

considered yielded back, the bill be read a third time, and the Senate then proceed to vote on passage of the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 41, nays 53, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—41

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Specter
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Kyl	Voinovich
Cornyn	Lieberman	Wicker
Crapo	Martinez	

NAYS—53

Akaka	Gillibrand	Murkowski
Baucus	Hagan	Murray
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burr	Klobuchar	Schumer
Byrd	Kohl	Shaheen
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Lincoln	Udall (NM)
Corker	Lugar	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—5

Conrad	Kennedy	Sessions
Johannis	Landrieu	

The amendment (No. 634) was rejected.

Mr. LAUTENBERG. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 638, WITHDRAWN

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided, prior to a vote in relation to amendment No. 638, offered by the Senator from Idaho, Mr. CRAPO.

The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, this amendment would strike section 626 from the bill. This is a section that gives the Federal Trade Commission

authority to expedite rulemaking over mortgage loans that are now overseen by not only the FTC but Federal banking and credit union regulators. This grant of increased authority to the FTC is not appropriate because we already have Federal regulators over both the banking and credit union industries. I think everyone agrees we do not want to see this extended regulatory authority changed. I have been working with our Banking Committee chairman, Senator DODD, and with Senator DORGAN and Senator INOUE, to see if we can address this.

It is my understanding we have an agreement and Senator DODD will discuss that agreement and enter into a colloquy for the RECORD that will establish that we do not want to change the regulatory authority and the jurisdictional structures we now have for our Federal regulators over our depository institutions, and that we will, in a very expedited manner in the next available option for a legislative vehicle, make statutory changes to correct that. In the meantime we will make it clear the intent of this legislation is not to have the FTC engage in rulemaking that would seek to assert jurisdiction over any of the institutions over which it does not now have authority.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I seek time of my own time. My colleague is exactly right and I thank him immensely for his involvement. We thank Senator INOUE as well as others who were part of this exchange, a colloquy which we will submit for the RECORD, which explains exactly what the Senator from Idaho has described. He has it exactly right. This is an expanded removal of jurisdiction from one area to another. There are a lot of very serious questions raised by it.

Our intent is at the earliest possible time we will have legislation to correct what is in this bill and change that. I thank him for his cooperation on this. I thank Senator INOUE and the staff and other people who could have objected to this. Senator DORGAN and others have had some strong views on this and I am very grateful to him as well, understanding our concerns on this matter. We will have a chance to come back to it. I again thank my colleague who helped us craft this colloquy which allowed us to move beyond this particular point. There may be others who want to object to what we want to do, but we feel strongly about the language of the amendment that Senator CRAPO has crafted here and we will hopefully get to that quickly.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me thank my colleague from Idaho and my colleague from Connecticut. The Federal Trade Commission does not have jurisdiction over FDIC-insured banks. There was no intention in any legislation drafted here to give them that ju-

risdiction and I think this colloquy clarifies that. If there is any lack of clarity going forward, I certainly want to work with my colleagues from Idaho and Connecticut to make certain there is no confusion at all about what this applies to. This does not apply to FDIC-insured banks.

Mr. DODD. Mr. President, I seek clarification from the Senator from North Dakota and the Chairman of the Appropriations Committee about the intent and effect of section 626 of Division D of the bill. Will the Senators confirm that section 626 was designed to enhance the FTC's ability to impose new standards only on those mortgage industry participants that are currently subject to the FTC's rulemaking jurisdiction?

Mr. DORGAN. Yes, that is correct. Section 626 is not intended to alter the allocation of responsibility for the Federal oversight of lenders under current law. The FTC is currently authorized, under the Federal Trade Commission Act, to issue regulations defining unfair and deceptive acts and practices by mortgage industry participants that are regulated at the Federal level by the FTC, such as nonbank mortgage brokers. Section 626 directs the FTC to initiate such a rulemaking within 90 days, using procedures widely used by all agencies under the Administrative Procedure Act, instead of more protracted procedures specified for FTC unfair and deceptive practices rulemaking under section 18 of the FTC Act. Section 626 is not intended to apply to institutions including banks, thrifts and credit unions that are outside the FTC's jurisdiction.

