

Inhofe	Manchin	Sanders
Inouye	McCaskill	Schumer
Johnson (SD)	Menendez	Shaheen
Kerry	Merkley	Snowe
Kirk	Mikulski	Stabenow
Klobuchar	Murray	Tester
Kohl	Nelson (NE)	Udall (CO)
Landrieu	Nelson (FL)	Udall (NM)
Lautenberg	Pryor	Warner
Leahy	Reed	Webb
Levin	Reid	Whitehouse
Lieberman	Rockefeller	Wyden

## NOT VOTING—2

Burr McCain

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 38, the nays are 60. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is rejected.

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I move to reconsider the vote.

Mr. BLUNT. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 763

The ACTING PRESIDENT pro tempore. There will now be 2 minutes, evenly divided, on amendment No. 763.

The Senator from South Carolina.

Mr. DEMINT. Madam President, 3 million Americans use over-the-counter inhalers to control asthma and other respiratory problems. Three years ago, the EPA came out with a ruling that bans these over-the-counter inhalers which takes effect this—

Mr. ROBERTS. Madam President, I do not think the Senate is in order. This is a very important amendment. I have a bill on this amendment which is the same thing. I would ask for order.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

The Senator from South Carolina.

Mr. DEMINT. The EPA has banned these inhalers, even though they acknowledged negligible impact on the environment. My amendment just keeps this rule from going into effect until the manufacturer can complete its work with the FDA to change its propellant.

Let's allow Americans to continue their quality of life while we solve the problem. We don't need to do that this January. It will be solved without the FDA enforcing this rule.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. This amendment affects the ability of people with asthma to purchase an inhaler that works, and the American Lung Association opposes this amendment. The American Thoracic Society, which is the expert—these are the experts on anything to do with respiratory diseases. There are 150,000 doctors who oppose this amendment.

I am perplexed by it because the reason we want to get away from these CFCs is because Ronald Reagan signed the treaty to do away with them and George W. Bush passed the rule to do away with them.

On behalf of the people who depend on inhalers that work right, that don't

use CFCs, I hope we will stand with the Lung Association and the 150,000 doctors of the Thoracic Society.

I hope we will vote this down.

Mr. DEMINT. Madam President, how much time do I have left?

The ACTING PRESIDENT pro tempore. The Senator from South Carolina has 18 seconds.

Mr. DEMINT. Certainly, there are many doctors who want folks to come in and get prescriptions. There are many manufacturers who make prescription drugs, but let 3 million Americans access these inhalers. They do not cause any problems with the environment. The EPA has recognized it is negligible and the manufacturer will have this worked out over the next few years.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. DEMINT. Madam President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

Mr. KYL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

The result was announced—yeas 44, nays 54, as follows:

## [Rollcall Vote No. 191 Leg.]

## YEAS—44

Alexander	Grassley	Murkowski
Ayotte	Hatch	Nelson (NE)
Barrasso	Heller	Paul
Blunt	Hoeven	Portman
Boozman	Hutchison	Risch
Chambliss	Inhofe	Roberts
Coats	Isakson	Rubio
Coburn	Johanns	Sessions
Cochran	Johnson (WI)	Shelby
Corker	Kirk	Snowe
Cornyn	Kyl	Thune
Crapo	Lee	Toomey
DeMint	Lugar	Vitter
Enzi	McConnell	Wicker
Graham	Moran	

## NAYS—54

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Blumenthal	Johnson (SD)	Reid
Boxer	Kerry	Rockefeller
Brown (MA)	Klobuchar	Sanders
Brown (OH)	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Manchin	Warner
Coons	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feinstein	Merkley	Wyden

## NOT VOTING—2

Burr McCain

The amendment (No. 763) was rejected.

Mr. REID. Madam President, I move to reconsider the vote and to lay that motion on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The motion to lay on the table was agreed to.

Mr. REID. Madam President, it is my understanding that on the next vote scheduled, the Crapo amendment, Senator CRAPO and Senator STABENOW will enter into a colloquy, and I ask unanimous consent that they both be given 2 minutes to explain what this is all about.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Idaho.

## AMENDMENT NO. 814 WITHDRAWN

Mr. CRAPO. Madam President, as the leader has indicated, I will withdraw this amendment at the conclusion of this colloquy, but I want to make sure my colleagues understand what the amendment does.

This amendment prohibits any funds from being used by the CFTC to promulgate any final rules under title VII until the agency substantiates that those rules are economically beneficial, adhere to congressional intent, provide end users with a clear exemption from margin requirements, and set clear bounds on the overseas application of derivatives requirements.

While there is not yet a bipartisan agreement to go forward with this amendment at this time, there is a bipartisan list of issues that regulators need to address. They need to protect end users from burdensome margin requirements. Margin requirements proposed by regulators currently ignore the clear intent of Congress not to impose them on end users. They need to limit the extraterritorial application of title VII per congressional intent in sections 722 and 764. This is also being addressed in the House of Representatives. They need to encourage greater coordination and harmonization between the SEC, the CFTC, and international regulators to seek broad harmonization of cross-border issues, and they need to ensure that the new rules are subject to robust and quantitative assessment of the costs and benefits.

The regulators involved in our rule-making process should know that Congress is going to closely monitor how they proceed, and we expect a change in course. If we don't get that change in course, then we will need to return to this kind of legislation.

I wish to thank Senator STABENOW for working with me. She and many other Senators across the aisle have indicated a willingness to help try to achieve these objectives and to work together to try to make this happen.

With that, I yield my time to Senator STABENOW.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Thank you, Madam President. First I wish to thank my colleague for raising issues of great importance to all of us. Financial regulatory reform is critically important

for our country moving forward. Senator CRAPO and I spoke earlier about this amendment. We have a number of areas of shared concern and I have committed to work with him on these issues.

First and foremost, I agree with my friend from Idaho that we need to protect our manufacturers, our rural co-ops, energy providers, and other companies that use financial products to manage their legitimate business risks. These end users did not cause the financial crisis. So when we passed Wall Street reform, we included protections for them.

We have held several hearings in the Agriculture Committee to reinforce to the regulators that manufacturers and others need to be protected. We will continue to do that oversight.

We certainly agree that as new rules are written, we need have an open and transparent process. I believe the Commodity Futures Trading Commission has created, in fact, an open and transparent process and has worked to improve that process over time. They have held roundtables, sought public comment, and are making changes based on those comments to ensure that the new rules work. But it is important that Congress continues to work with the agencies to get these rules right. We also expect the agencies to work with each other and with their international counterparts. We need to make sure rules are robust and consistent across international borders, avoiding a regulatory race to the bottom while using "mutual recognition" as a guidepost. Most importantly, the agencies need to create these rules in a way that provides businesses with market certainty. To that end, we will be holding another oversight hearing in the next few weeks.

It is important that we continue to urge the regulators to be mindful of the effects that these rules will have on American businesses. It is also important to remember that we passed reform because of the serious consequences of the financial crisis. Millions of families lost their homes, countless businesses shuttered, 8 million jobs lost. We need to ensure that the rules are not written in a way that creates incentives for banks to move their operations overseas to avoid oversight—we share that concern. We definitely need to get the rules right and keep the jobs here in America.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Ms. STABENOW. As I have told my colleague, I will continue to work with him on these important issues.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAPO. Madam President, The amendment prohibits any funds from being used by the CFTC to promulgate any final rules under Title VII until the agency substantiates that those rules are economically beneficial, adheres to congressional intent to pro-

vide end-users with a clear exemption from margin requirements, and sets clear bounds on the overseas application of the derivatives requirements.

While there is not yet bipartisan agreement to go forward with this amendment at this time, there is a bipartisan list of issues that the regulators need to address:

Protect end-users from burdensome margin requirements. Margin requirements proposed by regulators currently ignore the clear intent of Congress not to impose margin on end users.

Limit the extraterritorial application of title VII per Congressional intent in Sections 722 and 764. In the House of Representatives bipartisan legislation was just introduced that sets clear bounds on overseas application of the derivatives requirements, while allowing regulators to stop systematically dangerous transactions intended to evade U.S. requirements.

Encourage greater coordination and harmonization between the SEC, CFTC, and international regulators to seek broad harmonization of cross-border issues.

Ensure new rules are subject to robust and quantitative assessment of costs and benefits.

The regulators involved in the rule-making process should understand that Congress is going to closely monitor how they proceed and we expect a change in course.

If the regulators ignore congressional intent and fail to adequately harmonize their rules with each other and with their foreign counterparts, then it is my intention to revisit this amendment and push for a vote.

Madam President, I ask unanimous consent that my amendment be withdrawn.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEVIN. Madam President, I am pleased that Senator CRAPO has withdrawn his amendment, No. 814. I would have opposed this amendment because it would have brought to a screeching halt the financial reforms Congress recently enacted to end Wall Street abuses, because it would weaken capital and margin requirements to limit risk, and because it would add to the law multiple layers of complexity.

Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act to put a cop back on the Wall Street beat. It ended the decades of deregulation that helped unleash the forces of self-dealing and conflicts of interest that thrust our economy into the recession from which we are still digging out.

The Crapo amendment would have forced the key Federal banking, commodities and securities regulators to stop issuing all regulations to implement the Dodd-Frank law until they issued a host of studies. It would have buried financial reform under an unprecedented regulatory procedure requiring piles of new paperwork. The

new procedures and studies could have required years of additional delay, when Congress has already decided that financial reforms are needed now to protect the public from high risk financial activities. That was reason enough to oppose the Crapo amendment.

Second, the Crapo amendment would have weakened a key set of reforms contained in the Dodd-Frank Act, requiring capital and margin requirements to reduce risk in the shadowy market in derivatives. Now, just as rules requiring increased transparency and accountability are starting to become a reality, some have decided that they prefer the derivatives market the way it was before.

Some too quickly forget exactly why we need transparency, accountability, and reduced risk. So let me remind us all about AIG. A small unit, based in London and buried within the bowels of AIG, nearly brought about the collapse of the firm, and with it, the world economy. They sold a type of derivative called a credit default swap. Lots of them. While they got paid for taking on the risk behind those swaps, they had insufficient reserves to pay off the bets if they lost. Later, when all of those swaps went bad, they simply did not have the funds to pay off their bets. And only AIG knew how much it owed to whom, because the swaps market had no transparency. Federal regulators were prohibited by law from overseeing swaps.

Worse yet, Federal regulators could not just let AIG fail, because the losses to those on the other side of their bets could have brought them down as well. A global nightmare caused by one small unit of one company, allowed to run wild by selling a ton of swaps without the reserves to pay off the bets if they lost. So taxpayers bailed out AIG, and through them, the banks and companies that did business with AIG. If those banks had been allowed to collapse, the financial markets would have frozen. Companies would have been unable to get funds they needed to operate and grow. Families would have been unable to get loans to fund their educations, to buy cars and homes, and live.

The Dodd-Frank Act was designed to prevent that nightmare from happening again. It would institute new capital and margin requirements for swap dealers and other major participants active in the derivative markets. Yet just as we start to restore sanity and put the financial cops back on the Wall Street beat, the Crapo amendment would have stopped the cops from doing their jobs. The amendment would have fundamentally undermined Dodd-Frank in two principal ways. First, it would have delayed any new regulations as already described. Second, the amendment would have carved out vast amounts of derivatives trades from the new protections.

While the amendment was written in a complex way, it seems to prohibit the

CFTC from imposing capital and margin requirements for a whole host of swaps. Let me give you an example. As I understand the amendment, it could have prohibited the CFTC from using any of its funds to regulate derivatives involving at least one party that's a favored entity. Some of the favored entities are even investment firms.

Take, for example, the Hudson CDO that my Subcommittee on Investigations examined. It was a \$2 billion synthetic CDO designed by Goldman Sachs and then turned over to a special purpose investment vehicle set up by Goldman Sachs in the Cayman Islands. That company issued the Hudson credit default swap that allowed Goldman Sachs to bet against the very instrument it had constructed. If one of the purchasers of this bet was a manufacturing firm or some other type of special entity, shouldn't they also be protected?

For the last decade, the CFTC couldn't do anything to regulate swaps because the Commodity Futures Modernization Act explicitly exempted swaps from all government oversight. The Dodd-Frank Act reversed that ill-advised policy by making swaps once again subject to federal regulation and oversight. The Crapo amendment would have restored some of those exemptions and done it in a way that is poorly designed, and could have engendered years of litigation over what it meant.

In short, the Crapo amendment would have delayed important financial reforms, reduced protections against taxpayer bailouts, and crippled the abilities of our regulators to set the new rules of the road. To me, the Crapo amendment had a pretty simple message: return to the financial deregulation that preceded, and contributed to, the financial crisis of the last few years.

I am of the opposite view. I think that the collapse of AIG, Bear Stearns, Lehman Brothers, Merrill Lynch, Washington Mutual, and countless other firms teach us a different lesson. The findings of the bipartisan investigation conducted by the Permanent Subcommittee on Investigations tell a different story. Our financial system needs a cop back on the beat. I am glad that the Crapo amendment has been withdrawn.

Mr. REID. Madam President, I hope everyone just listened to and watched the exemplary way we are ridding ourselves of some of these amendments. We have two more amendments and it would be great if we didn't have to vote on those. I think the explanation given by the two Senators is an indication that progress can be made even without a vote.

I ask unanimous consent, since the amendment next in line is being delayed, that we move to the Coburn amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Oklahoma.

COBURN AMENDMENT NO. 801

Mr. COBURN. Madam President, this is a straightforward amendment on a program that fails 70 percent of the time. We spend \$35 million a year. It has an abject failure rate. Only 30 percent of it results in anything positive happening; 70 percent of the time it does not. The Obama administration and the Bush administration thought this program should be canceled.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Madam President, only \$6 million is provided for this program, but it makes a big difference for small rural communities that are struggling to provide air service. Air service is so important to jobs and economic development in these regions.

It is important to note that there is a requirement for State and local participation in these programs, and that there is a high demand. Nearly 300 communities across this country have benefited from this program since its establishment. Senator HUTCHISON has offered to tighten up the program to meet the concern of the Senator from Oklahoma.

I urge my colleagues to reject the amendment. This is critical to small rural communities.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Madam President, what the Senator from Maine just said is that \$4.2 million is going to be unsuccessful and \$2.8 million might be. The fact is that with a \$1.3 trillion deficit and a \$15 trillion debt, we can't continue to do this no matter how great it sounds when it fails 70 percent of the time.

I ask for the yeas and nays on my amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 41, nays 57, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—41

Alexander	Corker	Johanns
Ayotte	Cornyn	Johnson (WI)
Barrasso	Crapo	Kyl
Bennet	DeMint	Lee
Boozman	Enzi	Lieberman
Brown (MA)	Graham	McCaskill
Carper	Grassley	McConnell
Chambliss	Hatch	Murkowski
Coats	Heller	Paul
Coburn	Inhofe	Portman
Coons	Isakson	Risch

Rubio	Shelby	Udall (CO)
Sessions	Thune	Vitter
Shaheen	Toomey	

NAYS—57

Akaka	Harkin	Murray
Baucus	Hoeben	Nelson (NE)
Begich	Hutchison	Nelson (FL)
Bingaman	Inouye	Pryor
Blumenthal	Johnson (SD)	Reed
Blunt	Kerry	Reid
Boxer	Kirk	Roberts
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Casey	Lautenberg	Snowe
Cochran	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lugar	Udall (NM)
Durbin	Manchin	Warner
Feinstein	Menendez	Webb
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wicker
Hagan	Moran	Wyden

MOTIONS TO RECOMMEND

Burr

McCain

The amendment (No. 701) was rejected.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, I have a motion to recommit at the desk.

The PRESIDING OFFICER. The motion is pending. The Senator has 1 minute.

MOTION TO RECOMMEND

Mr. LEE. Mr. President, I filed this motion to recommit H.R. 2112 with instructions to send this "moneybus" back to the Committee on Appropriations for one simple reason: it spends more for the same set of expenditures in fiscal year 2012 than it did in 2011 to the tune of about \$10 billion.

I understand there are reasons for this excess. I understand when we look at individual components of the 2012 provisions there may be some cuts in there. But the overall picture, the entire pie, is about \$10 billion more than what we had in fiscal year 2011.

Unless we can be open and transparent with the American people and acknowledge the fact that we are, in fact, spending more, I think this is a problem. We have to get the fiscal house in order, and this is how it is perpetuated, when we claim we are cutting when we are, in fact, spending more. That is the reason for this motion to recommit. I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. This motion to recommit purports to set discretionary spending at fiscal year 2011 levels for these three bills. But this motion is extremely misleading because increased mandatory spending included in the three bills—they are not touching that.

Agriculture alone would see a \$7 billion cut due to increases in mandatory programs. If we include the emergency disaster relief, it would force an additional cut of \$3.2 billion. The measure before us is within our 302(b) allocation scored by the CBO and the Senate Budget Committee, and it meets every requirement of the Budget Control Act.

I strongly urge a "no" vote.

Mr. LEE. Mr. President, I ask for the yeas and nays.