23 calendar months, the taxpayer does not maintain an average employment level at least equal to the taxpayer's prior average employment, an additional amount equal to $75,000 multiplied by the number of employees by which the taxpayer's average employment level during such period falls below the prior average employment (but not exceeding the aggregate amount allowed as a deduction pursuant to subsection (a)(1)) shall be taken into income by the taxpayer during the taxable year that includes the final day of such period.

''(B) AVERAGE EMPLOYMENT LEVEL.—For purposes of this paragraph, the taxpayer's average employment level for a period shall be the average number of full-time United States employees of the taxpayer, measured at the end of each month during the period.

''(C) PRIOR AVERAGE EMPLOYMENT.—For purposes of this paragraph, the taxpayer's 'prior average employment' shall be the average number of full-time United States employees of the taxpayer during the period consisting of the 24 calendar months immediately preceding the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1).

''(D) FULL-TIME UNITED STATES EMPLOYEE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'full-time United States employee' means an individual who provides services in the United States as a full-time employee, based on the employer's standards and practices; except that regardless of the employer's classification of the employee, an employee whose normal schedule is 40 hours or more per week is considered a full-time employee.

''(ii) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—Such term does not include—

''(I) any individual who was an employee, on the date of acquisition, of any trade or business acquired by the taxpayer during the 24-month period referred to in subparagraph (A), and

''(II) any individual who was an employee of any trade or business disposed of by the taxpayer during the 24-month period referred to in subparagraph (A) or the 24-month period referred to in subparagraph (C).

''(E) AGGREGATION RULES.—In determining the taxpayer's average employment level and prior average employment, all domestic members of a controlled group shall be treated as a single taxpayer.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SA 1842. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VII—LIQUIDITY PROTECTION FOR PRIVATE COMPANIES

SEC. 801. SHORT TITLE.

This title may be cited as the ''Liquidity Protection for Private Companies Act of 2012''.

SEC. 802. CLARIFICATION OF PERMITTED ACTIVITIES FOR MARKET-MAKERS.

Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following:

''(g) PROTECTION OF LIQUIDITY.—Rules issued under this section shall not impede the ability of a regulated firm to provide reasonable liquidity to its clients, customers, or counterparties. Any such rules proposed or promulgated prior to the date of enactment of the Liquidity Protection for Private Companies Act of 2012 shall have no force or effect.''.

SEC. 803. ELIMINATION OF PREFERENTIAL TREATMENT OF U. S. TREASURIES AND MORTGAGE BACKED SECURITIES.

(a) IN GENERAL.—Section 13(d)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(d)(1)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) through (J) as subparagraphs (A) through (I), respectively.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) in subsection (c)(4), by striking ''subsection (d)(1)(G)'' and inserting ''subsection (d)(1)(F)''; and

(2) in subsection (f)—

(A) by striking ''paragraph (d)(1)(G)'' each place that term appears and inserting ''subsection (d)(1)(F)''; and

(B) in paragraph (3)(A)—

(i) in clause (i), by striking ''subsection (d)(1)(G)'' and inserting ''subsection (d)(1)(F)''; and

(ii) in clause (ii), by striking ''subsection (d)(1)(G)(v)'' and inserting ''subsection (d)(1)(F)(v)''.

SA 1843. Mr. MORAN (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—FINANCIAL INSTITUTIONS EXAMINATION FAIRNESS AND REFORM

SEC. 801. SHORT TITLE.

This title may be cited as the ''Financial Institutions Examination Fairness and Reform Act''.

SEC. 802. TIMELINESS OF EXAMINATION REPORTS.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.

''(a) IN GENERAL.—

''(1) FINAL EXAMINATION REPORT.—A Federal financial institutions regulatory agency shall provide a final examination report to a financial institution not later than 60 days after the later of—

''(A) the exit interview for an examination of the institution; or

''(B) the provision of additional information by the institution relating to the examination.

''(2) EXIT INTERVIEW.—If a financial institution is not subject to a resident examiner program, the exit interview shall occur not later than the end of the 9-month period beginning on the commencement of the examination, except that such period may be extended by the Federal financial institutions regulatory agency by providing written notice to the institution and the Office of Examination Ombudsman describing with particularity the reasons that a longer period is needed to complete the examination.

''(b) EXAMINATION MATERIALS.—Upon the request of a financial institution, the Federal financial institutions regulatory agency shall include with the final report under this section an appendix listing all examination or other factual information relied upon by the agency in support of a material supervisory determination.''.