Mr. INOUE. I concur with Senator DORGAN.

Mr. DODD. With respect to the provisions granting the states authority to take enforcement action, is it your intent the states limit their enforcement actions under the new mortgage standards promulgated by the FTC, or under TILA, only to those mortgage industry participants that are not currently supervised by the federal banking agencies or are not Federal credit unions?

Mr. DORGAN. Yes, the Senator from Connecticut is correct. Our intention was to permit state attorneys general to bring civil actions only against mortgage industry participants that are not supervised by the Federal banking agencies or are not Federal credit unions.

Mr. INOUE. Yes, I concur with Senator DODD and Senator DORGAN.

Mr. DODD. I ask the Senators to work with me to add an amendment to the next appropriate legislative vehicle that clarifies the scope of this provision to reflect the gentlemen's intent and that provides appropriate participation by state attorneys general in enforcement of federal mortgage standards.

Mr. DORGAN. I agree, and commit to work with the Senator from Connecticut to clarify this provision as expeditiously as possible on the next appropriate vehicle.

Mr. INOUE. I, too, will work with the Senator to clarify this provision.

Mr. CRAPO. Mr. President, I appreciate the fact that there is consensus that section 626 goes too far and that it is not the intention of the chairman of the Banking Committee and the chairman of the Appropriations Committee to provide the Federal Trade Commission authority in its rulemaking over mortgage loans overseen by the Federal banking and credit union regulators. However, if the intention is merely to expedite the FTC rulemaking process over nonbanks then the language should be clear on that account. Unfortunately, that is not the case.

It is important to remember that once this legislation is signed into law, the FTC is directed to initiate rulemaking within 90 days. Rather than agreeing to clarify this issue at a later point, it is my strong preference that the Senate would have deleted this section and agreed to working out compromise language at a later point. That is what my amendment would have accomplished by striking the section.

Per the colloquy of Senators DODD, INOUE, and DORGAN, I will follow up with the FTC that it is the clear intent of the Senate that the provision does not expand the FTC's regulatory jurisdiction and that the required FTC rulemaking will not attempt to include insured depository institutions. I will also note that there is a bi-partisan agreement that the Senate will shortly take up legislation to clarify the scope of the legislation to that effect. Additionally, in light of the focus by the Federal Reserve Board on mortgage lending, the FTC should be required to consult with the Federal Reserve Board in developing their rule. I would encourage my colleagues to send similar letters to the FTC.

If the initial FTC proposed rule attempts to go beyond this scope, it is my understanding that there is agreement that the Senate would immediately take up legislation and stop that from occurring. It would be a terrible mistake to add another patchwork of conflicting authorities and interpretations of Federal laws for insured depository institutions as it relates to home loans and other types of consumer finance transactions. This type of regulatory uncertainty and complexity will only further complicate the resurrection of our mortgage market, harming consumers who are having a difficult enough time obtaining appropriate mortgage loans.

I intend to closely monitor how the FTC proceeds and work with my colleagues to craft a narrow legislative clarification. If we cannot shortly come to agreement on this front, then I will push for a vote to eliminate this authority in the next appropriate vehicle before the Senate.

With that clarification and explanation, the FTC rulemaking that will be able to proceed under this legislation will not seek to extend to the FDIC depository institutions and credit union regulated institutions, then

I—and our agreement that we would on an expeditious basis statutorily seek to correct that and make that clear in the CONGRESSIONAL RECORD, I ask unanimous consent that the amendment be withdrawn.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

RESTORING NOMINAL DRUG PRICES

Ms. STABENOW. I would like to engage in a colloquy with the chairman of the Committee on Finance, Senator MAX BAUCUS. Senator BAUCUS, I am very pleased to see that the fiscal year 2009 Omnibus appropriations bill corrects an unintended consequence of a provision in the Deficit Reduction Act of 2005, DRA. Section 6001(d) of the DRA, which is Public Law 109-171, caused family planning clinics that do not receive Federal funding and university-based clinics to sustain increases in the price of oral contraceptives as much as tenfold over the past 2 years. This is because drug manufacturers stopped offering discounts to these clinics in response to changes to the Medicaid drug rebate program made by the DRA. While discounts remained perfectly legal, drug companies were concerned about the impact of their Medicaid rebate liability for the continued offering of discounts to certain family planning and college- or university-based clinics. The price increases have put a terrible strain on our country's first line of defense against unintended pregnancies. We have the highest unintended pregnancy rate of any advanced industrial country.

With enactment of this critical legislation, these clinics will once again have access to nominally priced drugs, should private sector manufacturers choose to provide these discounts. This access should begin immediately upon enactment, and manufacturers should feel confident that they can extend discounts to family planning clinics such as Planned Parenthood and college and university clinics without it affecting the rebates they must provide under Federal law to State Medicaid programs.

Mr. BAUCUS. I thank the Senator. I share the Senator's views on this matter. It has taken too long to correct what all parties agree was an unintended outcome of the DRA. I had asked the previous administration to use the discretion provided in the DRA to designate additional health providers as entities to whom the sale of nominally priced drugs is appropriate. The Bush administration chose not to make these designations when it promulgated final regulations on July 17, 2007, and so Congress is acting now to correct this error. The Senate included this provision in last year's Iraq supplemental appropriations bill, but the administration objected to its inclusion so it did not become law.

It is my understanding that, once this provision is enacted into law, drug manufacturers will immediately be able to restore the nominal drug prices they provided to these types of clinics—family planning clinics and college

and university health centers—for decades.

This provision simply restores the original policy in place since the enactment of the Medicaid rebate program in the Omnibus Reconciliation Act of 1990. Then, as now, no administrative action is necessary for manufacturers to commence offering deep discounts to the entities described in this provision.

Ms. STABENOW. I thank the Senator. I hope that the manufacturers will do this and that women will have access to affordable birth control and other critical health services.

TRANSPORTATION FUNDING

Mr. KOHL. Mr. President, I wish today to engage in a colloquy with my colleague, the Senator from Washington and the chairman of the Transportation Appropriations Subcommittee. As the chairman is aware, language was included in the explanatory statement accompanying the bill before us to help address an issue that has plagued the Milwaukee area for several years.

Due to a longstanding dispute between city and county officials, unobligated transportation dollars have lost value with each passing year. In an effort to spend down those funds on much needed transit projects, the report resolves this dispute by dividing the funding. I have spoken with Congressman OBEX, the chairman of the House Appropriations Committee, to confirm the intent of the language included in the explanatory statement. I would ask the Senator from Washington, is it your understanding that it is the expectation of both the House and Senate committees that 60 percent of the funding in question should be made available to the city of Milwaukee for a downtown fixed-rail corridor while 40 percent of the funding should be made available to the county of Milwaukee for energy efficient buses?

Mrs. MURRAY. To the Senator from Wisconsin I would say, yes, that is our expectation.

Mr. KOHL. I thank the chairman of the Transportation Appropriations Subcommittee for her help and for engaging in this colloquy.

Mrs. MURRAY. Mr. President, as chairman of the Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, I rise to clarify an error that we have found in the explanatory materials accompanying H.R. 1105, the Omnibus Appropriations Act. Included within the Transportation-Housing Division of the bill is an appropriation of \$570,000 within the TCSP program for transportation improvement in the Antelope Valley in Lincoln, NE. The attribution table that accompanies the explanatory statement to the bill inadvertently omits the name of the Senate sponsor of that appropriation. Mr. President, the Senate sponsor of the project is my colleague, Senator BEN NELSON.