SEC. 803. EXAMINATION STANDARDS.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1013. EXAMINATION STANDARDS.

''(a) IN GENERAL.—In the examination of financial institutions—

''(1) a commercial loan shall not be placed in non-accrual status solely because the collateral for such loan has deteriorated in value;

''(2) a modified or restructured commercial loan shall be removed from non-accrual status if the borrower demonstrates the ability to perform on such loan over a maximum period of 6 months, except that with respect to loans on a quarterly, semiannual, or longer repayment schedule such period shall be a maximum of 3 consecutive repayment periods;

''(3) a new appraisal on a performing commercial loan shall not be required unless an advance of new funds is involved;

''(4) in classifying a commercial loan in which there has been deterioration in collateral value, the amount to be classified shall be the portion of the deficiency relating to the decline in collateral value and repayment capacity of the borrower.

''(b) WELL CAPITALIZED INSTITUTIONS.—The Federal financial institutions regulatory agencies may not require a financial institution that is well capitalized to raise additional capital in lieu of an action prohibited under subsection (a).

''(c) CONSISTENT LOAN CLASSIFICATIONS.—The Federal financial institutions regulatory agencies shall develop and apply identical definitions and reporting requirements for non-accrual loans.''.

(b) DEFINITION OF MATERIAL SUPERVISORY DETERMINATION.—Section 309(f)(1)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806(f)(1)(A)) is amended—

(1) in clause (ii), by striking ''and'' at the end; and

(2) by inserting after clause (iii) the following:

''(iv) any issue specifically listed in an exam report as a matter requiring attention by the institution's management or board of directors; and''.

SEC. 804. EXAMINATION OMBUDSMAN.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1014. OFFICE OF EXAMINATION OMBUDSMAN.

''(a) ESTABLISHMENT.—There is established in the Council an Office of Examination Ombudsman.

''(b) HEAD OF OFFICE.—There is established the position of the Ombudsman, who shall serve as the head of the Office of Examination Ombudsman, and who shall be hired separately by the Council and shall be independent from any member agency of the Council.

''(c) STAFFING.—The Ombudsman is authorized to hire staff to support the activities of the Office of Examination Ombudsman.

''(d) DUTIES.—The Ombudsman shall—

''(1) receive and, at the Ombudsman's discretion, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

''(2) hold meetings, at least once every three months and in locations designed to encourage participation from all sections of the United States, with financial institutions, their representatives, or another entity acting on behalf of such institutions, to discuss examination procedures, examination practices, or examination policies;

''(3) review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

''(4) conduct a continuing and regular program of examination quality assurance for all examination types conducted by the Federal financial institutions regulatory agencies;

''(5) process any supervisory appeal initiated under section 1015 or section 309(e) of the Riegle Community Development and Regulatory Improvement Act of 1994; and

''(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council's recommendations for improvements in examination procedures, practices, and policies.

''(e) CONFIDENTIALITY.—The Ombudsman shall keep confidential all meetings, discussions, and information provided by financial institutions.''.

(b) DEFINITION.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(4) the term 'Ombudsman' means the Ombudsman established under section 1014.''.

SEC. 805. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

''SEC. 1015. RIGHT TO APPEAL BEFORE AN INDEPENDENT ADMINISTRATIVE LAW JUDGE.

''(a) IN GENERAL.—A financial institution shall have the right to appeal a material supervisory determination contained in a final report of examination.

''(b) NOTICE.—

''(1) TIMING.—A financial institution seeking an appeal under this section shall file a written notice with the Ombudsman within 60 days after receiving the final report or examination that is the subject of such appeal.

''(2) IDENTIFICATION OF DETERMINATION.—The written notice shall identify the material supervisory determination that is the subject of the appeal, and a statement of the reasons why the institution believes that the determination is incorrect or should otherwise be modified.

''(3) INFORMATION TO BE PROVIDED TO INSTITUTION.—Any information relied upon by the agency in the final report that is not in the possession of the financial institution may be requested by the financial institution and shall be delivered promptly by the agency to the financial institution.

''(c) HEARING BEFORE INDEPENDENT ADMINISTRATIVE LAW JUDGE.—

''(1) IN GENERAL.—The Ombudsman shall determine the merits of the appeal on the record, after an opportunity for a hearing before an independent administrative law judge.

''(2) HEARING PROCEDURES.—If a hearing is requested by the financial institution, the hearing shall—

''(A) take place not later than 60 days after the notice of the appeal was received by the Ombudsman; and

''(B) be conducted pursuant to the procedures set forth under sections 556 and 557 of title 5, United States Code.

''(3) JUDGE RECOMMENDATION; STANDARD OF REVIEW.—In any hearing under this subsection—

''(A) the administrative law judge shall recommend to the Ombudsman what determination should be made; and

''(B) in making such recommendation, the administrative law judge shall not defer to the opinions of the examiner or agency, but shall independently determine the appropriateness of the agency's decision based upon the relevant statutes, regulations, and other appropriate guidance.

''(d) FINAL DECISION.—A decision by the Ombudsman on an appeal under this section shall—

''(1) be made not later than 60 days after the record has been closed; and

''(2) be final agency action, and shall bind the agency whose supervisory determination was the subject of the appeal and the financial institution making the appeal.

''(e) REPORT.—The Ombudsman shall report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate on actions taken on appeals under this section, including the types of issues that financial institutions have appealed and the results of those appeals. In no case shall such a report contain information about individual financial institutions or any confidential or privileged information shared by financial institutions.

''(f) RETALIATION PROHIBITED.—A Federal financial institutions regulatory agency may not—

''(1) retaliate against a financial institution, including service providers, or any institution-affiliated party, for exercising appellate rights under this section; or

''(2) delay or deny any agency action that would benefit a financial institution or any institution-affiliated party on the basis that an appeal under this section is pending under this section.''.

SEC. 806. ADDITIONAL AMENDMENTS.

(a) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) is amended—

(1) in subsection (a), by inserting after ''appropriate Federal banking agency'' the following: '', the Bureau of Consumer Financial Protection,'';

(2) in subsection (b)—

(A) in paragraph (2), by striking ''the appellant from retaliation by agency examiners'' and inserting ''the insured depository institution or insured credit union from retaliation by an agency referred to in subsection (a)'';

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(C) by striking ''In establishing'' and inserting the following:

''(1) IN GENERAL.—In establishing''; and

(D) by adding at the end the following:

''(2) RETALIATION.—For purposes of this subsection and subsection (e), retaliation includes delaying consideration of, or withholding approval of, any request, notice, or application that otherwise would have been approved, but for the exercise of the institution's or credit union's rights under this section.''; and

(3) in subsection (e)(2)—

(A) in subparagraph (B), by striking ''and'' at the end;

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

(C) by adding at the end the following:

''(D) ensure that appropriate safeguards exist for protecting the insured depository institution or insured credit union from retaliation by any agency referred to in subsection (a) for exercising its rights under this subsection.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)) is amended by inserting ''the Bureau of Consumer Financial Protection,'' before ''any Federal banking agency'' each place that term appears.

(c) FEDERAL CREDIT UNION ACT.—Section 205(j) of the Federal Credit Union Act (12 U.S.C. 1785(j)) is amended by inserting ''the Bureau of Consumer Financial Protection,'' before ''the Administration'' each place that term appears.

(d) TECHNICAL CORRECTIONS.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(1) in section 1003(1) (12 U.S.C. 3302(1)), by striking ''the Office of Thrift Supervision,''; and

(2) in section 1005 (12 U.S.C. 3304), by striking ''One-fifth'' and inserting ''One-fourth''.

SA 1844. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. CLARIFICATION OF QUALIFIED MORTGAGE EXCEPTION.

(a) IN GENERAL.—Section 129C(b) of the Truth in Lending Act (15 U.S.C. 1639c(b)), as added by section 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended—

(1) in the subsection heading, by striking ''PRESUMPTION OF ABILITY TO REPAY'' and inserting ''EXCEPTION FOR QUALIFIED MORTGAGES'';

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

''(1) IN GENERAL.—Subsection (a) shall not apply to a residential mortgage loan that is a qualified mortgage.''; and

(3) in paragraph (3), by amending subparagraph (B) to read as follows:

''(B) LOAN DEFINITION.—The following agencies shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A):

''(i) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

''(ii) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

''(iii) The Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h)).

''(iv) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376).

SA 1845. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REFORM OF PROHIBITION ON SWAP ACTIVITY ASSISTANCE.

Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8305) is amended—

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

''(3) COVERED DEPOSITORY INSTITUTION.—The term 'covered depository institution' means—

''(A) an insured depository institution; and

''(B) a United States uninsured branch or agency of a foreign bank that has a prudential regulator.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''INSURED'' and inserting ''COVERED'';

(B) by striking ''an insured'' and inserting ''a covered'';

(C) by striking ''such insured'' and inserting ''such covered''; and

(D) by striking ''or savings and loan holding company'' and inserting ''savings and loan holding company, or foreign banking organization (as defined in section 211.21(o) of title 12, Code of Federal Regulations (commonly known as 'Regulation K'), or any successor to such regulation)'';

(3) in subsection (e), by striking ''an insured'' and inserting ''a covered'';
(4) in subsection (f)—
(A) by striking ''an insured'' and inserting ''a covered''; and
(B) by striking ''the insured'' each place that term appears and inserting ''the covered'';
(5) in subsection (g), by striking ''insured'' and inserting ''covered''; and
(6) in subsection (m), by striking ''An insured'' and inserting ''A covered''.

SA 1846. Mr. CARDIN (for himself, Ms. LANDRIEU, and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REMOVAL OF SUNSET DATES FOR CERTAIN PROVISIONS OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) MAXIMUM BOND AMOUNT.—Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking ''does not exceed'' and all that follows and inserting ''does not exceed $5,000,000.''.

(b) DENIAL OF LIABILITY.—Section 411(e)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(e)(2)) is amended by striking ''bonds exceeds'' and all that follows and inserting ''bonds exceeds $5,000,000,''.

SA 1847. Mr. REID (for Mr. BOOZMAN (for himself and Mr. PRYOR)) proposed an amendment to the bill H.R. 886, to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service; as follows:

At the end, add the following:

SEC. 8. FINANCIAL ASSURANCES.

The Secretary shall take such actions as may be necessary to ensure that—
(1) minting and issuing coins under this Act will not result in any net cost to the United States Government;
(2) no funds, including applicable surcharges, shall be disbursed to any recipient designated in section 7 until the total cost of designing and issuing all of the coins authorized by this Act (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping) is recovered by the United States Treasury, consistent with sections 5112(m) and 5134(f) of title 31, United States Code.

NOTICE OF HEARING

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, March 22, 2012 at 10 a.m. in SD–430 Dirksen Senate Office Building to conduct a hearing entitled ''Stay-at-Work and Back-to-Work Strategies: Lessons from the Private Sector.''

For further information regarding this meeting, please contact the committee at (202) 228–3453.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to hold a hearing entitled, ''Risk Management and Commodities in the 2012 Farm Bill,'' during the session of the Senate on March 15, 2012, at 9 a.m. in room SH 216 of the Hart Senate Office Building.

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

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 15, 2012, at 9:30 a.m.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works Subcommittee on Clean Air and Nuclear Safety be authorized to meet during the session of the Senate on March 15, 2012, at 10 a.m. in Dirksen 406 to conduct a joint hearing entitled, ''Lessons from Fukushima One Year Later: NRC's Implementation of Recommendations for Enhancing Nuclear Reactor Safety in the 21st Century.''

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

COMMITTEE ON FINANCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on March 15, 2012, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled, ''Russia's WTO Accession—Implications for the United States.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on March 15, 2012, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct a hearing entitled ''Indian Water Rights: Promoting the Negotiation and Implementation of Water Settlements in Indian Country.''

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on March 15, 2012, 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.

SELECT COMMITTEE ON INTELLIGENCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 15, 2012, at 2:30 p.m.

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

SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs' Subcommittee on Housing, Transportation, and Community Development be authorized to meet during the session of the Senate on March 15, 2012, at 2:30 p.m., to conduct a hearing entitled ''Strengthening the Housing Market and Minimizing Losses to Taxpayers.''

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

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Mr. President, I ask unanimous consent that a member of my staff, Lake Dishman, be granted floor privileges for the remainder of the 112th Congress.

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

HALE SCOUTS ACT

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 473.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 473) to provide for the conveyance of approximately 140 acres of land in the Ouachita National Forest in Oklahoma to the Indian Nations Council, Inc., of the Boy Scouts of America, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any related statements be printed in the RECORD.

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

The bill (H.R. 473) was ordered to a third reading, was read the third time, and passed.

UNITED STATES MARSHALS SERVICE 225TH ANNIVERSARY COMMEMORATIVE COIN ACT

Mr. REID. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 886 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows: