United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, WEDNESDAY, APRIL 1, 2009 No. 55

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mrs. TAUSCHER).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
April 1, 2009.

I hereby appoint the Honorable ELLEN O. TAUSCHER to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God of all goodness and life, the Holy Scripture teaches the human family that human progress, though it is a blessing, brings also a great temptation.

When there is an imbalance with others on the scale of values, tensions are raised.

When evil becomes mixed with what is good, both individuals and nations can be worried only about their own interests.

In our own day of economic difficulty and uncertainty and world markets, protect us, Lord, and free us from becoming narrow-minded or so frightened that self-interest devours any sense of compassion or concern about others.

May insecurity never rob us of thanksgiving or sharing our blessings.

Before You, all is transparent and accountable, both now and forever.

Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Alabama (Mr. BRIGHT) come forward and lead the House in the Pledge of Allegiance.

Mr. BRIGHT led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to 15 requests for 1-minute speeches on each side of the aisle.

HONORING NOWRUZ

(Mr. HONDA asked and was given permission to address the House for 1 minute.)

Mr. HONDA. Madam Speaker, I rise today to honor Nowruz, a holiday which marks the traditional Iranian new year.

Over 1 million Iranian Americans and the people of Iran celebrated Nowruz on Friday, March 20, and I introduced a resolution which recognizes the cultural and historical significance of Nowruz. It expresses also appreciation to Iranian Americans for their contributions to society and wishes Iranian Americans and the people of Iran a prosperous new year.

I'm proud to represent a civically engaged Iranian American community, and I'd like to commend the initiative and instrumental support given by the Public Affairs Alliance of Iranian Americans and the National Iranian Council, who I have had the pleasure of working with on this resolution.

Once again, Madam Speaker, I rise to honor and celebrate Nowruz.

AUTO PLAN

(Mrs. MILLER of Michigan asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MILLER of Michigan. Madam Speaker, I rise today to let my colleagues know that there is no challenge that we in Michigan cannot handle. So when the administration's auto plan came out this week, and it was announced that some decisions have been made that might mean even tougher times ahead, I knew that we would just do what we have always done: roll up our sleeves and get to work. And that's exactly what we are doing.

Recently, a bipartisan group of us in Congress introduced the CARS Act, which would offer vouchers to Americans to purchase new fuel-efficient cars made in North America, while trading in their old gas guzzlers. I was encouraged to hear the President say this week that he is in favor of such an incentive program.

This ''cash for clunkers'' program is a win-win plan. It gives our auto industry a much-needed boost, it cleans up our environment at the same time, and it does what those in Michigan and this great country have always done. It creates an innovative solution to answer the call of a challenge.

Let's support this plan and continue to work together to create solutions. That is the Michigan way. That is the American way.

CONGRATULATING HARRY N. MIXON ELEMENTARY SCHOOL ON RECEIVING THE ACCELERATED READER RENAISSANCE MASTER SCHOOL AWARD

(Mr. BRIGHT asked and was given permission to address the House for 1 minute.)

Printed on recycled paper.

Mr. BRIGHT. Madam Speaker, this past Friday I had the privilege of attending the Accelerated Reader Renaissance Master School Award ceremony at an elementary school in my district, Harry N. Mixon Elementary School in Ozark, Alabama.

To achieve this award, 90 percent of Mixon Elementary School students had to read and comprehend 90 percent of what they read. On average, students read 92 books each during the school year, and that means the student body read 50,526 books through the course of this year. There are only six other schools in Alabama to win this award, and nationwide only 127 schools achieved this goal out of over 60,000 schools.

It is quite an achievement for the students, Ms. Donna Stark who is the principal, and Mike Lenhart, the superintendent, and the faculty and parents at Mixon elementary, and it was an honor to be part of the ceremony.

By achieving such a high reading level at a young age, the students at Mixon are preparing themselves for future success and setting an example for all young people nationwide.

I would like my congressional colleagues to join me in congratulating the students of Harry N. Mixon Elementary School on this outstanding achievement.

ALL-ABOARD

(Mr. POE of Texas asked and was given permission to address the House for 1 minute.)

Mr. POE of Texas. Madam Speaker, when most people think about taking a cruise, they imagine dream destinations, sunny days, and boatloads of fun. What people don't imagine is that these so-called fun ships are not free from crime. Sometimes American passengers disappear on the high seas or become victims of sexual or physical assault.

You see, American passengers board these ships in U.S. ports and do not realize the ship is likely registered in a foreign country. That means these luxury ships are not required to report crimes to our government unless the crime occurs within U.S. territorial waters. This creates a serious problem for protecting the rights of Americans.

As founder of the Victims Rights Caucus and a former judge, it seems to me Americans should be concerned by the absence of law enforcement on cruise ships, concerned by the lack of duty to report crime and concerned with the sometimes careless way that crime scenes are handled or not handled at all.

Americans should be protected on U.S. soil or on the high seas. Representative MATSUI's Cruise Vessel Safety and Security Act will help protect Americans on cruise ships. It's high time we take back the high seas.

And that's just the way it is.

BUDGET AND FISCAL RESPONSIBILITY

(Mr. WALZ asked and was given permission to address the House for 1 minute.)

Mr. WALZ. Madam Speaker, I rise today to say a few words about our new budget that we'll be debating and voting on this week, and on fiscal responsibility.

This country is in the midst of an economic crisis the likes of which few have ever seen. The Recovery Act this House passed in February was the first major step in our response to that crisis. It cannot be the last. We must not go back on the progress we have begun.

The budget we will consider will address the crisis. It will begin the transformation of our economy so that it emerges stronger than ever, and we will do it in a way that gets us on the path toward fiscal balance. This is an incredibly difficult challenge.

No one likes deficit spending. I come from southern Minnesota, a fiscally conservative place, and it's no accident that we have preserved ourselves from some of the worst excesses of this economy.

But this plan and this budget before us have just the right mix. It invests in key priorities like health care, education, and energy independence to get our economy moving, and it cuts the deficit by two-thirds by 2013. What is not fiscally responsible is to support the same policies that got us into this mess in the first place. That I will not support.

If the alternative to this budget is basically the same plan, tax cuts to the super-rich and no efforts to address health care that we know does not work, that's not fiscal responsibility. That's the height of fiscal irresponsibility.

On the other hand, if this budget will help create the vital economic growth that we have lost, I will support it.

OUR BUDGET MAKES TOUGH, RESPONSIBLE CHOICES

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Madam Speaker, sadly, one of the ways Democrats may choose to trim President Obama's massive borrow-and-spend budget is to sunset middle-class tax cuts. So, after looking over the budget that already borrows too much, spends too much, and taxes too much, they've decided that they will save money by taking tax breaks away from American families.

Republicans believe we should help American families and small businesses keep more of their own money so they can create jobs. We do not balance our budgets on the backs of the American taxpayer. We are promoting the ideals of limited government, being threatened by the massive growth of big government.

Our budget will address national challenges like affordable health care, uncertainty in our dollar and Social Security, as well as high gas and electricity costs. It is a budget that reflects the spirit of responsibility we are seeing from families all across America.

In conclusion, God bless our troops, and we will never forget September the 11th and the global war on terrorism.

INTRODUCTION OF CRUISE VESSEL SECURITY AND SAFETY ACT OF 2009

(Ms. MATSUI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. MATSUI. Madam Speaker, members of the International Cruise Victims are on Capitol Hill this week to raise awareness of cruise safety issues.

Over 13 million Americans will take a cruise this year. However, few passengers are fully aware of the potential for a crime to occur, and those who are victimized often do not know their legal rights and whom to contact for help.

Those who have come to Capitol Hill this week have lost daughters, parents, aunts and husbands, and some were victims of sexual assault or other crimes on the high seas.

Due to the absence of law enforcement officials on ocean voyages, it can be difficult or impossible to properly resolve many of these crimes.

That is why I have introduced the Cruise Vessel Security and Safety Act of 2009 with Senator KERRY. This bill has been informed by three congressional hearings and the stories of the individuals who bravely came forward.

I want to thank Ken Carver, Laurie Dishman and the many others who have come here to bring awareness to this issue.

BUDGET DEBATE 3

(Ms. FOXX asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FOXX. Today, the House will consider whether we put our fiscal house in order or whether we continue the same failed policies of wasteful spending and skyrocketing debt.

We will decide whether we continue the great American tradition of leaving our children a Nation stronger and more prosperous than the one our parents left for us.

The President and Democrats in Washington have proposed a budget that takes this country in the wrong direction. The President proposes many of the same failed policies that caused our economic crisis, a budget that spends too much, taxes too much, and borrows too much.

Our children and grandchildren deserve better. It's time to get our fiscal house in order and make the tough decisions needed to set this country back

on the path of economic growth and fiscal responsibility.

The Republicans will present our budget plan that does just that, a budget plan that curbs spending, keeps taxes low, and tackles our Nation's skyrocketing deficits and debt.

The Congress must reject the President's budget and begin working on behalf of the American people.

CESAR CHAVEZ TRIBUTE

(Mr. BACA asked and was given permission to address the House for 1 minute.)

Mr. BACA. I rise today to commemorate the 82nd birthday of a true American hero, the late Cesar Chavez.

For 10 years, I have fought for a national holiday to honor Cesar Chavez, a man who not only carried the torch for justice and freedom, but was the beacon of hope for thousands without a voice.

As a cofounder and president of United Farm Workers, Cesar used nonviolent tactics to bring attention to the dangerous working conditions in the fields and the plight of exploited farm workers and their right to unionize.

The reach of his accomplishments stretches far beyond the Latino community. The battle for social justice is far from being over. But in the words of Cesar Chavez, ''si se puede!''

During these hard economic times, let us not forget that history teaches us many things. True leaders are those who fight for those without a voice, and he was one that fought for many of those who didn't have voices.

As we approach his birthday, I urge my colleagues to support House Resolution 213, a resolution that educates our youth about Cesar Chavez and his accomplishments and I urge the creation of a national holiday for him.

WHAT DOES RENEWING AMERICA'S PROMISE MEAN?

(Mr. FLEMING asked and was given permission to address the House for 1 minute.)

Mr. FLEMING. Madam Speaker, for the past few months we've heard our liberal colleagues repeatedly talk about renewing America's promise. Is it America's promise to place an insurmountable debt burden on our future generations?

This Congress just passed the largest series of spending bills in American history, and now this administration has unveiled a $3.6 trillion Federal spending plan. The U.S. is facing its largest deficit in history; yet we have placed a mortgage on America's future, and it's up to our children and grandchildren to make the monthly payments.

This budget doubles our debt in 5 years and triples it in 10 years.

My liberal colleagues have fostered in a new era where you can become the head of the IRS without paying your taxes, where pork-laden appropriations bills are done behind closed doors, and massive spending bills are designed in secrecy.

Writing blank checks from an empty bank account appears to be our real promise to America. Promoting a new era of irresponsibility has become this Congress' real agenda.

I will not vote for this budget, as it spends too much, taxes too much, and borrows too much.

□ 1015

HEALTH CARE

(Mr. SIRES asked and was given permission to address the House for 1 minute.)

Mr. SIRES. Madam Speaker, my constituents worry about the rising cost of health care. Today, I rise to let them know we are working to make health care more affordable and accessible.

We already strengthened and improved the State Children's State Insurance Program. Nearly 11 million children will benefit from actions by enrolling them in health insurance programs and expanding access to dental and mental health benefits.

This year, we voted to increase funding for health care information technology, saving billions of dollars and reducing private health insurance premiums for families. We also increased Medicaid funding, protecting coverage for millions of low-income and elderly Americans.

While more needs to be done, that is why I will vote for President Obama's budget. He sets aside more than $630 million over the next 10 years to reform health care, reduce Medicare overpayments to private insurance, and reduce drug prices to rein in high costs that are a drag on our entire economy.

I urge everyone to support this budget.

OBAMA'S BUDGET BORROWING TOO MUCH

(Mrs. McMORRIS RODGERS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. McMORRIS RODGERS. You know, like most moms in this country, I look at my two-year-old and I wonder: What kind of a world will he inherit; who will his friends be; what will his expectations be, what will his dreams be?

Like many middle-class families, I wonder: Will my child enjoy the same freedoms and opportunities that we enjoy today?

When I was born, my share of the national debt was $1,800. Now for my child's generation, it is $30,000 the moment that he's born. It's estimated that that's going to double in his first 5 years—to $60,000.

Government programs can certainly help people, but government programs are not the cornerstone to grow an economy. That happens in the private sector.

We need to be focusing now on what's going to help our small businesses, our mom-and-pop stores, the people on Main Street that are really struggling. That's where economic growth takes place.

So let's make sure that we are leaving our country with freedoms and opportunities for the next generation. And it starts with a budget that's responsible.

SHERIFF PRIBIL

(Mrs. KIRKPATRICK of Arizona asked and was given permission to address the House for 1 minute.)

Mrs. KIRKPATRICK of Arizona. My friend, Bill Pribil, presides as sheriff over Coconino County in Arizona. For 5 years, Bill has successfully navigated the challenges of overseeing law enforcement in a very vast and diverse area, all while keeping our community safe.

Since taking office, Sheriff Pribil has brought a new perspective to the job, having initiated a number of programs in the county to reduce crime. These programs include the Community Emergency Response Team, which provides the community with disaster preparedness and response training; the Exodus Program to reduce recidivism by helping prisoners overcome substance abuse; and the Leadership in Police Organization Program to improve training in his department, which has helped him successfully crack down on meth, drugs, and violent crime.

I congratulate Sheriff Pribil.

TIME TO TAKE RESPONSIBILITY

(Mr. HUNTER asked and was given permission to address the House for 1 minute.)

Mr. HUNTER. I joined the Marine Corps after 9/11, as did thousands of Americans, for one defining reason—so my children wouldn't have to. I went to Iraq twice and Afghanistan once, as thousands of Americans have, so my children and our children wouldn't have to.

It is in that vein that I rise today because it is up to this Congress to make responsible choices so our children are not beset by financial ruin. It is up to us to make good decisions right now in this defining moment in American history so our children can grow up without being punished so that this administration can make short-term gains without making any tough choices.

Tax cuts for the working class; more government responsibility; and less debt, less spending; were all campaign talking points for President Obama and congressional Democrats. That's all they were—talking points.

The buck stops with this budget that is before Congress now. And this budget can make us or break us. It is time we take responsibility for the direction of this country and stop spending.

Just stop spending. No more TARP, no more stimulus, no cap-and-trade tax on small business, no tax on charitable donations, no energy tax on working Americans. Surely, no more burying our children in debt while we spend, tax, and borrow our way into oblivion.

I ask the Democrats in this administration to put the checkbook down.

MYTH: MOST INDIVIDUALS WITHOUT HEALTH INSURANCE DON'T HAVE IT BECAUSE THEY DON'T WANT IT

(Mr. MURPHY of Connecticut asked and was given permission to address the House for 1 minute.)

Mr. MURPHY of Connecticut. Another health care myth—and we've heard it all before: opponents of health care reform claim that, of the 45 million uninsured, many don't have health care insurance because they just don't want it. So no need to reform the health insurance system—everybody who wants it already has it.

So who are these people who just don't want health care insurance? Well, according to a 2008 Kaiser study, 68 percent of the Nation's uninsured were under 200 percent of the Federal poverty guidelines—or making under $44,000 a year for a family of four. Of those, 37 percent were actually living in poverty—making under $22,000 a year.

These are families that cannot afford health insurance. For a family living at the poverty line, health insurance could cost them up to half of their income.

Sure, there are some amongst the uninsured who simply choose to pay their own way. But there are many more who are employed, who are playing by the rules, who want health care insurance but just can't cut out those frivolous things like food and clothes to pay the premium.

RESPONSIBILITY

(Mr. CHAFFETZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHAFFETZ. Life, liberty and the pursuit of happiness: that is what the American Dream is all about. It's been the American entrepreneur, it's the American family, it's the individual who starts and wants to build their own business that's going to drive this country and this economy forward. It's not Big Government that's going to get us out of this. It's going to be the American family and the American entrepreneur.

I look at the President's budget, what the Democrats are proposing and, quite frankly, it spends too much, it taxes too much, and it borrows too much. We will literally double the debt in this country that will be paid at some point by our kids and our grandkids.

We have an opportunity to reject the overspending; we have an opportunity to reject the idea that we are going to continue to run this government on a credit card. That's why I urge my colleagues to look very strongly at this budget and just say ''no.''

We can no longer afford to continue to spend the way Washington, DC, spends. We need to operate this country in a fiscally disciplined manner. That's why I encourage my colleagues to look strongly at the Republican alternative, because in that budget you will see responsibility.

STRUGGLE AGAINST VIOLENT EXTREMISM

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Madam Speaker, a couple of recent Washington Post headlines deserve mentioning on the House floor. The first was on March 16, where the Red Cross Confirmed that the United States Violated International Laws Against Torture.

Last Sunday's article points out that that torture policy applied to an individual by the name of Abu Zubaida sent our government officials on any number of false leads. It produced no reliable information. It turns out that that suspect, Abu Zubaida, wasn't even an official member of al Qaeda. He told our professional interrogators what he knew to be true, until—under pressure from the Cheney White House to torture him—he sent our government on any number of false leads. As usual, people being tortured tell you what they know that you want to hear in order to stop the torture.

The point for the Congress to act on is that if we are ever going to prevail in our struggle against violent extremism, we need to stand up for America's defining principles of equal justice under the law. We have to hold those people accountable who pressured and enabled American government officials to perform actions that were counterproductive to our national security, that were illegal, and were immoral, and thus were anti-American. Only through such judicial accountability can we regain the moral high ground and once again lead the world by practicing what our founders preached.

COVER THE UNINSURED WEEK

(Mr. BARROW asked and was given permission to address the House for 1 minute.)

Mr. BARROW. Madam Speaker, I rise today to call attention to the rising number of uninsured in America. Right now, nearly 50 million Americans have no health insurance. That is nearly one in six. One in six.

These aren't just numbers on a page. This has real effects on the rest of us, because when millions of Americans who have no health insurance get sick enough, they end up in the emergency room of the nearest hospital. But the care they get there costs six times as much as preventive care—and is far less effective.

Those of us who pay the full cost of our health care end up picking up the tab for the care we provide the uninsured in the emergency room. That's just one reason we as a Nation pay far more for health care than we get back in return. In fact, on average, every American spends about $900 each year to pay the cost of treating the uninsured badly. That is pure waste.

There are some good signs coming out of the current health care debate. Congress and this President have already extended health coverage to an additional 4 million children this year by enacting a bipartisan expansion of the State Children's Health Insurance Program.

We waited too long to address this problem. We've paid a huge price by not confronting it sooner. I look forward to working with the President and my colleagues on commonsense solutions that will extend coverage to all Americans.

HOUSING CRISIS IN THE CENTRAL VALLEY

(Mr. CARDOZA asked and was given permission to address the House for 1 minute.)

Mr. CARDOZA. I rise today to remind my colleagues that the housing crisis continues to devastate across this country. My constituents in Merced, California, near my hometown of Atwater, are suffering from 19.9 percent unemployment, the highest rate of foreclosures in the Nation, and a 70 percent loss of their home equity over the last 3 years.

They have seen their community banks fail and their businesses on Main Street close their doors for good. Simply put, the Central Valley is experiencing an economic tsunami that will leave the Central Valley struggling for many years.

That is why I'm working on legislation to devise an Economic Disaster Area designation—so places like my district, whose communities have been disproportionately affected by the country's recession, can receive additional Federal funding they need to keep from falling off the maps.

I'm asking my colleagues to support me in my efforts to create this Economic Disaster Area designation and to help my constituents and the entire Central Valley recover from this economic downturn.

WE ARE GOING TO RECOVER

(Ms. CASTOR of Florida asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CASTOR of Florida. Madam Speaker, the economic recovery plan signed by President Obama is saving and creating jobs all across the country. It was just signed into law 6 weeks

ago, but millions of jobs are being created, including in my community in Tampa, Florida.

Monday, in the Tampa Bay area, we announced that we are going to draw down over $3.5 million for our community health centers to hire new doctors, nurses, and medical professionals that will be able to serve more patients in an affordable way. This is happening all across our country.

In addition, we expect additional dollars to put folks back to work constructing community health centers across this country in just a matter of weeks.

The economic recovery plan is working. We are going to recover and America will be stronger than ever before.

□ 1030

AMENDMENT TO H.R. 1664

(Mrs. DAHLKEMPER asked and was given permission to address the House for 1 minute.)

Mrs. DAHLKEMPER. Madam Speaker, I rise today on behalf of the hard-working families of my district in the State of Pennsylvania who have been hit especially hard by the economic downturn. Across my district, paychecks just don't seem to stretch as far to buy groceries and to pay the utility bills. Many have had to take a pay cut simply to keep their job.

Madam Speaker, my constituents are struggling just to make ends meet, and they are sick and tired of seeing their hard-earned tax dollars go to pay the excessive bonuses at companies like AIG. However, I have good news for those who want to put an end to this shameless practice. Today, my colleagues on both sides of the aisle have an opportunity to support my amendment to H.R. 1664.

The purpose of my amendment is to close any loopholes and to make it crystal clear that excessive taxpayer-funded bonuses are absolutely not allowed, regardless of when the executive worked at the company. Let me repeat that. It does not matter when the executive was employed at the company, it does not matter what the official name of the bonus is called; all excessive bonuses at taxpayer expense are prohibited.

Madam Speaker, I came to Congress to represent my constituents on Main Street, not the corporate executives on Wall Street. That is why I voted against the Wall Street bailout, and that is why I am offering my amendment today, to protect taxpayer dollars and hold Wall Street executives accountable.

THE RESTORATION BUDGET

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute.)

Ms. JACKSON-LEE of Texas. Madam Speaker, today we will begin an historic opportunity to address the budget of this country, which I call the restoration budget.

There may be a number of perspectives from the White House, from this Congress, both House and Senate. But I am delighted that many of us have organized to support basic principles of reducing the deficit. The congressional progressive budget does it at 58 percent. Or, focusing on enhancing the opportunities of health for all; or, providing additional stimulus money of $300 billion; looking at the issues of global warming and energy independence; and fully funding elementary and secondary education, ideas that permeate throughout the various discussions and budgets that you will see here today, particularly as we in the majority lead.

Our principles are equality for all, putting the economy back on its feet, and putting the economic engine back in the hands of America, educating them, extinguishing poverty. I am very proud that we will have the opportunity to serve America.

PROVIDING FOR CONSIDERATION OF H. CON. RES. 85, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010

Mr. MCGOVERN. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 305 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 305

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the concurrent resolution (H. Con. Res. 85) setting forth the congressional budget for the United States Government for fiscal year 2010 and including the appropriate budgetary levels for fiscal years 2009 and 2011 through 2014. The first reading of the concurrent resolution shall be dispensed with. All points of order against consideration of the concurrent resolution are waived. General debate shall not exceed four hours, with three hours confined to the congressional budget equally divided and controlled by the chair and ranking minority member of the Committee on the Budget and one hour on the subject of economic goals and policies equally divided and controlled by Representative Maloney of New York and Representative Brady of Texas or their designees. After general debate the Committee of the Whole shall rise without motion. No further consideration of the concurrent resolution shall be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized for 1 hour.

Mr. MCGOVERN. Madam Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Mr. MCGOVERN. I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and to insert extraneous materials into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MCGOVERN. I yield myself such time as I may consume.

Madam Speaker, H. Res. 305 provides for general debate on H. Con. Res. 85, the budget resolution for fiscal year 2010. Madam Speaker, I am honored to stand here today to introduce the fiscal year 2010 House budget resolution.

I want to thank my friend, the Budget Committee Chairman JOHN SPRATT, for all of his incredible work on this budget. He is smart, he is fair, and no one cares more about these issues.

I also want to thank our ranking member, PAUL RYAN. Even though I often disagree with him, I admire his intellect and his dedication to his principles. I thought we had a spirited, substantive debate in the Budget Committee, and I am sure we will have more of the same here on the House floor.

I also would like to thank the staff of the Budget Committee, Democrat and Republican, for their tireless effort and their commitment to public service.

Madam Speaker, the budget before us today represents a clean break from the past. For the last 8 years, President Bush flat out mismanaged the Federal budget. How? By enacting huge tax cuts for the wealthiest Americans that led to skyrocketing deficits, by spending hundreds of billions of dollars on the wars in Iraq and Afghanistan without paying for them, and by refusing to invest in the American people.

In November, the American people said ''enough,'' and they voted for change. They voted for new direction. And that is what this budget is all about. We are not only turning the page on the last 8 years, we are writing a whole new book, and our budget cuts the deficit by more than half by 2013. It cuts taxes for middle-income families by $1.5 trillion. It creates jobs by investing in health care, clean energy, and education.

Now, let me briefly outline those three areas: Fiscal discipline, middle-class tax cuts, and investments in the American people.

As I said, our budget will cut the deficit by more than half in 2013. In order to get us back on a fiscally sustainable path, the budget provides a realistic assessment of our fiscal outlook.

Unlike the Bush administration, we actually budget for the wars in Iraq and Afghanistan instead of hiding them under, quote, emergency spending categories. We budget for natural disasters that inevitably will occur.

Our budget cuts taxes for 95 percent of Americans. Let me repeat that, Madam Speaker, because we are going to hear a lot of rhetoric from the other side about taxes. The Democratic budget, the Obama budget cuts taxes for 95 percent of Americans. It provides immediate relief from the alternative

minimum tax, it eliminates the estate tax in nearly all the States, and works to close corporate tax loopholes.

You see, all of us believe in altering the Tax Code. We believe that we should reduce the tax burden on the middle class and those trying to get into the middle class. We believe that corporations shouldn't be allowed to shirk their responsibility by hiding their profits in offshore tax havens. The other side believes we should reduce taxes for the very wealthiest. It is a simple difference of philosophy. And, most importantly, this budget actually invests in the American people.

What a welcome change from the past 8 years. We invest in health care reform, not just to improve health care quality and improve coverage, but to reduce the crushing burden of health care costs on American businesses. Everybody likes to talk about health care reform. This budget, the Democratic budget, the Obama budget actually gets it done.

We invest in clean energy in order to create jobs, improve the environment, and reduce our dependence on foreign oil. We invest in renewable energy and energy efficiency. Everybody likes to talk about energy independence, but this budget actually gets it done.

We invest in education to reclaim our place as the best educated workforce in the world. We work to expand early childhood education and to make college more affordable. Everybody likes to talk about improving education, but this budget actually gets it done.

So that is what we could do, and that is what we do. As for my Republican friends, it is more of the same. Last week, they made a big to-do when they introduced their own ''budget.'' In fact, it wasn't much of a budget at all, given the fact that it didn't include any numbers. What it did include was lots of empty rhetoric and a belief in massive tax cuts for the wealthiest.

Madam Speaker, the American people have seen this movie before, and they gave it two thumbs down. I know it is April Fool's Day, but don't be fooled by my Republican friends.

My Republican friends will talk a lot about the difference in economic growth estimates between the Office of Management and Budget and the Congressional Budget Office, but here is the thing: There will be no growth unless we invest in the American people. There will be no growth unless we get a handle on these deficits. There will be no growth as long as health care costs and inadequate education and dependence on foreign oil keeps us down.

I know that change is hard. I know my Republican friends want to cling desperately to the failed policies of the past. But the good news is that despite all the nasty press releases and television ads and talk radio attacks on the President, the American people still, by overwhelming margins, support President Obama's vision for America. That is why this budget is so very important.

We are presenting a budget, Madam Speaker, with a conscience. It is a budget that believes in the American spirit, and it is a budget that fulfills the promises that President Obama made to the American people.

We are at a crucial moment, Madam Speaker. Our country can meet its potential. Our children can have a better future. But in order to make that happen, we need a change. We need to move in a bold, innovative, new direction. We need to pass this budget. I urge my colleagues to join me in support of this rule and the underlying bill.

I reserve the balance of my time.

Mr. DREIER. Madam Speaker, I yield myself such time as I may consume.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Let me begin by expressing my appreciation to my very good friend from Worcester for yielding me the customary 30 minutes.

Madam Speaker, it is interesting that we begin this April Fool's Day with the budget debate. You know, we have some very, very serious economic challenges here, and the sad thing from my perspective is the fact that this budget, which was just described by my friend as the Democratic-Obama budget, is not a joke.

The thing that is so incredibly ironic is that 45 seconds ago my friend just said we must get a handle on these deficits. ''We must get a handle on these deficits,'' is what my friend has just said, and yet this budget, this Democratic-Obama budget of which my friend is so proud in fact over the next 5 years doubles the national debt and over the next 10 years triples the national debt.

We all concur on this notion of trying to get deficits under control. It is a very high priority. Everyone says this. What we need to do is we need to work to rein in government spending rather than trying to bring about this transformation, this transformation in an economic downturn which dramatically expands the size and scope and reach of the Federal Government.

Madam Speaker, as every parent or small business owner knows, a budget is about choices. Often, it is about very hard choices that need to be made. During times of economic hardship or uncertainty, those choices get even harder, and that is clearly where we are today.

When we look at our expenses for the coming month or year, we have a number of factors that have to be taken into consideration as a family, as a small business person.

There are expenses that are absolutely mandatory, mortgage payments or meeting a small business payroll. There are expenses that are essential but can be reduced with greater flexibility and frugality, like the grocery bill. There are expenses for luxury items that are simply not affordable any longer. And then, Madam Speaker, there are those expenses that are important and worthy and useful, but just aren't possible when funds are tight. These choices are clearly the very hardest. We want to buy the kids a new laptop for college or build a new addition onto the house, but we know that the money just isn't there right now. So we tighten our belts, figure out a way to spend our money more wisely, and save for the things that are most important.

This is how America's families and businesses are dealing with the economic difficulties that we all face today. If only the Democratic leadership and this budget that my friend touts as the Democratic-Obama budget would do the same. They could learn a lot from the American people, Madam Speaker.

The Democratic budget before us today recklessly abandons any semblance of responsible decisionmaking. It spends as though the money is just flowing in, and it raises taxes as though American businesses and families have endless cash to spare. But we know all too painfully well that this is far from the case. Ask anyone out there. It is time for the Democratic majority to wake up to our economic reality.

□ 1045

This is not the time to raise taxes on small businesses and working families. They like to claim that their tax hikes will only hit the super-rich. They are wrong. Their income tax hikes will hit the small businesses that are the backbone of our economy. And their cap-and-trade program, the great source of revenues, which is really a cap-and-tax program, will raise taxes on every single household in America. Families will get slapped with new energy taxes of up to $3,100 a year. Every time our constituents flip on a light switch or turn on the microwave or drive the kids to school, they will feel the pain of the Democratic tax plan.

This is also not the time to recklessly add hundreds of billions of dollars in new spending that our Nation cannot come close to affording. Republicans aren't advocating extreme austerity, but we are advocating a little common sense. We must own up to the hard choices that are a fact of life for the American people and should be a fact of life for their representatives here in this institution as well. After all, this is not our money. This is money that belongs to the hard-working people here in the United States of America.

We must be realistic about which expenses are mandatory, which leave room for greater flexibility, frugality and efficiency, which spending items are luxuries and which are worthwhile but simply not affordable at this time, just like the American people must do. We have to use the same kind of prudence when it comes to spending taxpayer dollars as people are as they face the challenges of today's economy.

Instead, what this budget does is shirk all responsibility for our tax dollars and bury the American people under a mountain of debt that won't be paid for generations. This is not just an issue of deficits. It's an issue of deficits so catastrophically huge that they threaten to put our recovery off for years to come and permanently saddle all of us with staggering amounts of debt.

In this year alone, the deficit, Madam Speaker, will be $2 trillion, that is trillion with a ''T.'' I know in this age of constant $100 billion bailouts, we have forgotten just how much money that is. Everyone has their illustrations of how to visualize $1 trillion. And I know that it seems a little gimmicky, but it is important to understand what we are talking about when we refer to $1 trillion. And let's remember that the deficit for this year under this budget is $2 trillion.

If we were to spend $1 million a day, a day, $1 million a day, it would take 5,475 years to spend our deficit for this year alone. Not our national debt as a whole, just the part, just the part that would accumulate this year. In other words, it would take until the year 7484 to spend our deficit if we were spending $1 million a day. Or put another way, we would have to go back to the 35th century B.C., the 35th century B.C., to spend the money by the year 2009, back to the rise of the early Bronze Age in order to spend $2 trillion at that rate of $1 million a day.

Now that's an awful lot of debt, Madam Speaker. That is an astronomical amount of debt. And that is what this budget leaves us with. It taxes recklessly, spends wildly and borrows almost too much for us to even comprehend.

Now I have talked a lot about hard choices. Now I want to say something about false choices. Unfortunately, our colleagues on the other side of the aisle seem to want the American people to face a false choice, the choice between their very dangerous budget and the status quo. They like to think that they can convince our constituents that their disastrous budget is the only option out there.

But, Madam Speaker, we clearly have an alternative. There is a commonsense way. Republicans, contrary to what our friends said about the lack of numbers in our budget, we have our budget. It was submitted by the 10 a.m. deadline to the Rules Committee. It is an alternative budget that will not tax small businesses and working families and will not balloon the deficit to untenable proportions. It is true that it will not entirely eliminate the deficit. That might not be possible during these very, very tough times. But it does own up to the hard choices that responsible legislators must make. It does accept our tough economic reality and it does exercise common sense and accountability in the spending of taxpayer dollars. And it does not punish the small businesses and working families who are already struggling with new burdensome taxes. Now, Madam Speaker, I urge my colleagues not to be drawn into the false choice that has been provided by the Democratic majority.

With that, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, I want to point out for my colleagues one important fact that I think we need to keep in mind. When President Bush became President of the United States, he inherited a record surplus of $5.6 trillion over 10 years. He left us with a record deficit of $5.8 trillion, with double the national debt and triple the amount held by foreign countries. We were left with flat wages and the smallest rate of job growth in three-quarters of a century. We tried it the gentleman's way. And it failed. People do not want the status quo. They do not want the same old same old.

There is a general understanding amongst the American people that in order for us to be able to reduce our deficit and pay down our debt, we need to grow this economy. And you cannot grow this economy unless you invest in the American people and unless you invest in the economy.

I am happy to yield to the gentleman.

Mr. DREIER. I thank my friend for yielding.

And let me respond to his very thoughtful comments with a couple of points. First and foremost, we need to remember that it was a Republican Congress that got us back on the road of fiscal responsibility leading up to what President Bush did, in fact, inherit. And I'm not going to stand here as an apologist for spending that did take place. But we have to remember that most of the spending that took place dealt with the aftermath of September 11, 2001, when we saw dramatic increases in defense and homeland security spending. And in the last 3 years, there were actually real spending cuts that took place in every other appropriation bill at that time. And so the issue of economic growth——

Mr. MCGOVERN. Reclaiming my time, I appreciate that, and I would point to the 2001 and 2003 tax cuts that went mostly to the wealthy that bankrupted this Nation.

The fact of the matter is the gentleman's party controlled Congress for many years. His party controlled the White House for many years. And jointly, they have driven this economy into a ditch. I think there are philosophical differences here. And I think one of the major differences is that we believe that in order to be able to pay down the debt, we need to grow this economy. And to grow this economy in these difficult times means investing in our people and everything from education to health care to environmental technologies.

The Republican budget is really the same old same old, more tax cuts for the wealthy, and basically, an indifference towards some of the Nation's most pressing problems. You cannot rebuild roads and bridges for nothing. We can't just simply constantly put the burden of education, the cost of education, and special education in particular, on the backs of our cities and towns. There needs to be an understanding that in order to get this economy back up and running, we are going to need to invest. And that is what the Democratic budget does.

I stand before you proud to defend this budget, proud of the fact that we have a budget that has a conscience, proud of the fact that when this gets enacted, we are going to have a blueprint for this country that I believe will not only put us back on the road to economic recovery but will allow us to pay down our deficits and our debt.

As I said in my opening statement, the House budget slashes the deficit by nearly two-thirds over the next 4 years, from $1.7 trillion or 12.3 percent of gross domestic product in 2009 to $586 billion, or 3.5 percent of gross domestic product in 2013.

I would reserve the balance of my time.

Mr. DREIER. Madam Speaker, I yield myself such time as I might consume, and I would be happy to yield to my friend.

Clearly, I think we have a problem of maybe talking past each other. We all concur with the notion of getting the economy back on track. The question is do we grow the economy by growing the size, scope and reach of government? And that is what my colleague is arguing that we should do, that we should get the economy back on track by dramatically increasing the role of government. The exact opposite is the case.

Now as my friend said, that the same old same old of what we did in 2001–2003 with creating tax incentives for economic growth. That is, I believe, the single best answer to this challenge. Why? Well, remember what we faced in 2001. Many people thought after we had this unprecedented attack on the United States of America that we would see a huge economic downturn. We also were dealing at that point with corporate scandals that existed in the early part of this decade and a wide range of other challenges. And we had already had an economic slowdown. It was those policies of growth-oriented tax cuts that were able to see 55 months of sustained job creation and economic growth.

We all know that over the past year we have seen serious economic challenges, we are in recession and the American people are hurting. We also believe that we need to have priorities established like dealing with the issue, as my friend has correctly said, of building roads and bridges. That is what I'm saying. We are not talking about extreme austerity. We are talking about a commonsense approach. And we do embrace that.

But this notion of this huge expansion which doubles the national debt in 5 years and triples it in 10 years is, in fact, I believe, a prescription for disaster.

I reserve the balance of my time.

Mr. MCGOVERN. I reserve my time.

Mr. DREIER. I would inquire of my friend if he has any speakers on his side.

Mr. MCGOVERN. Not at this time.

Mr. DREIER. Would my friend like to yield me the balance of the time?

Mr. MCGOVERN. I will hold on just in case.

The SPEAKER pro tempore. The gentleman from Massachusetts reserves his time.

Mr. DREIER. Madam Speaker, at this time, I'm very happy to yield 2 minutes to our friend from Stillwater, Minnesota (Mrs. BACHMANN).

Mrs. BACHMANN. I thank Mr. DREIER, the gentleman from California, for yielding.

It is clear and it is true for the American people we have a very clear choice. It could not be more crystal clear, the future that is being offered to the American people by the Democrats, the future, Madam Speaker, that is being offered by the Republicans. And it is illustrated by this chart. This is the future that the Democrats have planned for the next generation. And I would put one word out before this body and before the American people: it is the word ''compassion.'' When we look at children and when we look at the next generation and we think of the word ''compassion,'' what does compassion have to do with children when we look at this? This is the future for our children? Debt levels that will be so high that we are literally on this floor forging shackles and chains for today's 5-year-olds, 5-year-olds who, when they come into their peak earning years, would be paying tax rates of 65 percent; who, if they are a business owner, will be paying 85 percent; who, if they are at the lowest income strata, will be paying income tax rates of 25 percent.

Who, Madam Speaker, would be getting out of bed in the morning to go and put their capital at risk and their lives at risk working 14 hours a day to pay this government 85 percent of their income? And that is before, Madam Speaker, this budget is put into effect. Or, Madam Speaker, I ask the question on compassion, on compassion for today's 5-year-olds, is the budget alternative the Republicans are putting forward the more compassionate budget? Is this not, in fact, the budget that gives hope for America's 5-year-olds and opportunity for America's 5-year-olds? Where they could, instead of paying a tax rate that would be 85 percent or 50 percent, see their tax rate, in fact, lowered, so the United States would no longer be the country of punishing debt burden but the country of opportunity for today's 5-year-olds.

Mr. MCGOVERN. Madam Speaker, the gentlelady talks about compassion. I don't see a lot of compassion in the Republican budget. In fact, I haven't seen a lot of compassion in the Republican policies over the last 8 years. We are living in a country where there are 36 million Americans who are hungry, millions of whom are children. Where is the compassion? Where is the response? We have kids going to schools that are falling apart, where the heat works in the summer but doesn't work in the winter. Where is the compassion to make sure that our kids get the education that they deserve? We have a world where the environment is becoming the key issue, the issue of global climate change. We are giving our kids that kind of world? Where is the compassion there? If you want compassion, it is in the Democratic budget, which is not only compassionate but is fiscally responsible and will give our kids the kind of future they deserve.

I reserve the balance of my time.

□ 1100

Mr. DREIER. Madam Speaker, I yield myself such time as I might consume to say that this is incredibly ironic. Again, we're here on April Fool's Day, and I wondered if the statement that was just propounded by my friend was, in fact, an April Fool's statement.

He continues to use the line, ''We're tired of the same old same old.'' Well, the arguments that I just heard from my friend are the quintessential same old same old: Republicans don't care about children, about senior citizens, about the homeless. That is absolutely preposterous. We care, and we truly are compassionate because we want to ensure every American opportunity, and those who are hurt the most, those who can't take care of themselves, we clearly want to do everything that we possibly can to assist them. And to argue to the contrary is the standard class warfare, ''us versus them'' argument which is the epitome of same old same old.

And with that, Madam Speaker, I would like to yield 2 minutes to my good friend from Cherryville, North Carolina, Mr. MCHENRY.

Mr. MCHENRY. Madam Speaker, I thank the ranking Republican on the Rules Committee for yielding.

Madam Speaker, I rise today in opposition to this fundamentally flawed Democrat budget, which taxes too much, spends too much, borrows too much. And we simply cannot tax, spend and borrow our way back to prosperity.

This budget raises taxes at an unprecedented level, and it raises taxes to the tune of $1.4 trillion, the largest tax increase in American history. It raises taxes, which we all know, we all know that raising taxes will only deepen and prolong this recession and hurt economic growth and growth of jobs.

This budget compiles a national debt larger than the total amount of debt accumulated by the Federal Government from 1789 until just this year. It will take generations to pay off this debt, and it will require even bigger tax increases in the near future to pay off this debt. And no Democrat has yet explained what happens when China stops bankrolling our debt or, worse, calls in the loans.

This is an unfortunate plan, and it's the wrong direction for America. We must cut, save and incentivize our way to economic growth. That is the way we create jobs. That's the way we get ourselves out of this recession. That's the way that American families can grow and prosper.

We must provide tax relief to help working families and small businesses create jobs. That's the way it occurs. That's the way it should be. And that's what our Republican budget alternative will do. Economic growth, not government spending, will restore prosperity for all Americans.

Mr. MCGOVERN. Madam Speaker, I would just say to the gentleman who just spoke that we've tried it his way and his way failed. Our economy is in the worst shape it has been in my lifetime, probably in the worst shape since the Great Depression. The policies that they have pursued for the last 8 years have failed. The American people, in the election in November, made it very clear they want to move in a different direction.

The budget that we are presenting here today, that the Democrats are proudly presenting here today, not only turns the page, but writes a whole new book on the way this country should move forward. We're going to tackle the big problems of global warming and of health care. We're going to deal with health care once and for all, and not only in a way that provides people with the quality care that they deserve and they are entitled to, but also helps control costs. We have ignored these big problems for far too long.

So I stand before you again, Madam Speaker, proud to say that the Democratic budget, the budget that has been inspired by President Obama, is the right budget for this country. And there is a clear choice. I mean, I think we could agree on one thing, that there is a very clear choice. We can either go the way the Republicans want us to go or the way the Democrats want us to go. And I think we have tried the Republican way, and it has failed.

I reserve my time.

Mr. DREIER. Madam Speaker, I would inquire of my friend if he has any other speakers at all.

Mr. MCGOVERN. No, I'm it.

Mr. DREIER. If not, I'm prepared to close if the gentleman will be the closing speaker after I speak then.

Madam Speaker, I yield myself such time as I may consume. And I will say that if my friend would like to interject any points during my remarks, I certainly would be more than happy to yield to him if he'd like to ask me any questions as I proceed.

As I look at last fall's election, the mantra, ''A change we can believe in'' was something that got a great deal of

attention. Well, Madam Speaker, I would say to my friend, I encourage him to change the talking points that he has provided because they are, in fact, the same tired old talking points that we've received for many, many, many years. Blame the Republicans for whatever difficulty we face. Don't work together in a bipartisan way for a constructive solution, which is exactly what we want to do.

I agree with my friend that we need to grow the economy to bring the debt down. We have this area of agreement. We all talk about and decry deficit spending, and we want to pursue this quest of trying to diminish that debt burden imposed on future generations. The question is, how do we do it?

Well, I'll tell you what the rest of the world has learned and what the United States of America has learned. What we have learned is that increasing taxes and spending and the reach of the Federal Government does not grow the economy. So if we can work together in a bipartisan way to do what my friend says we want to accomplish, and that is, growing the economy, so that we can reduce the debt, then let's recognize what it is that works.

And I think it's also important to note that, as my friend continues to point the finger at President Bush, he left office in January, I will say. And it's also important to remember that my friend and his colleagues have been in charge of taxing and spending for over 2 years now since they have had the majority. And so I think that it's a bit of a stretch for us to continue down this road of class warfare, us versus them, saying that Republicans don't care. It is crazy.

We know that the budget that's before us, as we've all been saying, taxes too much, spends too much, and borrows too much. And we know that, as the rest of the world has found, that it is a prescription for disaster.

Now, I hesitate, but I am going to proceed with quoting the President of the Czech Republic, Mr. Topolanek, who made it very clear, from the experience that they've had with the expansion and the reach of government, that he does not believe that that is, in fact, the answer for the future.

I met a year ago, a little over a year ago with the President of Peru, who had been President in the 1980s in Peru. And he embraced the very, very hard-left, Big Government policies. He's President today, and he said that the worst 5 years in modern Peruvian history were when he was President in the 1980s. He learned from that experience that dramatically increasing the size and scope and reach of government, increasing the tax and excessive regulatory burden has failed. The rest of the world has learned that it has failed.

And now, for this new majority to try and bring about a complete transformation of government with this budget that does, in fact, double the national debt in 5 years, and triple the national debt over the next 10 years, is a prescription for failure.

We have come forward, Madam Speaker, with a very positive, pro-growth budget. We focus on growing the economy, number one, and realizing that, as my friend has said, growing the economy can help bring the debt down. But we also know that one of the other ways to grow the economy is to diminish the reach of government.

And so we, over the next 2 days, are going to have a very clear choice that is put before us, as Members, and the American people. And I believe that an overwhelming majority of Democrats, Republicans and Independents in the United States of America believe that a dramatic expansion of government is not the answer, and allowing people to keep more of their own hard-earned dollars is, in fact, a better prescription to do what we all want to do, and that is to get our economy back on track.

I yield back the balance of my time.

Mr. McGOVERN. Madam Speaker, let me reiterate that we find ourselves in the worst economic crisis since the Great Depression. We find ourselves in this position in large part because of the very reckless policies of the last 8 years, policies that have been championed by President Bush and by the Republicans when they were in the majority.

And I want to commend the Republicans for actually introducing a budget alternative to the Rules Committee because, up until just today, what they handed out was a brochure with not a lot of numbers in it, a lot of criticism of Democrats. But I look forward to——

Mr. DREIER. Madam Speaker, will the gentleman yield on that point?

Mr. McGOVERN. I am happy to yield.

Mr. DREIER. I thank my friend for yielding. Let me just say that that outline that my friend has is very similar to the package that was presented by the President. And if you look at Page 3 of the Democratic budget that we had last week, it did not have any numbers on it either. This budget proposal was submitted at 10 this morning. It does, in fact, have these numbers.

And I thank my friend for yielding.

Mr. McGOVERN. Reclaiming my time, what they did last week was produce a document that was basically a political piece that had no numbers in it and was basically an attack on the President and on the Democratic budget.

Now, we have been able to take a cursory look at some of the things that are in the Republican budget alternative, and if you would note——

Mr. DREIER. Will the gentleman yield very briefly for a question?

Mr. McGOVERN. I am happy to yield to the gentleman for a question.

Mr. DREIER. Is the gentleman trying to argue that we have not submitted a budget with real alternatives and simply provided a political statement?

Mr. McGOVERN. I am saying that I am glad that the gentleman, the Republicans have submitted a budget to the Rules Committee today——

Mr. DREIER. Good. Thank you.

Mr. McGOVERN. Because up until today we had a political brochure.

But anyway, a cursory look at what they presented, there are some substantial cuts in some very essential programs. They're talking about a $38.5 billion cut in agriculture. Well, what are they going to cut? Are they going to cut food stamps and nutrition programs to people who are suffering and struggling during these terrible economic times?

A $22.7 billion cut to education and labor. Are they going to cut schools more? Are we going to cut money for special education?

I mean, there are some significant programs that will have to be cut as a result of what they're proposing.

Energy and Commerce, a $666.1 billion cut. What are they going to cut, Medicare and Medicaid?

Billions of dollars in Financial Services. Where are the cuts going to come from? Housing for low-income people? Is that the idea of what a compassionate budget is about?

Ways and Means, billions and billions of dollars of cuts for the Ways and Means Committee, again, going into Medicare, you know, programs that help vulnerable senior citizens.

Madam Speaker, I think people are tired of the same old same old. And let me tell you what the old way was. The old way was to ignore health care. That's why we have such a mess with health care today.

The old way was to ignore education. That's why we have so many schools that are crumbling. That's why we're understaffed in terms of our teachers. That's why schools don't have the technology that they all should have.

The old way is to give tax breaks to millionaires. The old way was to continue to rely on foreign oil.

The budget that the Democrats are proudly presenting today puts us in a very new direction, in a direction that I think the American people are excited about. That is what this last election was about.

People will have their opportunity to vote for the Republican budget or the Democratic budget, whatever they want to do. But please know one thing. What they are proposing is what they have been proposing consistently for as long as I have been here.

Mr. DREIER. Madam Speaker, will the gentleman yield for a quick question?

Mr. McGOVERN. I will be happy to yield.

Mr. DREIER. I thank my friend for yielding.

When my friend began discussing the issue of agriculture spending cuts, I was struck. I was just provided a document here which shows that actually there are $2 billion in greater cuts in agriculture spending in the budget that my friend has propounded than in ours. And I wonder if those cuts are in food stamps, this is in budget outlays, if those cuts are in food stamps or other nutritional programs that my friend

has said himself. And I thank my friend for yielding.

□ 1115

Mr. MCGOVERN. Our budget actually goes after subsidies for wealthy farmers, but it does not go after food stamps for the vulnerable.

The Republican budget that has been proposed makes dramatic cuts in some of the most essential and valuable programs that serve the most vulnerable people in our country.

Mr. DREIER. Where in our budget does it say we are going after food stamps?

Mr. MCGOVERN. We are faced with the worst economic crisis since the Great Depression, and what they propose is the same old same old. Enough. Enough.

Mr. DREIER. Will my friend yield for just one second?

Mr. MCGOVERN. Madam Speaker, the Democratic budget moves us in a different direction, in one that, I think, the American people want us to move.

I urge my colleagues to vote ''yes'' on the previous question and on the rule.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 1664, PAY FOR PERFORMANCE ACT

Mr. PERLMUTTER. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 306 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 306

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. Notwithstanding clause 11 of rule XVIII, no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Colorado is recognized for 1 hour.

Mr. PERLMUTTER. Madam Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentlewoman from North Carolina, Dr. FOXX. All time yielded during consideration of the rule is for debate only.

I yield myself such time as I may consume.

GENERAL LEAVE

Mr. PERLMUTTER. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 306.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. PERLMUTTER. Madam Speaker, House Resolution 306 provides for consideration of H.R. 1664 to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

This is under a structured rule. The rule provides for 1 hour of general debate controlled by the Committee on Financial Services. The rule makes in order seven amendments which are listed in the Rules Committee report accompanying the resolution. Each amendment is debatable for 10 minutes except the manager's amendment, which is debatable for 20 minutes. The rule also provides for one motion to recommit with or without instructions.

Madam Speaker, the American people rightfully demand that the taxpayer dollars they put in to help stabilize the banking system be spent wisely by the banks and by the institutions that borrow under what is called the Troubled Asset Relief Program, or TARP.

Recently, when information came to light showing AIG gave, roughly, $165 million in retention bonuses to senior executives, hardworking Americans all across the country quickly asked, How as a Nation can we recover this money? Now the House considers a similar question: How do we reasonably prevent this from happening again?

The grounds for this action are simple. As the lender to AIG and to a number of other institutions, the United States has the authority to define the terms by which we are lending money. This is a standard in business practice, as lenders from time to time put limits on executive compensation, as do their shareholders.

The gentleman from Georgia (Mr. MARSHALL) recently related to me that you have to be just before you are generous, that you have to take care of your creditors before you can pass out gifts. In this case, generosity, or generous, is taken to a whole new level with the retention bonuses that we saw recently. We as Members of Congress must assert our rights to protect our constituents and the people of this country from any further losses. I want to make clear several things about this bill:

First, it only applies to financial institutions that have received a capital infusion under the TARP program. An amendment by Representative BILIRAKIS will clarify this point, and an amendment by Representative CARDOZA would exempt smaller community banks which receive TARP funds.

Second, it only prohibits compensation that is unreasonable or excessive or prohibits any bonus or other supplemental payment that is not performance-based. Guidelines are established by the Treasury Department within which to determine what is unreasonable or excessive.

Third, the bill only applies while the TARP capital remains outstanding. Once the institution has paid the taxpayers back, they may meet any contractual obligations allowed by their board of directors and shareholders regarding bonuses.

I support the private sector, and I believe in rewarding employees for doing a good job. This bill does allow for performance compensation, but if you have received a capital investment of American tax dollars through TARP to make it through these extraordinary times, there should be commonsense limits on bonuses. My constituents in Colorado do not want their hard-earned dollars going to inflate the senior executives' life rafts as the ship steers close to the rocks.

We are going through this economic downturn, but we need to make sure that middle-class America can trust the money that has been placed into the banking system to keep that system functioning properly. If an institution has an outstanding debt to the Federal Government, it has to pay it back before it gets bonuses that are excessive or unrealistic.

I urge my colleagues to vote in favor of the rule and the underlying bill.

With that, I reserve the balance of my time.

Ms. FOXX. Madam Speaker, I yield myself such time as I may consume. I appreciate my colleague from Colorado yielding time.

This is another very deceptively named bill by our colleagues on the other side. It is a fairly short bill, only four pages long, so everyone should have a chance to read it, and that is an important thing to do.

It is titled ''to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.''

Now, again, that sounds great. However, when you get inside the bill and you read it, it says, ''any executive or employee,'' and it says that four times, so the deception is that this is only for executives. It is not just for executives. It allows the Treasury Department to set the salaries and compensation for all employees in a private organization. This is wrong to do.

We have had so many statements that have been made that have been misleading, I think, on the floor. This is not the worst economic crisis since the Depression. Our situation in the country was much worse in the eighties after a Democratically controlled Congress and a Democratic Presidency. So we are in a situation that has been created, again, by Democrats. Yet they want to say over and over again that this is the problem of a Republican administration. We have to constantly point out the fact that the Congress has been controlled for the past 2 years and is now controlled by Democrats.

So I think this rule is bad; I think the underlying bill is bad, and I think that our colleagues should vote against both of them.

What the Democrats are doing now is, again, providing political cover for Democrat Members of the House who voted for a bad bill a couple of weeks ago, and they are trying to change the subject from the administration's failure to exercise adequate oversight of the taxpayer dollars which have been extended to prop up AIG, American International Group. So I expect most of my colleagues, if not all, to vote against this rule and to vote against the underlying bill.

We also have a situation where this is not an open rule. The majority continues its practice of limiting debate and of limiting opportunities for Republicans to offer amendments and to do whatever we can do to make a bad bill somewhat better or to make a bad rule somewhat better. So we have a situation where these things continue.

You know, when I have thought about this, I have thought about just a commonsense way to describe this to people. The Democrats have a tar baby on their hands, and they simply cannot get away from it. They are stuck on this problem. They have created a bad situation, and every time they try to get away from it, they keep getting stuck on it, and I think that this is just the latest iteration and bad policy that they are recommending, and I am going to recommend to my colleagues to vote against it.

I reserve the balance of my time.

Mr. PERLMUTTER. I yield myself such time as I may consume.

Madam Speaker, I would like to respond to my friend from North Carolina. I just have to remind her that it was President Bush's Secretary of the Treasury who came to the Congress, hat in hand, because of a potential collapse of the financial system, asking for immediate assistance from this Congress to right the financial system, to put it back on some sort of stable footing. Since then, we have seen a variety of financial institutions take advantage of the assistance that was given. This is designed to restrict the way companies can take advantage of taxpayer dollars until they have repaid the loans and capital that have been advanced to these companies.

With that, I would like to yield 2 minutes to my friend from New York (Mr. ARCURI).

□ 1130

Mr. ARCURI. I thank the gentleman for yielding.

Madam Speaker, these past few months have confronted us with some of the most difficult economic choices we have faced in the Nation in recent memory. As job reports continue to show thousands of new layoffs each month and unemployment numbers in my district hover above 10 percent, I am outraged that the very individuals who have contributed to this financial disaster are rewarding themselves with hard-earned taxpayer money intended to get our economy moving again.

We have been called to action to see that those responsible are held accountable and not rewarded. This bill does just that. It ensures that these TARP-taking executives are paid based on the work that they do, not paid for the work they didn't do.

You know, I listen to my colleagues from the other side of the aisle talk, and I guess I understand that some people are critical of AIG. Certainly we understand that. We all are critical of the AIG top executives. I even respect the opinions of those who are critical of this bill.

The thing that I don't understand is how you can be critical of both. You really can't. If you are critical of what happened at AIG, then you have to say that this is exactly the kind of thing that Congress should be doing. We should be going in and we should be regulating. We should be exercising the oversight that our constituents sent us here to Congress to do.

This is a commonsense piece of legislation that reflects the values of this Nation and the very same lessons that we hold in our communities and teach to our children. We will not sit idly by as this money is practically being taken from the American people instead of being used to restore confidence in this Nation as it was intended.

Madam Speaker, we owe it to our constituents and to our children and to our grandchildren to do everything we can to bring justice where it is lacking and repair it so we have a clear road to success.

Ms. FOXX. Madam Speaker, I am intrigued at my colleagues being outraged. Well, my goodness. If you were so outraged, why did you vote for these things to begin with? You know, your hands are not clean. I'm sorry, but your hands are not clean when you say that you are outraged.

POINT OF ORDER

Mr. PERLMUTTER. Madam Speaker, point of order.

The SPEAKER pro tempore. The gentleman from Colorado will state his point of order.

Mr. PERLMUTTER. I would ask my friend to address the Speaker.

The SPEAKER pro tempore. The gentlewoman from North Carolina will address her remarks to the Chair.

Ms. FOXX. Thank you, Madam Speaker.

Madam Speaker, I wonder why my colleagues are so outraged when they voted for these bills. This is covering up their previous action. They are trying to make something better. As I said, they've got a tar baby on their hands and they don't know what to do with it.

Well, it's easy to say that you could criticize the AIG executives for taking the money and criticize people for having voted for these things and be against this bill because it is taking our government in the wrong direction.

I am also very puzzled at my colleagues saying they are so concerned about their children and their grandchildren. But I will bet most of them are going to vote for this budget a little later on today, and they are quite willing to put the debt of this country on the backs of their children and grandchildren.

I think those are crocodile tears that they're crying when they say they want to preserve this country for their children and grandchildren. Give me a break.

In the headlines today in one of the rags here on the Hill—''Senator LEVIN Considers Defense Executive Pay Cuts.'' Where is this going to end? Our colleagues in this administration think

they have all the answers. They're going to run this country from the government down to every single business in the country: ''Let's just cut their pay. They're getting money from the government.'' Where is it going to end?

Are we going to have a President—he's already running GM. He's now the executive in chief of GM. And so our colleagues want to take on every single entity in this country and say, We know best. The government knows best. We're from Washington and we're here to help you. The American people have heard that before. They are not going to be fooled again by this kind of comment.

And, I'm sorry, but, again, I think it's crocodile tears when they say they are concerned about their children and grandchildren. If they are, they'll all vote ''no'' on the budget a little later on today and show their true concern. Saying that this upholds the rule of law for their children and grandchildren? Again, give me a break.

I reserve the balance of my time.

Mr. PERLMUTTER. Madam Speaker, I would like to respond to my good friend from North Carolina just to remind her that when Secretary Paulson came to the Congress asking for $700 billion, he brought us a three-page document. The first page said, I need $700 billion. The second page said, I can do anything with it I want. And the third page said, You can't sue me.

Well, we took that in a crunch time based on his—not his demands, his pleas, his pleas to the Congress to act quickly to preserve our banking system because so many things were going wrong all at one time. We took that three pages, which was completely ridiculous——

Ms. FOXX. Would the gentleman yield?

Mr. PERLMUTTER. Let me finish.

Which was completely ridiculous. We expanded it to a hundred pages, and acted promptly at the request of President Bush and his administration to try to get our financial system stabilized. And it is still rocky, but it's going. But we've seen certain companies take advantage of the assistance of the people of America, and we've got to prevent that. This bill is about compensation where it's excessive or not based upon performance.

What I would like to do now, though, is turn it over to my friend from Virginia (Mr. MORAN), and I would yield him 3 minutes.

Mr. MORAN of Virginia. Madam Speaker, I was not intending to speak, but it does seem to me there should be some historical accuracy within the CONGRESSIONAL RECORD. And while the gentlelady from North Carolina is certainly entitled to her own set of opinions, she is not entitled to her own set of facts. So let me review some of the facts in terms of the economic history she purported to describe.

I agree that we did have a substantial fiscal crisis in the 1980s, but it was the Bush administration that has told us that today we are faced with the most severe fiscal crisis since the Great Depression.

Now in the 1980s, President Ronald Reagan was elected on a platform that any President who submitted an unbalanced budget should be impeached. Well, not only did he never balance any budget that he submitted, he tripled the national debt. Every single budget was unbalanced.

President Bush, the 41st President—referred to as Papa Bush or whatever; it's important to distinguish between the two—in 1990, realizing how bad the Republicans' supply-side gimmickry had failed, what damage it had done to the economy, he brought the Democratic leaders and the Republicans together and came up with a fiscal plan. That plan put together by the 41st President, formed the foundation of fiscal responsibility for the next decade. It was called PAYGO. And it worked. Basically, you don't cut taxes unless you cut spending and vice versa. You don't increase spending unless you raise that same amount of revenues.

So we implemented that, and then President Clinton came in, passed a balanced budget, adopted that President Bush the 41st PAYGO concept, and, in fact, balanced the budget. That produced surpluses. And, in fact, at the end of the Clinton administration, he handed over $5.6 trillion of projected surplus based upon this concept of fiscal responsibility.

President Bush took it—this is the 43rd President now—takes that $5.6 trillion and immediately started squandering it by negating the concept of PAYGO. One of the first things that was done by the immediate past-Bush administration was to say, ''We are no longer going to be bound by PAYGO concepts. We'll cut taxes and we'll increase spending.'' They started a war of choice that cost us $1 trillion—not one dime was ever paid for—and then passed two tax cuts which have cost trillions of dollars, $3.5 trillion. Not one dime was ever cut to pay for that, either.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. PERLMUTTER. I yield the gentleman an additional 1 minute.

Mr. MORAN of Virginia. So here we are now with the largest deficit we have ever faced, a deficit that is greater than the deficit created by all the previous Presidents in American history, and basically it was because we had a Congress of the same party as the White House who got all the spending programs they wanted, primarily in the defense area, and cut all the taxes they chose.

Now, of course, the money was not well distributed, and that's one of the problems. It went to the wealthiest people in the country. In fact, one of our problems is that more than 90 percent of the income growth that has occurred over the last 8 years went to the top 10 percent. 90 percent of this country's wealth is now controlled by 1 percent of our population. And that's one of the reasons why the bottom 90 percent had to borrow from their assets, their equities, their homes which created this bubble.

But the point is, there was a lack of fiscal responsibility, and that is what is plaguing us today. This President is trying to reinvest in the American people, ultimately balance the budget and put us back on the course that President Clinton set us on and that Democrats want to put us back on.

Ms. FOXX. Madam Speaker, I have said on the floor several times in the last few weeks that the public needs to be reading or rereading the book ''1984'' because we're here in a period where the Democrats continue to rewrite history.

I would like to, just again, say to my colleague from Virginia that he wants to say we have the largest deficit we've ever had. Absolutely. Because the Democrats have been in control of Congress for the past 2 years. The President does not pass a budget, does not pass appropriations bills. The President can either sign or reject appropriations. The appropriations bills were not passed last year because they knew that President Bush would reject them, he would veto them, and so they didn't pass them. We did them this spring. That's what caused the largest deficit.

We have a Democratic President and a Democratically controlled Congress, and you cannot rewrite history in that way. We had a very small deficit when we had a Republican Congress and a Republican President.

With that, I yield 5 minutes to my colleague from Missouri (Mr. BLUNT).

Mr. BLUNT. Madam Speaker, I don't blame my good friend from Virginia for not wanting to talk about the bill today. If I were him, I wouldn't want to talk about it either. I oppose this bill. I oppose this rule.

I was not particularly concerned a few days ago when we were sending a message to AIG and the executives at AIG, the high-paid executives there. I think every once in a while the Congress can send a message, and it is a good thing to send that message. This is a company that taxpayers now own 80 percent of. If that's not a definition of bankruptcy, I don't know what is. In bankruptcy, it's okay to look at the commitments you made in the past.

Now I am afraid—by the way, the AIG executives apparently got the message because many of them have returned that bonus money back to the taxpayers who gave it to the company. I thought that was okay to send that message. We were way ahead of any constitutional concern. There was no Senate action. The President wasn't about to sign a bill. We were sending a message. They got the message.

I think the problem with that message may be that some of our own Members got a different message, which is it's somehow okay for the government to decide that they can decide salaries and how to run companies.

You know, the government can barely run the government. The government this week has announced we're going to run the auto industry. The auto industry is in trouble. If I were picking a group of folks to run it, it wouldn't be the government. But the government is there.

And now we've got this bill on the floor that suggests somehow that the government can set salaries at what I would see as not only the high level that we tried to take care of last fall in a bill. And apparently the stimulus package that came through had language in it that reversed some of that language and made these bonuses at the higher level possible to be paid. I regret that. I am glad I didn't vote for that stimulus bill. I'm glad that I didn't do anything that enabled that.

I am not going to vote for this bill today. It is all we can do to run the government and to try to tell these companies how to pay the people that work for them is not the right thing to do. I mean, as late as last April, the chairman of the Banking Committee in the House that deals with housing, the chairman of the Housing Committee in the Senate were both saying as late as last April that Fannie Mae and Freddie Mac didn't need to be reined in. They were saying as late as last April that these agencies needed even more ability to loan more money.

If we could be that wrong that close to the precipice that we went off in the summer and fall, imagine how wrong we could be running a company that doesn't even have any relationship to what the government does every day.

□ 1145

This is a bad bill. It's a bad rule. We should not move forward with this rule and not move forward with this bill.

Mr. PERLMUTTER. Madam Speaker, I will use so much time as I might consume, and I'd like to remind my friend from Missouri, first of all, the first time any kind of regulation over Fannie Mae and Freddie Mac was proposed was in this Congress, was by the House of Representatives, as early as March of 2007 to provide some regulation to those two entities.

The second thing I would remind my friend—and I appreciate his comments about, you know, the shot across the bow of the AIG executives and the fact that they are returning some of the money—but I would also remind him that in the business world, a lender in making a loan to a company may, as part of that loan agreement, put limits on compensation to the executives until that loan is repaid. That's a standard operating procedure in the business world, and shareholders do that, too.

So a board of directors of a company may be restricted by an outside influence like a lender or by its own shareholders. In this instance, we are placing a lot of money into many institutions across this country, and I believe the people of this country have some say as to what the compensation should be of those institutions until those loans or that capital is repaid.

Now, there may be something that might make the gentleman from Missouri a little happier, and that is, there is an amendment that will be proposed, I believe it's an amendment by Mr. CARDOZA, that will exempt, in effect, institutions that have received less than, I think it's $250 million, which is still a lot of money. But small community banks, smaller financial institutions will not be part of the program, if that amendment is accepted.

Mr. BLUNT. Would the gentleman yield?

Mr. PERLMUTTER. Certainly.

Mr. BLUNT. Thank you for yielding.

I just say that on that broader topic of reform of those GSEs, certainly there was legislation proposed in 2007. It wasn't passed. The President of the United States called for legislation every year beginning in 2001.

The point is that the Congress can barely run the government, let alone try to put a matrix together and run these companies in minute detail. The very fact that we're going to have all these amendments today indicates that, once again, we're rushing to the floor with a bill that shows maybe the Congress is not the best daily governing officer of the businesses of America.

I thank my friend for yielding.

Mr. PERLMUTTER. Thank you. And I would just respond to my friend from Missouri by saying that we, at least in this House, passed the GSE reform bills twice, once in 2007 and again in 2008, at which time the President signed it in the summer of 2008.

Secondly, I would just say that the financial sector has been in a heap of trouble, and without the assistance of the people and this government, they would be in worse trouble today. That is my belief, and I think that would be the record reflected by many experts across the country.

With that, I reserve the balance of my time.

Ms. FOXX. Madam Speaker, our colleagues on the other side keep bringing up Secretary Paulson, but they leave out the fact that the current Secretary of the Treasury was the head of the New York Fed at the same time and was standing right beside Secretary Paulson when those recommendations were made.

It also was under his watch that the amendment to allow the bonuses to AIG was done, and we know from statements that Senator DODD has made that he was directed to do that by the Treasury Department. So, again, we're not going to be saddled with the problems they created. They've got a tar baby. They're not going to shift it off to the Republicans.

I'd now like to yield 4 minutes to the gentleman from Georgia (Mr. KINGSTON), my colleague.

Mr. KINGSTON. I thank the gentlewoman for yielding, and I want to just say at the outset I have a number of problems with this, but in terms of bringing up Mr. Paulson, I did not vote for the first TARP program nor did I vote for the second one, but at least Mr. Paulson did pay his taxes. And I think most Americans know that we have a man in charge of the Treasury who was appointed by Mr. Obama who did not pay his taxes. And to hold him up as a standard over and over again I think is ironic for the Democrat Party. In fact, if I was a member of the Democrat Party, I'd have a little squeamishness myself before I embraced Mr. Geithner and all of the wonderful things that you believe he's going to do for this country.

Having said that, even though he did not pay his taxes, I hope he is successful because we need to turn the economy around, and the Republican Party certainly is going to help any way we can and work on a bipartisan basis to do that.

I have some real concerns about H.R. 1664, however. Number one, the institutions who signed up for it understood that there were certain rules that they would abide by, certain understandings, and now that has changed, this is going back and making the rules different for them. And that is one of the things that this administration is most guilty of I think is constantly changing the rules.

The market needs to react. If the market knows the rules are here, or they're here and they're left or they're right but they're poured in concrete, then the market can start making adjustments. But as it is, this Congress is obsessed with each week reading a new poll and coming out with a new rule, and because of that instability, the market will never normalize. The market has to become comfortable with the rules so that they can adjust and live in that environment, but if we keep changing them, we are still going to have instability in the market.

Secondly, this is overly broad. It applies to all employees rather than the top executives, and I know that many in the Democrat Party see this as a delicious opportunity to beat up on executives, successful people who pay high taxes, the rich and the wealthy who seem to be so maligned by the left. But this applies to all employees. Now, the gentleman mentioned that there might be a Cardoza amendment that's going to make some changes in this, maybe eliminate some of the companies that would be qualified for it. I'm interested in that amendment and look forward to that debate.

Number three, this is really all about AIG, and the fact that Mr. DODD, the Democrat chairman of the Senate Banking Committee, had taken out the language which was put in by Republican OLYMPIA SNOWE that would have eliminated the AIG bonuses. Mr. DODD purposely, under the instruction, according to him, not me, under the instruction of the Obama administration, took that out.

So now we're crawfishing—I'm not sure if you have crawfish out in Colorado, my friend, but crayfish, either way, but you know how they swim, when they're scared they put the tail in, they go backwards. And I think there are Members of the Democrat Party right now who are crayfishing or crawfishing, and they're doing it for Mr. DODD's politics. Nobody in the House was aware of that negotiation and the language, but I think this is all about AIG, and this is a political decision.

You know, we've got a really smart administration right now, one that's on the side of fighting the war, can turn around the car industry, can turn around the banking industry, turn around the insurance industry, and guarantees us the efficiency of the post office and FEMA as an end result, as the standard that we've got to live by.

This is a bill that actually has some good intentions, something that we're all frustrated about. We do not want to reward inefficiency, but unfortunately, the government and these companies got in bed together, and now they're trying to live in that framework, and the government keeps changing the rules.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. FOXX. Madam Speaker, I would be happy to give the gentleman 2 more minutes.

Mr. KINGSTON. I thank the gentlewoman, and I just want to say this.

One other thing that Mr. Geithner recently announced is this public-private partnership to buy the toxic assets, now legacy assets, of banks, and the idea is to get the public sector and the private sector to take all this bad real estate off the books of financial institutions so that we can get a bottom, so that we can get a market, so that we can get them off the taxpayers.

But unfortunately, if you are a public-private kind of entrepreneur who might want to put together a deal like this, you're saying, you know, do I really want to do this when the government is going to come back and change my compensation? I think most people would say, you know, if these folks actually have to make as much money as some of the leading Democrats of the world like Barbra Streisand and George Soros, some of the big donors in your area, you know, if we have to pay them but they can do the job right, they can turn around AIG—which I think probably it's too late for that—maybe it's worth it because, after all, we are paying a lot of people to play professional sports and star in movies and things like that.

So maybe it's worth it to pay people high salaries to turn around the financial institutions, which have a ripple effect throughout our housing and our credit system and our banking system. It might be something that we should do. But I just think that this bill is a politically motivated bill and not a sound economic bill in the current situation.

So, with that, I certainly appreciate the gentlewoman for yielding.

Mr. PERLMUTTER. Madam Speaker, I yield myself such time as I might consume.

I would just advise my friend, Mr. KINGSTON, that take a look at the bill. It's a very simple bill. My friend from North Carolina was correct, and it just basically says no financial institution, while it has money that's taxpayer money through TARP or otherwise, can pay excessive compensation or anything other than performance bonuses. An executive cannot hold the company hostage, as was done in the AIG instance.

And if and when that money's paid back, then fine, the board of directors, and the shareholders will determine what appropriate salaries their management deserves, and that is all this does. Lender has a chance in this instance to put some restrictions on salaries, and if the borrower, being the financial institution, doesn't like those restrictions, feels it's in a solid position and can return the moneys, then so be it. That's the way it is.

But the private sector, and particularly the financial system, was on shaky ground until this loan was made to them, and the purpose of this is to make sure that the institutions don't take advantage of the good graces of the American people.

It brought kind of a chuckle when my friend Mr. KINGSTON talked about FEMA and the way the government ran FEMA. Well, FEMA under the Clinton administration, I would say, was run in a very good fashion. FEMA, on the other hand, under the Bush administration was at best a troubled organization.

With that, I reserve the balance of my time.

Ms. FOXX. Madam Speaker, I think that my colleagues who have spoken have been very eloquent in pointing out again what is wrong with this bill. I want to reiterate that this is simply to provide political cover for Democratic Members of the House and to change the subject away from the administration's failure to exercise adequate oversight of taxpayer dollars extended to prop up AIG and other organizations.

Most Republicans voted against the bailout last fall. All Republicans and 11 Democrats voted against the stimulus bill. So, again, we can't be blamed for the things that the Democrats have carried out in this session of Congress.

We are for accountability, and we want to see the administration and the Democratically controlled House get these things under control. But they keep doing things that make it worse and worse and worse.

I believe, as do many of my colleagues, that we need to be focusing on holding all programs that get Federal dollars accountable. However, there is absolutely no effort going on in this Congress to scrutinize programs that are controlled by the Federal Government.

□ 1200

As my colleague from Georgia pointed out, we have such great examples of the wonderful way that the Federal Government spends money, such as FEMA and other areas where the public knows a big disaster has been made.

But I want to point out again that this is the wrong way to go. We've said this from the beginning—again, with the bailouts last year. And we're asking now: What is the exit strategy from all of the sweeping government involvement in the private sector? What is the exit strategy?

Is it going to be week after week after week that we're going to see another bill that tries to cover up the mistakes that the Democrats have brought to us over and over again?

This moves in the wrong direction from an exit strategy. It makes the Treasury Secretary, with approval of the members of the Federal Financial Institutions Examination Council, in consultation with the chairperson of the TARP Congressional Oversight Panel, the arbiters of what is reasonable or excessive compensation for covered institutions. They don't even define that in this bill. They leave it up to the Treasury regulators, the bank regulators, who created this problem to begin with. What kind of a system is that?

It's a little crazy to say that we're going to give the people who created this problem more authority, more responsibility. They're going to define what is unreasonable or excessive.

I asked yesterday, ''Can we define those things?'' No. We leave that up to the Treasury Department. But it was the Treasury Department who decided that the AIG bonuses were just fine. In fact, they promoted them. So are they going to say that they are going to give big bonuses under this? That doesn't make any sense.

The best approach to protecting the taxpayers' investment in private businesses is through stronger oversight and accountability, not by further entrenching government in the operations and management of hundreds of businesses across America.

I say again, Senator LEVIN says he wants to consider defense executive pay cuts. Are we going to go into every single business in this country and decide? Is the Congress going to do that, is the Treasury Department going to do that?

We know that the bill a week ago to tax bonuses 90 percent—those at AIG—was clearly unconstitutional. My guess is that this bill is going to be decided that way also.

We also know there was this big hue and cry and, again, outrage, outrage, outrage, expressed on the floor of this House about that bill, and the bill is going nowhere. After all the outrage, then the President says, Oh, maybe we went too far. The Senate buried the bill. Nobody's going to do anything about it. I'm wondering if that's going to happen to this too. And that's what

should happen to this bill—the same thing that happened to the bill last week.

But is it going to be a bill a week where we deal with this? Again, we try to make Republicans look bad because they are standing up for the Constitution, they're standing up for the people of this country. They are trying to rein in the government. Again, we don't say, We're here from Washington, and we're here to save you.

The Congressional Oversight Panel that they want to put in charge of this, along with the Treasury Department, was never intended, nor is it authorized, to set policy.

So here we have, again, a situation where we're going to mix the executive with the legislative. We know the Supreme Court has ruled in the past that that is unconstitutional. But this majority doesn't seem to care about the Constitution. They don't mind that they took an oath to uphold the Constitution. Day after day after day we see violations of the Constitution. This happens to be the latest one.

I want to point out again what one of my colleagues said earlier. There's a rush to judgment here. This bill was introduced on March 23. So, here we are, continuing to rush in. Fools rush in where angels fear to tread is something my mother taught me a long time ago. I'm wondering if we need to think a little bit before we rush into areas where we might be treading on thin ice.

I reserve the balance of my time.

Mr. PERLMUTTER. Mr. Speaker, I would inquire of my friend from North Carolina whether she has any other speakers.

Ms. FOXX. Mr. Speaker, I don't have any other speakers, but I do have a closing statement.

Mr. PERLMUTTER. I would reserve the balance of my time.

Ms. FOXX. The other side of the aisle, I think, is trying to demonize this issue. It's constantly trying to say that Republicans favor the rich and that they favor the poor and are looking after the taxpayers.

Their vote later today on the budget is going to prove they're not looking after the taxpayers. They're not concerned about our children and grandchildren. They're simply concerned with politicizing every issue they can possibly politicize. And I think that I have a perfect example of that stated by one of their own.

Yesterday, the D.C. Examiner published an article on the underlying measure that this rule deals with, and I will place it in the RECORD at this point.

[From the Washington Examiner, Mar. 31, 2009]

BEYOND AIG: A BILL TO LET BIG GOVERNMENT SET YOUR SALARY

(By Byron York)

It was nearly two weeks ago that the House of Representatives, acting in a near-frenzy after the disclosure of bonuses paid to executives of AIG, passed a bill that would impose a 90 percent retroactive tax on those bonuses. Despite the overwhelming 328–93 vote, support for the measure began to collapse almost immediately. Within days, the Obama White House backed away from it, as did the Senate Democratic leadership. The bill stalled, and the populist storm that spawned it seemed to pass.

But now, in a little-noticed move, the House Financial Services Committee, led by chairman Barney Frank, has approved a measure that would, in some key ways, go beyond the most draconian features of the original AIG bill. The new legislation, the ''Pay for Performance Act of 2009,'' would impose government controls on the pay of all employees—not just top executives—of companies that have received a capital investment from the U.S. government. It would, like the tax measure, be retroactive, changing the terms of compensation agreements already in place. And it would give Treasury Secretary Timothy Geithner extraordinary power to determine the pay of thousands of employees of American companies.

The purpose of the legislation is to ''prohibit unreasonable and excessive compensation and compensation not based on performance standards,'' according to the bill's language. That includes regular pay, bonuses—everything—paid to employees of companies in whom the government has a capital stake, including those that have received funds through the Troubled Assets Relief Program, or TARP, as well as Fannie Mae and Freddie Mac.

The measure is not limited just to those firms that received the largest sums of money, or just to the top 25 or 50 executives of those companies. It applies to all employees of all companies involved, for as long as the government is invested. And it would not only apply going forward, but also retroactively to existing contracts and pay arrangements of institutions that have already received funds.

In addition, the bill gives Geithner the authority to decide what pay is ''unreasonable'' or ''excessive.'' And it directs the Treasury Department to come up with a method to evaluate ''the performance of the individual executive or employee to whom the payment relates.''

The bill passed the Financial Services Committee last week, 38 to 22, on a nearly party-line vote. (All Democrats voted for it, and all Republicans, with the exception of Reps. Ed Royce of California and Walter Jones of North Carolina, voted against it.)

The legislation is expected to come before the full House for a vote this week, and, just like the AIG bill, its scope and retroactivity trouble a number of Republicans. ''It's just a bad reaction to what has been going on with AIG,'' Rep. Scott Garrett of New Jersey, a committee member, told me. Garrett is particularly concerned with the new powers that would be given to the Treasury Secretary, who just last week proposed giving the government extensive new regulatory authority. ''This is a growing concern, that the powers of the Treasury in this area, along with what Geithner was looking for last week, are mind boggling,'' Garrett said.

Rep. Alan Grayson, the Florida Democrat who wrote the bill, told me its basic message is ''you should not get rich off public money, and you should not get rich off of abject failure.'' Grayson expects the bill to pass the House, and as we talked, he framed the issue in a way to suggest that virtuous lawmakers will vote for it, while corrupt lawmakers will vote against it.

''This bill will show which Republicans are so much on the take from the financial services industry that they're willing to actually bless compensation that has no bearing on performance and is excessive and unreasonable,'' Grayson said. ''We'll find out who are the people who understand that the public's money needs to be protected, and who are the people who simply want to suck up to their patrons on Wall Street.''

After the AIG bonus tax bill was passed, some members of the House privately expressed regret for having supported it and were quietly relieved when the White House and Senate leadership sent it to an unceremonious death. But populist rage did not die with it, and now the House is preparing to do it all again.

I will quote briefly from the article. This is a quote—and I probably will say that more than once because I think it's very important to continue to make sure this is a quote:

''Representative ALAN GRAYSON, the Florida Democrat who wrote the bill, told me its basic message is, 'you should not get rich off public money, and you should not get rich off of abject failure.'

''GRAYSON expects the bill to pass the House and, as we talked, he framed the issue in a way to suggest that virtuous lawmakers will vote for it, while corrupt lawmakers will vote against it.

''This bill will show which Republicans are so much on the take from the financial services industry that they're willing to actually bless compensation that has no bearing on performance and is excessive and unreasonable,'' GRAYSON said. ''We'll find out who are the people who understand that the public's money needs to be protected, and who are the people who simply want to suck up to their patrons on Wall Street.'' That's the end of the quote from the D.C. Examiner.

I certainly hope that the gentleman from Florida wasn't inferring that I, a Republican who opposes this bill, am a ''corrupt lawmaker.''

None other than Thomas Jefferson in his manual, which is our guide here—Mr. Speaker, I know you are familiar with Mr. Jefferson's manual. It is what we use to guide us—not just day by day, but minute by minute on this floor.

Mr. Jefferson said: ''The consequences of a measure may be condemned in the strongest terms; but to arraign the motives of those who propose to advocate it is not in order.'' Just because a Member chooses to oppose legislation, whether it be for reasons of policy or principle, they should not be disparaged by their colleagues, who wrestle with the very same voting decisions every day.

We're seeing things which are unprecedented in our history. Just yesterday, the President of the United States fired the CEO of what was once the largest corporation in the world. Some of us are concerned about where this is going. Some of us think this is simply the wrong thing to do.

It's easy to demonize the high-flying Wall Street fat cats who contributed mightily to our current situation. It's politically expedient to criticize corporate CEOs who seem tone deaf to the problems experienced daily by our constituents. But just because we're elected every 2 years doesn't mean that we

leave our principles at the door when we enter this Chamber.

Ambition is a good thing, but not when you impugn the motives of those who disagree. Those of us who have some experience understand that such words quoted from the D.C. Examiner, if they had been spoken on the floor, would have been considered inappropriate. They are just as inappropriate off the floor as they are on the floor.

Mr. Speaker, this rule is wrong. The underlying bill is wrong. The efforts to continue to involve our government in places it has no business in is wrong.

We need to do everything we can at this time—and we know we have people in this country hurting. Republicans are very, very sensitive to that. But the last thing in the world we need to do is to cut out the basis of this country—to weaken the very things that have made us the greatest country in the world. And involving ourselves more and more in controlling private enterprise will do nothing but to weaken this country more, to get our government involved.

It's the wrong way to go. I urge my colleagues to vote against this rule and to vote against the underlying bill.

With that, I yield back the balance of my time.

Mr. PERLMUTTER. I yield myself such time as I may consume.

I would urge an ''aye'' vote on this rule. So we will begin with that. The rule is designed and provides for seven amendments to a bill that limits executive compensation that is excessive, unreasonable, and not performance-based.

If an executive of an institution that's been loaned money or in which it has had capital advanced by the United States of America, by the people of America, and pays $5 million, $10 million, $20 million for no reason, in an excessive manner, then that kind of bonus is restricted.

The people's money as we've advanced it is to get the institutions back on track and not to pay executives exorbitant salaries. The people across the country expect that, number one. So I support the rule and I support the underlying bill.

Now there are a lot of reasons we got into this position where the government and the people of this country have had to assist the financial system—not the least of which was something like the Gramm-Leach-Bliley, which dropped regulations; or an inattention by the Bush administration to regulations within the financial system. But we are where we are.

President Bush and Secretary Paulson asked for a huge advance to the financial system to keep it upright. We did that. As a Democrat and as a Democratic Congress, advancing $700 billion to a Republican President and his Treasury Secretary to put the financial system back on track was not the first thing I wanted to do. But they made a good case. Their pleas were heard. And we did that.

Now we've got to make sure that people within that system don't take advantage of the good graces of the American people. And that's the purpose of this bill.

It provides for guidelines and regulations. There will be amendments, Mr. Speaker, that will potentially limit this to bigger banks—not to smaller community banks.

I would agree with my friend from North Carolina that whether it's on this floor or out in public, hyperbole and rhetoric can impugn somebody's character. She's concerned about Mr. GRAYSON. I would say there are others on her side who call people un-American because of the way they vote here.

I would just say to you, Mr. Speaker, and to the Members of this Chamber, that our words do really matter, and we do need to keep an eye on what we say. We really do have to watch ourselves and not get caught up in the heat of debate.

This bill is appropriate at this time to manage the lending that this country has done. As companies pay back their TARP advances, they're no longer subject to this. The management payments and salaries are subject to the board of directors and their shareholders.

But at this point in time, with those particular institutions, we are both lenders and shareholders, and we certainly have a say over the compensation of the management.

I urge an ''aye'' vote on the rule and on the underlying bill.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. SALAZAR). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. FOXX. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

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ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on the postponed questions will be taken later.

FEDERAL RETIREMENT REFORM ACT OF 2009

Mr. TOWNS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1804) to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1804

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Retirement Reform Act of 2009''.

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

Sec. 1. Short title; table of contents.

TITLE I—PROVISIONS RELATING TO FEDERAL EMPLOYEES RETIREMENT

Subtitle A—Thrift Savings Plan Enhancement

Sec. 101. Short title.
Sec. 102. Automatic enrollments.
Sec. 103. Qualified Roth contribution program.
Sec. 104. Authority to establish self-directed investment window.
Sec. 105. Reporting requirements.
Sec. 106. Acknowledgement of risk.

Subtitle B—Other Retirement-Related Provisions

Sec. 111. Credit for unused sick leave.
Sec. 112. Exemption of certain CSRS repayments from the requirement that they be made with interest.
Sec. 113. Computation of certain annuities based on part-time service.
Sec. 114. Treatment of members of the uniformed services under the Thrift Savings Plan.
Sec. 115. Authority to deposit refunds under FERS.
Sec. 116. Retirement credit for service of certain employees transferred from District of Columbia service to Federal service.

TITLE II—SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR SURVIVING SPOUSES OF ARMED FORCES MEMBERS

Sec. 201. Increase in monthly amount of special survivor indemnity allowance for widows and widowers of deceased members of the Armed Forces affected by required Survivor Benefit Plan annuity offset for dependency and indemnity compensation.

TITLE I—PROVISIONS RELATING TO FEDERAL EMPLOYEES RETIREMENT

Subtitle A—Thrift Savings Plan Enhancement

SEC. 101. SHORT TITLE.

This subtitle may be cited as the ''Thrift Savings Plan Enhancement Act of 2009''.

SEC. 102. AUTOMATIC ENROLLMENTS.

(a) IN GENERAL.—Section 8432(b) of title 5, United States Code, is amended by striking paragraphs (2) through (4) and inserting the following:

''(2)(A) The Board shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

''(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may by regulation prescribe.

''(C) The regulations shall include provisions under which any individual who would

otherwise be automatically enrolled in accordance with subparagraph (A) may—

''(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective from the start of such enrollment; or

''(ii) decline automatic enrollment altogether.

''(D) For purposes of this paragraph, the term 'eligible individual' means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual is eligible to contribute to the Thrift Savings Fund.

''(E)(i) Subject to clause (ii), sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.

''(ii) The Secretary concerned may, with respect to members of the uniformed services under the authority of such Secretary, establish such special rules as such Secretary considers necessary for the administration of this subparagraph, including rules in accordance with which such Secretary may—

''(I) provide for delayed automatic enrollment; or

''(II) preclude or suspend the application of automatic enrollment.''.

(b) TECHNICAL AMENDMENT.—Section 8432(b)(1) of title 5, United States Code, is amended by striking the parenthetical matter in subparagraph (B).

SEC. 103. QUALIFIED ROTH CONTRIBUTION PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting after section 8432c the following:

''§ 8432d. Qualified Roth contribution program

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'qualified Roth contribution program' means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

''(2) the terms 'designated Roth contribution' and 'elective deferral' have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

''(b) AUTHORITY TO ESTABLISH.—The Board shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

''(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

''(1) provisions under which an election to make designated Roth contributions may be made—

''(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

''(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

''(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an 'account' made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

''(3) any other provisions which may be necessary to carry out this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432c the following:

''8432d. Qualified Roth contribution program.''.

SEC. 104. AUTHORITY TO ESTABLISH SELF-DIRECTED INVESTMENT WINDOW.

(a) IN GENERAL.—Section 8438(b)(1) of title 5, United States Code, is amended—

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

(2) in subparagraph (E), by striking the period and inserting ''; and''; and

(3) by adding after subparagraph (E) the following:

''(F) a self-directed investment window, if the Board authorizes such window under paragraph (5).''.

(b) REQUIREMENTS.—Section 8438(b) of title 5, United States Code, is amended by adding at the end the following:

''(5)(A) The Board may authorize the addition of a self-directed investment window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

''(B) The self-directed investment window shall be limited to—

''(i) low-cost, passively-managed index funds that offer diversification benefits; and

''(ii) other investment options, if the Board determines the options to be appropriate retirement investment vehicles for participants.

''(C) The Board shall ensure that any administrative expenses related to use of the self-directed investment window are borne solely by the participants who use such window.

''(D) The Board may establish such other terms and conditions for the self-directed investment window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

''(E) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before establishing any self-directed investment window.''.

SEC. 105. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the self-directed investment window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

(b) REPORTING OF FEES AND OTHER INFORMATION.—

(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Executive Director may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year's experience.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''Board'' has the meaning given such term by 8401(5) of title 5, United States Code;

(2) the term ''participant'' has the meaning given such term by section 8471(3) of title 5, United States Code; and

(3) the term ''account'' means an account established under section 8439 of title 5, United States Code.

SEC. 106. ACKNOWLEDGEMENT OF RISK.

(a) IN GENERAL.—Section 8439(d) of title 5, United States Code, is amended—

(1) by striking the matter after ''who elects to invest in'' and before ''shall sign an acknowledgement'' and inserting ''any investment fund or option under this chapter, other than the Government Securities Investment Fund,''; and

(2) by striking ''either such Fund'' and inserting ''any such fund or option''.

(b) COORDINATION WITH PROVISIONS RELATING TO FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PENALTIES.—Section 8477(e)(1)(C) of title 5, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (C)(i); and

(2) by adding at the end the following:

''(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

''(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

''(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2); or

''(III) for allowing a participant to invest through the self-directed investment window or for establishing restrictions applicable to participants' ability to invest through the self-directed investment window.''.

Subtitle B—Other Retirement-Related Provisions

SEC. 111. CREDIT FOR UNUSED SICK LEAVE.

(a) IN GENERAL.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating the second subsection (k) and subsection (l) as subsections (l) and (m), respectively; and

(2) in subsection (l) (as so redesignated by paragraph (1))—

(A) by striking ''(l) In computing'' and inserting ''(l)(1) In computing''; and

(B) by adding at the end the following:

''(2) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x)–(xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.''.

(b) EXCEPTION FROM DEPOSIT REQUIREMENT.—Section 8422(d)(2) of title 5, United States Code, is amended by striking ''section 8415(k)'' and inserting ''paragraph (1) or (2) of section 8415(l)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to annuities computed based on separations occurring on or after the date of enactment of this Act.

SEC. 112. EXEMPTION OF CERTAIN CSRS REPAYMENTS FROM THE REQUIREMENT THAT THEY BE MADE WITH INTEREST.

(a) IN GENERAL.—Section 8334(d)(1) of title 5, United States Code, is amended—

(1) by striking ''(d)(1)'' and inserting ''(d)(1)(A)''; and

(2) by adding at the end the following:

''(B) No interest under subparagraph (A) shall be required in the case of any deposit to the extent that it represents the amount of any refund that was made to an employee or Member during the period beginning on October 1, 1990, and ending on February 28, 1991.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

SEC. 113. COMPUTATION OF CERTAIN ANNUITIES BASED ON PART-TIME SERVICE.

(a) IN GENERAL.—Section 8339(p) of title 5, United States Code, is amended by adding at the end the following:

''(3) In the administration of paragraph (1)—

''(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

''(B) subparagraph (B) of such paragraph—

''(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

''(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

SEC. 114. TREATMENT OF MEMBERS OF THE UNIFORMED SERVICES UNDER THE THRIFT SAVINGS PLAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) members of the uniformed services should have a retirement system that is at least as generous as the one which is available to Federal civilian employees; and

(2) Federal civilian employees receive matching contributions from their employing agencies for their contributions to the Thrift Savings Fund, but the costs of requiring such a matching contribution from the Department of Defense could be significant.

(b) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall report to Congress on—

(1) the cost to the Department of Defense of providing a matching payment with respect to contributions made to the Thrift Savings Fund by members of the Armed Forces;

(2) the effect that requiring such a matching payment would have on recruitment and retention; and

(3) any other information that the Secretary of Defense considers appropriate.

SEC. 115. AUTHORITY TO DEPOSIT REFUNDS UNDER FERS.

(a) DEPOSIT AUTHORITY.—Section 8422 of title 5, United States Code, is amended by adding at the end the following:

''(i)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which such employee or Member may be allowed credit under this chapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

''(2) Interest under this subsection shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.

''(3) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONAL AMENDMENT.—Section 8401(19)(C) of title 5, United States Code, is amended by striking ''8411(f);'' and inserting ''8411(f) or 8422(i);''.

(2) CREDITING OF DEPOSITS.—Section 8422(c) of title 5, United States Code, is amended by adding at the end the following: ''Deposits made by an employee, Member, or survivor also shall be credited to the Fund.''.

(3) SECTION HEADING.—(A) The heading for section 8422 of title 5, United States Code, is amended to read as follows:

''§ 8422. Deductions from pay; contributions for other service; deposits''.

(B) The analysis for chapter 84 of title 5, United States Code, is amended by striking the item relating to section 8422 and inserting the following:

''8422. Deductions from pay; contributions for other service; deposits.''.

(4) RESTORATION OF ANNUITY RIGHTS.—The last sentence of section 8424(a) of title 5, United States Code, is amended by striking ''based.'' and inserting ''based, until the employee or Member is reemployed in the service subject to this chapter.''.

SEC. 116. RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE.

(a) RETIREMENT CREDIT.—

(1) IN GENERAL.—Any individual who is treated as an employee of the Federal Government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual's creditable service under sections 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

(A) Sections 8333 and 8410 (relating to eligibility for annuity).

(B) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).

(C) Sections 8338 and 8413 (relating to deferred retirement).

(D) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).

(E) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).

(F) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

(2) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual's qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1–626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying paragraph (1) with respect to the individual.

(3) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

(b) QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.—In this section, ''qualifying District of Columbia service'' means any of the following:

(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts—

(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government under section 11232(f) of such Act; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(c) CERTIFICATION OF SERVICE.—The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

TITLE II—SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR SURVIVING SPOUSES OF ARMED FORCES MEMBERS

SEC. 201. INCREASE IN MONTHLY AMOUNT OF SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR WIDOWS AND WIDOWERS OF DECEASED MEMBERS OF THE ARMED FORCES AFFECTED BY REQUIRED SURVIVOR BENEFIT PLAN ANNUITY OFFSET FOR DEPENDENCY AND INDEMNITY COMPENSATION.

Section 1450(m)(2) of title 10, United States Code, is amended—

(1) in subparagraph (B), by striking ''$60'' and inserting ''$95'';

(2) in subparagraph (C), by striking ''$70'' and inserting ''$105'';

(3) in subparagraph (D), by striking ''$80'' and inserting ''$120'';

(4) in subparagraph (E), by striking ''$90; and'' and inserting ''$130;'' and

(5) by striking subparagraph (F) and inserting the following new subparagraphs:

''(F) for months during fiscal year 2014, $330;

''(G) for months during fiscal year 2015, $335; and

''(H) for months during fiscal year 2016 ending before the termination date specified in paragraph (6), $345.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. TOWNS) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. TOWNS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. TOWNS. Mr. Speaker, I yield myself such time as I may consume.

Today, I am pleased to bring to the floor H.R. 1804, the Federal Retirement Reform Act of 2009. The bill modernizes the Thrift Savings Plan, the retirement savings plan for Federal employees. The legislation includes several other important retirement reforms for Federal employees and members of the Armed Forces.

This bill enjoyed strong bipartisan support in the last Congress when it passed the House as H.R. 1108. Two weeks ago, the Oversight and Government Reform Committee again considered and reported favorably the current language of this bill. I am pleased that the bill makes further progress in ending the military family tax which unfairly penalizes the survivors of those who died in service or as a result of their service-connected injuries.

As Chairman SKELTON will explain, this bill increases the monthly amounts paid to surviving spouses who are denied the full amount of their annuity under the Survivor Benefit Plan. Our enhancement to the TSP program also will benefit military members and their families.

The Federal Employee Thrift Savings Plan is one of the best retirement savings programs in the Nation. The plan runs with very low cost and is a model for both the private sector and other governments. The bill we are considering today will strengthen and modernize the TSP.

At the suggestion of the Federal Retirement Thrift Investment Board, the bill provides for automatic enrollment in TSP for new Federal civilian employees. Employees have the opportunity to choose whether to enroll or not, but for those who do not make any decision enrollment would be the default. The decision on automatic enrollment for members of the uniformed services is at the discretion of the Secretaries of the military departments.

The bill would also provide a Roth contribution option for TSP. With a Roth option, employee contributions are made after taxes are deducted, and the employee does not pay taxes on the fund upon withdrawal. This option is currently available in many private sector retirement plans today.

The bill also includes a provision to allow employees covered by the Federal Employees Retirement System to receive credit for unused sick leave towards their retirement annuity, as is currently the case for employees covered by the older Civil Service Retirement System. The committee also adopted amendments to make it easier for former employees to reinstate their retirement credits if they return to Federal service, and to work part-time at the end of their career.

I want to recognize the Federal Workforce Subcommittee chairman, Mr. LYNCH, who has worked really hard on this, and for his work on these issues and the bill. I would also like to thank Representative NORTON, Representative VAN HOLLEN, and Representative CONNOLLY for their thoughtful amendments that improve the bill.

I would like to thank the Oversight Committee ranking member, Mr. ISSA of California, for his amendments that strengthen the legislation as it relates to members of the uniformed services. Thank you for your input.

Finally, I would like to thank Chairman SKELTON and the Armed Services Committee for their contribution to this bill that will provide better financial protection to the families of our military men and women. I urge my colleagues to support this legislation.

I reserve the balance of my time.

Mr. ISSA. I reserve the balance of my time.

Mr. TOWNS. I recognize the gentleman from Missouri (Mr. SKELTON) for 3 minutes, the person who has worked really hard on this and has done a fantastic job. And of course, when it comes to the military and military personnel, he is always there doing the right thing.

Mr. SKELTON. First, I thank the gentleman from New York (Mr. TOWNS) for yielding. I rise in strong support of his bill, H.R. 1804, and I thank him for his partnership on this bill.

In addition to the many good things this legislation does for Federal civil servants, I am pleased to report that this bill includes a provision of great importance to the surviving spouses of servicemembers who have died as a result of service-connected conditions.

I want to thank Chairman TOWNS for his great assistance in making it possible to address this issue in this bill. Members of the Committee on Armed Services, which I am privileged to chair, are very appreciative of the cooperation that made the legislation possible, because it is unlikely that the funding required to support the change could have otherwise been found.

I would also commend my colleague, my friend, a member of the Armed Services Committee, Congressman SOLOMON ORTIZ, who has introduced legislation on the SBP offset and has been a great leader and advocate for the military families affected by this issue.

The provision would increase the monthly special survivors indemnity allowance beginning in fiscal year 2010 with a $35 increase, resulting in a monthly payment of $95, and concludes in fiscal year 2016 with a $245 increase, resulting in a monthly payment of $345.

Although the improvements are substantial and a welcomed addition for our surviving spouses, the proposal is an incremental change that falls short of the ultimate objective to eliminate the offset of the Survivor Benefit Plan, or SBP as it is called, by the amount of Dependency and Indemnity Compensation, or DIC, received from the Department of Veterans Affairs.

This so-called widow's tax has long denied surviving family members the full payment of their SBP benefits. I can assure our surviving spouses and my colleagues on the Armed Services Committee that we will continue to explore every opportunity to pursue legislation that brings us closer to eliminating the widow's tax, just as we are doing today, with the help of Chairman TOWNS. H.R. 1804 provides a robust step in that direction, and I encourage my colleagues to vote for it.

Mr. ISSA. Mr. Speaker, I would like to thank Chairman SKELTON and Chairman TOWNS for the hard work they put into this bill. I am here today to say this is a good bill on the front end. I am sad to say this is a bad bill on the back end.

What this bill does, which was worked out on a very bipartisan basis with all speaking here today, is in fact it does recognize that modern retirement plans should have as many options as possible, and certainly adding the Roth IRA option for some Federal workers is extremely good.

Additionally, the advantages for the military and military commanders to be able to look at their individual needs of their services and allow for different opting in and out patterns of course makes sense, and I appreciate Chairman TOWNS' willingness to work on that fix during the markup.

The majority in our committee and the minority in our committee found this to be a very bipartisan issue to

work on, and I appreciate the fact that this is good for the troops and on paper saves money. However, I have to say, the back end of this bill, sponsored by Members of the majority not speaking yet here today, is nothing but a piggy bank for other projects, for special interest projects.

The fact that this is a tobacco bill begs the question of: If we were to free up 2 or 3 or more billion dollars from a military budget in outlying years, why would this be a reason, when we have trillions of dollars of deficits, to spend money? I think the majority knows it is not.

In fact, the idea that you on paper save money by members of the government opting out of pre-tax contributions in favor of the Roth IRA post-tax contribution and thus creating additional tax revenue, at a time when we have a deficit at the highest in our history, says not one penny ever saved will in fact go to deficit reduction under this majority.

So, will I vote for this bill? Of course, I will. It does a lot of good things for our Federal workers. The fact, though, that the provision for family smoking prevention is not funded through the ordinary course of revenue but rather through this scheme that, depending upon how many workers choose Roth IRAs, may or may not produce the money that is about to be spent, I find wrong and I find misguided.

As the chairman said, there were a number of things we did for the military. There is more that we should do. Only the U.S. military is eligible for TSP but receives no match.

It is very clear that, in a modern military, one in which only about one in four serve until retirement on active duty, the TSP is all the military takes with them when they leave. That famous 20-year retirement does not vest in 5 years the way it does with the majority and the minority, all of us as Members of Congress; in fact, it takes 18½ years to lock in a military retirement and 20 years to appreciate it. Clearly, the military does not enjoy what we in Congress enjoy, which is TSP, with a match, and a 5-year vesting schedule so that we can take our retirement plan with us whenever we leave, in as few years as 5.

I do once again thank all the Members on both sides of the aisle that worked hard on the front ends of this bill. I believe it has merit and should be positively received and voted for.

I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I recognize one of the hardest working Members in this body, the chairman of the Federal Workforce Subcommittee, STEPHEN LYNCH, for 3 minutes.

Mr. LYNCH. I thank the gentleman for his kind words.

Mr. Speaker, I rise in support of both Chairman TOWNS, the gentleman from Brooklyn, and also Mr. SKELTON from Missouri in their endorsement of H.R. 1804, their sponsorship as well. This is the Federal Retirement Reform Act that includes enhancements to the Thrift Savings Plan as well as to other Federal retirement programs. And I do so because I am in agreement with both of those gentlemen that the TSP's offerings to Federal employees must finally be allowed to catch up to private sector 401(k) plans.

Given the Thrift Savings Plan's integral role in providing retirement income security for Federal employees, it is time for Congress to adopt and extend the auto enrollment plan to TSP participants. This legislation would allow the Thrift Savings Plan to offer a Roth option. And both sides have talked about the impact of that.

I think it is important to point out that by having Federal employees using this Roth option, it is calculated that we will bring in approximately $2.2 billion in new taxes, new tax revenues from Federal contributions from Federal employees over the next 10 years.

□ 1230

This bill, unlike a lot of other bills on this floor, basically pays for itself.

Mr. Speaker, in my role as chairman of the Federal Workforce, Postal Service, and the District of Columbia Subcommittee, I believe that the Federal Government must ensure that its benefits allow it to retain and recruit the best and the brightest. Toward that end, I authored H.R. 1263, legislation that would make improvements to the TSP, as well as to the Federal retirement programs. I have been pleased to work with both Chairman TOWNS and former Chairman WAXMAN on the issue, as well as my friend and colleague, JIM MORAN from Virginia.

This bill facilitates amending the Federal Employees Retirement System to provide employees with retirement credit for unused sick leave. Federal executives, managers and employees have called for crediting unused sick leave in the same way that the Civil Service Retirement System treats unused sick leave.

Additionally, this legislation fixes a CSRS annuity calculation problem for those employees who wish to phase down to part-time work at the end of their Federal careers. That is an important option given the aging demographics of our Federal workforce.

At a time of an overall aging workforce in America, and a particularly aging Federal workforce, the government as an employer must take the lead in addressing these workplace realities.

I conclude my remarks by stating that I give my full support to these civil service provisions. On behalf of the National Active and Retired Federal Employees Association, NARFE, I would also like to make it clear that this new obligation—this is very important—this new obligation does not result in an ''unfunded obligation'' for the Civil Service Retirement and Disability Fund as current law provides that new payments are fully funded. And I am submitting an additional clarification to that effect as part of the RECORD.

Mr. Speaker, I would like to expand on a provision contained in H.R. 1804, the ''Federal Retirement Reform Act of 2009,'' which makes improvements to the Thrift Savings Plan (TSP) and to the federal retirement programs. By amending the Federal Employees Retirement System (FERS) to credit unused sick leave for retirement purposes, the measure will modestly increase certain federal employees' retirement benefits. Thus, this bill will result in additional benefits, though small, from the Civil Service Retirement and Disability Trust Fund (CSRDF). However, on behalf of the National Active and Retired Federal Employees Association (NARFE), I want to make it clear that this new obligation does not result in an ''unfunded obligation'' of the CSRDF as current law expressly provides that new payments from the CSRDF are fully funded. Since the creation of FERS in the 1980's, Section 8348f of Title 5 of the United States Code has ensured the integrity of the CSRDF by automatically setting-aside funds to cover the cost of any new benefits. Additionally, H.R. 1804 results in sufficient savings to cover the cost of this modest benefit increase under FERS.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, once again, I have to say it is not the front end of this bill that anyone should object to. The part we are seeing here today is excellent. But as Chairman LYNCH said, and said quite rightfully, it is calculated that this piece of legislation will save net approximately $2.2 billion for better or worse on the backs of our retirees.

It is a short-term savings, Mr. Speaker. It is not, in fact, a long-term savings. Any time you do collect money now but don't collect it later, it is going to eventually catch up. So for the short period of time in which this $2.2 billion is generated, it certainly would have been appropriate for all of us to be able to use this money in the committee for the Federal workforce. And the part that upsets me is that we are neither returning it to the taxpayers in the form of less deficit, nor are we using it for structural changes for the Federal workforce, whether uniform military or civilian. That is the only problem.

Again, what this bill does, it does well. What this bill eventually does is, in fact, fund a pet project of the former chairman, Mr. WAXMAN, for tobacco programs, something that has certainly been funded very well, funded on the backs of plenty of other programs. Candidly, I don't believe that this is the best use of the money at a time we are running trillions in deficits.

I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield 2 minutes to the chairman of the Readiness Subcommittee on Armed Services, the gentleman from Texas, Mr. SOLOMON ORTIZ.

Mr. ORTIZ. Chairmen TOWNS, SKELTON and HENRY BROWN, thank you so much for bringing this bill to the floor.

I rise in support of the bill before us today.

Today, the Congress takes another important step toward providing surviving spouses of military servicemembers relief by addressing a long-standing problem in our military survivors benefit system called the widow's tax.

Like most matters that involve Federal payments, this is a complex yet pivotal matter of importance to the survivors of our servicemembers. Essentially, if servicemembers purchase a survivor's benefit plan for their loved ones, the survivor receives a portion of the servicemember's retired pay upon his or her death. If that servicemember dies of a service-connected cause, the survivor is also entitled to compensation from the VA.

However, per current law, the survivor benefit payment is decreased by the amount of the VA payment dollar for dollar, and that's the amount the survivor will get, not the full amount of both entitlements.

This affects approximately 59,000 widows. For too long, the offset between the two programs has done precisely the opposite of what they are intended to do, protect the surviving loved ones.

The survivors of those who defend our country deserve our very best. Congress addressed the unfairness of the offset in the Fiscal Year 2008 Defense Authorization Act by creating a special monthly survivor allowance for dependents subject to the offset.

I am pleased that this bill considered today builds upon those efforts by providing a substantial increase in the monthly payment to spouses from the survivor allowance. Although there is still much work to be done, this bill is an important step towards the complete elimination of the offset and reflects our bipartisan desire to provide for surviving dependents of military servicemen and -women.

And I want to thank all those involved in bringing this bill to the floor.

I support it, and I urge my colleagues to support this bill.

Mr. ISSA. Mr. Speaker, I reserve the remainder of my time.

Mr. TOWNS. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Mrs. DAVIS), the chairwoman of the Military Personnel Subcommittee.

Mrs. DAVIS of California. Mr. Speaker, I rise in support of H.R. 1804. Earlier this year, spouses of servicemembers from current and past wars stood up during a Military Personnel Subcommittee hearing to share their stories about how the SBP/DIC offset has impacted their lives. Their stories, I can assure you, were compelling and demonstrated why the goal of eliminating this offset is so important.

While the enhancement of the monthly benefits under the Special Survivor Indemnity Allowance provided in this bill does not end the so-called widow's tax, it is a strong step in the right direction. We have done the best we could with this bill given the resources available, and strong support for H.R. 1804 from the military associations has confirmed the value of our effort. However, I do believe that more needs to be done, and I intend to keep searching for opportunities to make improvements with the hope that someday we can find a permanent solution.

I want to thank Chairman TOWNS for sponsoring a bill that provides so many benefits to our civilian and military workforce, and Mr. ORTIZ for his leadership on the SBP/DIC issue. I urge my colleagues to vote in favor of H.R. 1804.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I continue to urge my colleagues to vote for this bill because of all the good things it does. I also urge my colleagues to continue to look at what we owe our Federal workforce, and particularly as previous speakers have said, our uniform men and women. Men and women in uniform enter the service voluntarily. Four years, 6 years, 8 years later, they often leave. As a matter of fact, with the up-or-out program, many of them are not promoted and must leave. Therefore, they leave the military service with less than 20 years. Therefore, they have nothing. They have their GI Bill, but they have no retirement.

Only, only in the Federal uniform services do we treat people that way. The President served 1 day, and he was eligible for his lifetime benefit. I don't begrudge the President hundreds of thousands of dollars a year for the rest of his life or any of the previous Presidents. But it is amazing to me that the President vests as soon as he is sworn in. Members of Congress fully vest after just 5 years; and yet, we are looking at our men and women in uniform being shot at, being injured, often being forced into early retirement or early leaving of the service with 10 or 20 or 30 percent disability, just enough they can't really do the job they came in to do, but not enough to get, if you will, a handsome retirement. They then enter the workforce later in life, and they enter with instead of a head start, with an impairment.

This $2.2 billion was only about one-tenth of what it would have taken to provide matching TSP funds for our men and women in uniform. Certainly, it is even a fraction of what it would take to give them a defined benefit plan, even close to what we here in Congress get. But certainly, as we pass this piece of legislation today as a downpayment for reform, we need to begin looking at what it is going to take to provide our men and women in uniform equal justice with the rest of the Federal workforce.

I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield 2 minutes to Congressman CONNOLLY from the great State of Virginia.

Mr. CONNOLLY of Virginia. I thank the distinguished chairman.

Mr. Speaker, I rise today in support of the Federal Retirement Reform Act of 2009. This legislation eliminates inconsistencies in the Federal retirement system and provides greater retirement security for Federal employees. It helps ensure we will not face a brain drain that could cripple Federal agencies. Within the next decade 47 percent of supervisory staff in the Federal workforce will be eligible for retirement. We must take action to ensure that Federal agencies continue to have the institutional knowledge and expertise that allows government to function smoothly and effectively.

The Federal Retirement Reform Act of 2009 makes several legislative reforms. This legislation enables members of the civil service and the Federal Employees Retirement Service to redeposit their cashed-out annuities if they decide to re-enter civil service. The committee adopted my amendment to H.R. 1256 by adding this language which is contained in the bipartisan FERS Redeposit Act.

I am pleased that we now have the opportunity to enact this legislation that will attract talented employees back to the Federal Government. We should be consistent with all of our Federal workers. Employees in the Civil Service Retirement System can already redeposit their annuities. Allowing FERS employees to do the same is only fair. This bill also ensures that FERS employees receive annuity credit for unused sick leave, just as CSRS employees do. Again, it is an issue of equity to provide those employees with the same benefits. This reform will improve the efficiency of the Federal Government by reducing absenteeism.

In addition, the bill will enable employees in the Civil Service Retirement System to work part-time at the end of their careers without losing retirement benefits. This provision will help retain talented workers and assist in training future supervisors and executive-level staff.

I applaud the distinguished chairman, Mr. TOWNS, for shepherding this important legislation through committee and look forward to its passage to help ensure a vibrant Federal workforce for years to come.

Mr. ISSA. Mr. Speaker, it is my distinct pleasure to yield 2 minutes to the ranking member of the Subcommittee on the Workforce, Mr. CHAFFETZ of Utah.

Mr. CHAFFETZ. Mr. Speaker, the gentleman from Virginia (Mr. CONNOLLY) just indicated his support of this bill. I have a brief question. I would like to yield some time to him. He was quoted in the Washington Post as saying, ''We need to reverse the Bush economic policies by balancing the budget.'' My question to him is does he intend to support the President's budget today which would double the national debt?

I yield time to the gentleman from Virginia.

Mr. CONNOLLY of Virginia. I would say to my good friend in response, when the budget comes to the floor this afternoon, I would be glad to talk about that subject. Right now we are talking about Federal employees and

trying to make sure that they have what they need.

Mr. CHAFFETZ. Reclaiming my time, Mr. Speaker, my question for the gentleman from Virginia, I wonder if the gentleman from the State of Virginia knows that this Democratic budget raises taxes by $1.2 trillion or that it makes each American's share of the national debt $70,000. Or that it opens the door to a national energy tax that will cost every family at least $3,128 a year.

Mr. Speaker, I would like to yield some time to the gentleman from Virginia to respond.

Mr. CONNOLLY of Virginia. Well, as a member of the Budget Committee, I'm very aware of the fact that actually tax cuts for middle class families in this budget exceed $2 trillion. And again, that will be made clear when we have the opportunity to debate the budget on the floor of the House. I thought the gentleman wanted me to answer his question.

Mr. TOWNS. Mr. Speaker, I yield 1 minute to Congresswoman CAROL SHEA-PORTER from New Hampshire.

Ms. SHEA-PORTER. Mr. Speaker, I rise today in support of the Federal Retirement Reform Act which contains a much-needed provision to increase the special survivor indemnity allowance for widows or widowers of deceased servicemembers.

When our servicemembers purchase a survivor benefit plan to protect their families, they expect their families to receive the full annuity they paid for. Unfortunately, if the surviving spouse is eligible for VA dependency and indemnity compensation because of a spouse's service-related death, the survivor benefit annuity is reduced dollar for dollar. This is not fair.

The DIC is meant to compensate survivors for the servicemember's death in service. Why would we penalize those servicemembers who have the foresight to purchase insurance for their families?

Our military, and their families, make many sacrifices to serve and protect our Nation. We owe them the benefits they earned for their service, and we most certainly owe them the insurance they purchased. They should not have to worry about their families if they die. This is no way to treat those who are willing to put their lives on the line for us, and this is no way to treat their families.

This bill takes another step toward eliminating this unfair widow's tax that in effect punishes the families of those who sacrificed their lives for this country.

Mr. ISSA. I continue to reserve the balance of my time.

□ 1245

Mr. TOWNS. I recognize the gentleman from Virginia (Mr. MORAN) for 1 minute.

Mr. MORAN of Virginia. Mr. Speaker, I rise in support of this bill and, particularly, for three bills that I was proud to sponsor that are included, the FERS Redeposit bill, the Part-Time Compensation, and the Parity For Retirement Systems. I want to mention a word about the parity for retirement systems.

At a time when those who are in the Federal Employee Retirement System are seeing their Thrift Savings Plans tank by 30, sometimes 40 percent, it's particularly important that they be fully compensated for unused sick leave. The reality is that, in the earlier retirement system, the so-called CSRS system, Federal employees are fully compensated for all unused sick leave at the end of their careers. But under the FERS system, if they don't use that sick leave, they lose it. And so the Government loses $68 million in productivity from those employees who take their sick leave at the very end of their careers. That's not an intelligent plan, and the fact is that this bill corrects that disparity.

The entire bill should be passed, and I hope we'll have bipartisan support for it. And I thank Mr. LYNCH for his leadership on behalf of Federal employees.

Mr. TOWNS. I would like to recognize the gentleman from Virginia, GLENN NYE, for 1 minute.

Mr. NYE. Mr. Speaker, the men and women who sign up to serve our country in uniform do so knowing they may not return home, and with the expectation that, if the unthinkable should happen, their loved ones will be cared for.

However, because of the so-called ''widow's tax,'' survivor benefits paid for by the VA are subtracted from benefits paid by the Department of Defense, meaning that families receive less than they should. For families of servicemembers killed in Iraq and Afghanistan, this sudden loss of income adds an unnecessary burden to the tragedy of losing a loved one.

The widow's tax also strikes the families of older veterans. Often the spouses of seriously disabled veterans give up their own careers in order to act as caregivers. And when these veterans pass away, the reduced benefit is not enough for their widows to make ends meet.

With this bill we will take a strong step toward righting this wrong by increasing the payments to survivors. This is the least we can do for our servicemembers, our veterans and their families, and it's the right thing to do as a country.

I urge my colleagues to support this bill.

Mr. TOWNS. At this time I yield 1½ minutes to the Congresswoman from Washington, D.C., Ms. ELEANOR HOLMES NORTON.

Ms. NORTON. I want to thank the chairman and the ranking member for bringing forth this very important set of bills that benefit Federal employees. One that perhaps has not been spoken to I'll speak to now. It's the Employees' Equity Act, which restores credible service or retirement years to District of Columbia employees who were involuntarily transferred to the Federal Government pursuant to the Revitalization Act and, in the process, somehow, by an error of government, not an error of their own, they have lost retirement years. Not money, just years. Some of them are working when they could have retired 10 years ago.

This bill simply restores the years, gives them credit for the years so that, in their transfer from the District of Columbia to the Federal Government, they haven't lost all of those years of service. They have to start over again as if just entering the Federal Government. No one intended that.

And because you, Mr. Chairman, and the ranking member have understood this bill, which has been in the Congress for some time, we come forward now to correct this mistake. Some of them will retire, some of them will stay on, but all of them will have all of their years in public service credited to them. I thank you both.

Mr. TOWNS. Does the gentleman have any further speakers?

Mr. ISSA. I'll do a very short close, if you want to reserve your time to close.

Mr. TOWNS. I'd like to reserve the time to close.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Once again, in closing, this is a good bill. As the previous speakers have said, we were able to fix a number of ills, including what was mentioned by the gentlelady from the District of Columbia.

What I'm sad about is that we didn't begin to make a down payment on some other important areas; certainly, most among them, our uniform services. We took the benefit of putting military personnel on to a Roth IRA without looking into whether we could do something for them.

Mr. Speaker, there's no question in this body that our men and women in uniform that are not able to retire in 20 years will leave the military only with whatever they happen to put into their Thrift Savings Plan. They're basically finding themselves encouraged to save on what is one of the smallest salaries that anyone could imagine for a particular private, corporal or sergeant. And yet, we will not even make the 3 percent match we make for ourselves here in Congress.

So I certainly would hope that, in the foreseeable future, this Congress, on a bipartisan basis, as we're doing here today, can see fit to make a bipartisan down payment for our men and women in uniform to allow their Thrift Savings Plan to have at least some match, which today it doesn't have, and leaves them often with no retirement when they leave the military.

With that, I want to thank the chairman for the markup on this bill, which was done in a very cordial fashion, preagreed and worked out so that it could be done efficiently and we could get the best possible bill to the floor.

I yield back.

Mr. TOWNS. How much time remains?

The SPEAKER pro tempore. The gentleman has 1¼ minutes remaining.

Mr. TOWNS. Let me begin by first thanking the gentleman from California (Mr. ISSA) for his input. Let me thank the staff for all their input. I'd like to thank Congressman SKELTON. And of course I'd like to thank Congressman LYNCH for all the work they've done to make this bill better.

I'd like to reiterate my strong support for H.R. 1804. It will provide much-needed enhancements to the Thrift Savings Plan and to the Federal Government's retirement system.

I urge all of my colleagues to join in supporting the passage of this measure and, of course, because I think it will do so much for the servicemen and, of course, the widows of servicemen. And I think that we owe them that.

And this legislation is not perfect, but it's a giant step in the right direction. So I'm hoping that my colleagues will support this legislation. And let's move it very quickly through the House, and let's get it to the President's desk for him to be able to sign it.

Thank you so much for the support that we've gotten from everyone.

Mr. BROWN of South Carolina. Mr. Speaker, I rise today in support of Title II of H.R. 1804, the Federal Retirement Reform Act. Congressman TOWNS is to be commended for taking up the cause that Congressman ORTIZ and I, along with many others, have championed with H.R. 775, The Military Surviving Spouses Equity Act. While this bill doesn't repeal the widows' tax imposed by the offset of Survivor Benefit Plans by Dependency and Indemnity Compensation, it helps military survivors during a difficult time for all of us.

When Congress established the Military Survivors' Benefit Plan, or SBP, in 1972, they did so in order to give members of the military a sense of security about their spouses in the event of their death. The plan is voluntary, can be purchased by retirees or will be provided to survivors of active duty servicemembers who are killed in the line of duty. Through the SBP that was bought, spouses and children can receive up to 55% of the servicemembers' retired pay. While SBP is an annuity, survivors of military retirees and veterans may also receive Dependency and Indemnity Compensation (DIC) if their spouse died a service connected death. Under current law, widows are forfeiting, dollar-for-dollar, the SBP annuity their spouse paid for by the amount of the DIC benefit.

It's simply wrong, and unfair to our military surviving spouses who were tasked with supporting their spouses during the most difficult of war times and peace times, to take away that which was intentionally paid for because of a benefit intended to serve another purpose. We don't do this with private life-insurance, we don't do it with the federal survivor benefit, and we shouldn't do it to the families of those who paid the greatest cost for freedom.

This bill, while it doesn't repeal the offset of SBP annuities by the DIC benefit, will be a needed help for widows, widowers and their children. However, I hope that it will not be considered the last step towards equity. By increasing payments by $35 beginning in 2010, surviving spouses will receive a monthly payment of $95 and will continue to receive increased payments until fiscal year 2016 with a $245 increase resulting in a monthly payment of $345. It's the least we can do; we need to repeal the offset.

Finally, I want to thank the veterans service organizations, particularly the Gold Star Wives of America, and Representative SOLOMON ORTIZ, for their hard work towards equity for surviving spouses. While I've sponsored a bill to repeal the SBP/DIC offset since my first term in Congress, even such small steps as the one we took today wouldn't be possible without their help.

Ms. BORDALLO. Mr. Speaker, I rise today in support of the passage of H.R. 1804, the Federal Retirement Reform Act of 2009 in the House of Representatives. The passage of this bill in the House marks an important step towards reducing the "widow's tax" that currently denies surviving family members the full payment of their Survivor Benefit Plan (SBP).

If enacted, Title II of H.R. 1804 would increase the monthly payments under the Special Survivor Indemnity Allowance to surviving spouses or former spouses of deceased service members who were denied the full amount of their annuity under the SBP due to an offset requirement by the Dependency and Indemnity Compensation (DIC) from the Department of Veterans Affairs (VA). This benefit will help thousands of military widows and more than a million current servicemembers and federal civilian employees.

I commend Representative IKE SKELTON of Missouri and Chairman of the House Armed Services Committee as well as Representative ED TOWNS of New York and Chairman of the House Committee on Oversight and Government Reform for their working together to strike a compromise on this important provision in H.R. 1804. I will continue to work with my colleagues on the House Armed Services Committee to find ways to reduce the burden on widows of our nation's servicemembers. The compromise struck in this legislation is a major step forward and we need to continue to find ways to ensure that the servicemembers' widows receiving the full and fair annuity to which they are entitled under the SBP.

Mr. TOWNS. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. TOWNS) that the House suspend the rules and pass the bill, H.R. 1804.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

END GOVERNMENT REIMBURSEMENT OF EXCESSIVE EXECUTIVE DISBURSEMENTS (END THE GREED) ACT

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1575) to petition the courts to avoid fraudulent transfers of excessive compensation made by entities that have received extraordinary Federal financial assistance on or after September 1, 2008, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1575

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "End the Government Reimbursement of Excessive Executive Disbursements (End the GREED) Act".

SEC. 2. CIVIL ACTION TO AVOID FRAUDULENT TRANSFER.

The Attorney General, after consultation with the Secretary of the Treasury, may commence a civil action in an appropriate district court of the United States to avoid any transfer of compensation by (or on behalf of) a recipient entity to (or for the benefit of) an officer, director or employee made on or after September 1, 2008 (and to avoid the obligation pursuant to which such transfer occurred, to the extent of such transfer), and to recover such compensation (wherever located) for the benefit of such entity, to the extent such entity received less than a reasonably equivalent value in exchange for such compensation and such entity—

(1) was insolvent on the date that such compensation was transferred, not taking into account any covered direct capital investment received by such entity on or after September 1, 2008, or

(2) was engaged in business or a transaction, or was about to engage in business or a transaction, for which property remaining in the recipient entity was an unreasonably small capital, not taking into account any such covered direct capital investment.

Pursuant to the authority provided in this section, the Attorney General may avoid any such transfer in the manner described in this section, or may avoid any such transfer to the full extent that such transfer is avoidable under applicable law by or on behalf of any creditor holding an unsecured claim against such entity.

SEC. 3. SUBPOENA AUTHORITY.

The Attorney General may, after consultation with the Secretary of the Treasury, issue a subpoena requiring the attendance and testimony of witnesses and the production of documentary evidence relevant to possible avoidance of any transfer of compensation under section 2, including evidence regarding the circumstances surrounding any compensation arrangement or transfer of compensation involved, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate district court of the United States.

SEC. 4. DEFINITIONS.

For purposes of this Act—

(1) the term "covered direct capital investment" means a direct capital investment received under the Troubled Assets Relief Program or, with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank, under the amendments made by section 1117 of the Housing and Economic Recovery Act of 2008,

(2) the term "officer, director, or employee" includes—

(A) an officer, director, or employee of a recipient entity, and

(B) an officer, director, or employee of a subsidiary of a recipient entity,

(3) the term "compensation arrangement" means an arrangement that provides for the payment of compensation (including performance or incentive compensation, a bonus of any kind, or any other financial return designed to replace or enhance incentive, stock, or other compensation), and

(4) the term ''recipient entity'' means a person (including any subsidiary of such person) that on or after September 1, 2008, is holding (or has the direct benefit of) a covered direct capital investment that exceeds $5,000,000,000 outstanding.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent for all Members to have 5 legislative days to revise their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. I yield myself as much time as I may consume.

Members of the House, this is a modest effort to safeguard taxpayer funds and rein in the out-of-control compensation and bonus abuses by companies that have used Federal Government-supplied capital to stay out of bankruptcy.

Essentially, the two main provisions in it are first, it supplements existing fraud laws to allow the Attorney General to use the courts to challenge, on a case-by-case basis, the most egregious bonuses by entities receiving more than $5 billion in direct capital investments. This measure is directly based on fraudulent transfer laws that are in the United States Code, codified, or a matter of common law in every State that goes back to Elizabethan times, if anyone would care to research that.

Secondly, we authorize the Attorney General to subpoena necessary information relevant to the bonuses. But, unlike other measures, this act applies to bonuses made as far back as the fall of 2008, so that it could apply to year-end bonuses made by AIG and Merrill Lynch. And so it also can be applied to foreigners, since we found out that a majority of AIG bonuses, as determined by Attorney General Cuomo, were not received by Americans, and that, for some reason, foreign individuals appear less likely to return their bonuses voluntarily.

So, this is a very important complement to everything else that's going on. And later on I'll introduce records for those constitutional Members of the body that want to be assured that this is a constitutional matter. We have Laurence Tribe and three other professors who have analysis of the constitutionality of this measure to be inserted into the RECORD at the appropriate time.

I'll reserve, now, the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1575 should not be on the floor today. In the rush to respond to the bonuses paid to AIG executives, some in the majority have, once again, let expediency override common sense. The Judiciary Committee has held no hearings, heard no expert witnesses, and provided no reasoned evaluation of this bill during the normal legislative process. Instead, the bill went directly to full committee markup within hours of its introduction. After markup, it was substantially rewritten behind closed doors. Now it has been rewritten in the dark, once again, and has been sent prematurely to the floor.

In the last few weeks, Congress has learned the hard way about the unintended consequences of rushing to legislate without adequate expert testimony or debate. The results this time could be more costly than any of us would want.

President Obama, Secretary Geithner, leading financial institutions, and even the Washington Post, have already sounded the alarm. Congress' haste to rewrite contracts, claiming that payments under the contracts were ''fraudulent conveyances,'' as this bill attempts to do, could scare banks and other institutions away from the government's financial rescue programs.

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Keenly aware of this, President Obama has urged us to act intelligently, not out of anger, but to pass this bill would be to do the opposite of what President Obama has said that he wants.

Early last week, Secretary Geithner finally announced a toxic assets relief program, relying heavily on private participation. The markets responded by rallying strongly for the first time in months. Why would we scare private institutions away now just when we need them the most?

Bonuses like AIG's may seem unwise and unfair, but to companies receiving them and courts reviewing them, are they really fraudulent?

Our efforts to void legal contracts make the prospect of working with the government look like a walk through a minefield. Remember, it was the current administration that urged congressional Democrats to protect AIG's right to pay these bonuses through the stimulus bill. Congressional Democrats willingly complied. House Democrats passed a bill without even reading it and without any House Republican even supporting it. Then President Obama signed it.

How could bonuses that Congress and the President specifically ratified suddenly be fraudulent? If they were not fraudulent, how can this be anything other than an unconstitutional taking of contractual rights?

What is more, this bill is unnecessary. We have already passed tax legislation to recoup the AIG bonuses. Besides, a great majority of the key AIG bonus recipients have returned their bonuses.

In the end, New York Attorney General Cuomo expects to force the return of all bonuses that went to domestic recipients. He apparently is not as confident about his ability to recoup payments overseas. I am confident, however, that if Mr. Cuomo needs additional authority to recoup overseas payments, the New York legislature is competent to pass legislation through regular order to give him just that authority.

Meanwhile, we cannot say with any confidence that this bill will permit us to recoup anything beyond what Attorney General Cuomo has already recovered or may be able to recover. This bill, accordingly, may be utterly useless.

The AIG bonuses may have been unwise, but what was fraudulent about them when Congress and the President specifically ratified them?

The retribution this bill threatens rests on anger, not on sound policy. It will undoubtedly undermine the Federal Government's ability to recruit bank rescue participants, so this bill will hinder a successful economic recovery rather than contribute to it.

Finally, the House just passed H.R. 1586. We do not need to take follow-up action, and we certainly do not need to take it in haste or to overreact. We should not compromise on our duty to the American people by rushing out this hasty, ill-considered and unnecessary bill. I fully expect there will be bipartisan opposition to this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. I am pleased to recognize the chairman of the subcommittee from which this measure came, Mr. COHEN of Tennessee, for as much time as he may consume.

Mr. COHEN. Mr. Speaker, I want to thank Chairman CONYERS for the time and for being the lead sponsor on this important legislation. I greatly respect my colleague from Texas, the ranking member, but I would have to disagree with his perspectives on the bill.

First of all, it does not rewrite contracts whatsoever. It just gives a court the opportunity in a contested hearing, with the United States on one side and the recipient of what is alleged fraudulent transfer or excessive compensation or bonus on the other side, to argue whether that compensation was a fraudulent transfer and was excessive and was beyond what would be dictated in the economic conditions and times that the payment was made.

I think that is the American way to have issues such as this determined before a neutral and detached magistrate based on the facts and on the law of this country. This would be applying a fraudulent transfer law which 45 States have and that has existed in common law for many, many years.

The manager's amendment, which makes the bill, is different from the original bill that did have some controversy about the question of its constitutionality. There were several esteemed judicial minds who felt that

the original bill was constitutional, a majority of people whose opinions were sought and who replied, but it is almost unanimous agreement that this bill is constitutional. None other than Laurence Tribe of the Harvard Law School and others have taken the position that this is constitutional.

The public was justly outraged, as were many Members of this Congress—I suspect nearly every Member of this Congress—at the size of the bonuses paid to AIG. AIG, Merrill Lynch and other companies were given money, Mr. Speaker, because they were going to be broke. They were broke. They had recklessly ruined their stockholders' investments and had put this country on the verge of economic collapse. Because of that, it was necessary for the United States Congress to respond, both under President Bush and President Obama, and to put moneys into these institutions to make them whole, hopefully, with the idea that they would be lending money to the American consumer and to American businesses to get the economy moving again.

Unfortunately, what some of these people did—Merrill Lynch was one, and AIG was another—is they used these moneys in ways that were not intended, sometimes parceling them out to their associate companies in Europe as well as here, by giving out bonuses called ''retention bonuses'' or other types of bonuses in excess of $1 million and sometimes up to $6 million. The individuals who got these bonuses would have gotten nothing if it were not for the United States' money coming in to make those companies solvent, with the purpose of making them solvent and able to lend money to businesses to get our economy moving—to stimulate our economy. Instead of that, they stimulated each other, and did something to the American public that has not been done since, maybe, to Sabine women. It was the wrong thing to do.

For this purpose, it was important that Congress responded to protect the taxpayer and to protect the Treasury. We passed a bill last week concerning taxes. This is a fairly narrowly drawn bill, surgically drawn to only allow courts to make these decisions on companies that have over $5 billion worth of assets—not community banks, not small folks—but big folks who got big bucks who then put big bucks out to their employees who basically, in many cases, were the people who recklessly put those companies on the verge of collapse, and the American economy and the world economy on the verge of collapse.

It shocks the public conscience, and any of those bonuses should be void against public policy, and because they would be void against public policy, this Congress appropriately acted with legislation. I am proud to stand with Chairman CONYERS and with other members of the Judiciary Committee who brought this legislation that has been reviewed by scholars and that has been found to be constitutional and that gives the Attorney General, in consultation with the Secretary of the Treasury, the opportunity to bring fraudulent transfer charges into court where a judge can make a decision on whether or not the moneys should or should not be expended.

So I urge all of my colleagues to vote as to what is appropriate—to void this act against public policy and against the unjust enrichment of people who have been reckless with our public dollars and earlier with their private dollars and with their stockholders' dollars and to put the whole situation back in balance.

Mr. SMITH of Texas. I yield myself such time as I may consume.

Mr. Speaker, I would like to address in a little bit more detail some of the defects in this bill.

Many of us believe that the AIG bonuses were unwise, but what was fraudulent about them? Urged on by the White House and by the Department of the Treasury, a provision to protect AIG's right to pay the AIG bonuses was sneaked into the stimulus bill, which was subsequently signed by President Obama.

How can bonuses that Congress and the President specifically ratified be fraudulent? If they were not fraudulent, how can this bill do anything but threaten an unconstitutional taking of contractual rights?

Bonus retribution rests on anger, not on sound policy. It will undermine the Federal Government's ability to recruit bank rescue participants. President Obama, Secretary Geithner and others have all recognized the obvious, that the more we rewrite the contracts of companies participating in the rescue programs, the more the companies will run the other way from our programs.

Secretary Geithner has finally announced the program that was supposed to help the meltdown at the very outset, the toxic assets relief plan. The markets responded strongly and positively to that announcement just last week. So how can we take this action that will only scare participants and that program away precisely when we need them to succeed?

H.R. 1575 will put executive compensation decisions into a multitude of district judges' different hands. The bill cannot fairly or reliably restrain these 1,000-plus judges as they assess in districts across the country what they think is ''reasonably equivalent value for services.'' The bill is, thus, a prescription for arbitrary results.

What is more, in the cases in which the judges find that reasonable compensation was not exceeded, we will recover not one dime of these bonuses. So what is the point?

Mr. Speaker, this bill is the product of hurried decision-making, the trampling of regular order and insufficient vetting. In fact, this bill was rewritten twice behind closed doors before we arrived here today, and it still is riddled with all of the flaws that I have discussed. Mr. Speaker, the answer is therefore clear. We certainly should not pass this bill today.

I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I am pleased to recognize the gentlewoman from Houston, Texas, who has served with great effectiveness on the Judiciary Committee, and I would yield her as much time as she may consume (Ms. JACKSON-LEE of Texas).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman from Michigan and the chairman of the subcommittee, Mr. COHEN, for their leadership.

Mr. Speaker, I am very pleased to be an original cosponsor of this legislation, and frankly, I think it is important that we clear the air and provide a treatise, an instructive recalling, of the reason we are on the floor today.

First of all, this is a moderate approach, a temperate approach, a constitutional approach of, really, paying the taxpayers back, of giving the taxpayers a day in the sun and of using the Constitution and the respect of three branches of government to be able to protect the taxpayers. This does not thwart the work of Secretary Geithner or the administration. It is a complement to them.

Mr. Speaker, the committee undertook a careful constitutional assessment of this bill. We were quite well aware that we did not want to violate the Constitution, and we secured the assistance and the insight of four prominent constitutional scholars to affirm its constitutional soundness.

Mr. Speaker, I insert into the RECORD at this point the letters of law professors Laurence Tribe of Harvard Law School and Michael Gerhardt of the University of North Carolina.

HARVARD UNIVERSITY,
Cambridge, MA, March 24, 2009.

Re constitutionality of H.R. 1575.

Hon. JOHN CONYERS, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

I have been asked to address the constitutional validity of H.R. 1575, the ''End the Government Reimbursement of Excessive Executive Disbursements (End the GREED) Act.'' Having carefully reviewed the text of the bill, I believe it stands on solid constitutional ground. This judgment applies both to the bill as reported by the Judiciary Committee on March 18, 2009, and to the revised version your staff sent me on March 23, which has been narrowed to a provision authorizing the Attorney General to petition a court to avoid a covered payment of compensation in exchange for ''less than a reasonably equivalent value,'' and a related subpoena provision. Because I understand that this narrowed version of the bill is the one now being considered for the House floor, it is this bill that I will address primarily in this memorandum.

Enacting this legislation is well within Congress's affirmative constitutional authority under the Bankruptcy Clause, Article I, Section 8, Clause 4, ''[t]o establish . . . uniform Laws on the subject of Bankruptcies

throughout the United States.'' That this authority extends not only to laws regarding bankruptcy itself, but also to laws regarding companies facing insolvency generally—and thus to the very entities defined in Section 2 of H.R. 1575—is established beyond question by settled Supreme Court precedent. In Continental Illinois National Bank & Trust Co. v. Chicago Rock Island & Pacific Railway Co., 294 U.S. 648, 667–68 (1935), for example, the Supreme Court stated that, ''[w]hile attempts have been made to formulate a distinction between bankruptcy and insolvency, it has long been settled that, within the meaning of the [Bankruptcy Clause], the terms are convertible.'' And, in Railway Labor Executives' Ass 'n v. Gibbons, 455 U.S. 457, 466 (1982), the Court explained that, ''[a]lthough we have noted that 't]he subject of bankruptcies is incapable of final definition,' we have previously defined 'bankruptcy' as the 'subject of relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief.' Congress' power under the Bankruptcy clause 'contemplate[s] an adjustment of a failing debtor's obligations.''' (citation omitted.) H.R. 1575 thus fits comfortably within the category of laws that the Bankruptcy Clause empowers Congress to enact—particularly when that clause is coupled with the Necessary and Proper Clause of Article I, Section 8, Clause 18, and when it is supplemented by the Commerce Clause of Article I, Section 8, Clause 3.

Moreover, because H.R. 1575 is limited to the subject of fraudulent transfers from companies that have received at least $5 billion in federal funds since the beginning of September 2008, it is also readily justified as a reasonable condition on the expenditure of funds provided by Congress in the exercise of its power ''To lay and collect Taxes, . . . to pay the Debts and provide for the . . . general Welfare of the United States.'' U. S. Const., Article I, Section 8, Clause 1. The power of Congress to invoke this taxing and spending authority, again in conjunction with the Necessary and Proper Clause, to impose conditions on the receipt of federal funds where, as in this instance, those conditions relate directly and substantially to ensuring that those funds are expended solely for the purposes contemplated by Congress, is thoroughly settled. See, e.g., South Dakota v. Dole, 483 U.S. 203, 206–07 (1987); Fullilove v. Klutznick, 448 U.S. 448, 474 (1980); Lau v. Nichols, 414 U.S. 563, 569 (1974).

Questions have been raised about whether H.R. 1575 might constitute a forbidden Bill of Attainder, but any such claim would be wholly without merit. The bill is carefully structured to apply to a broad class of individuals and inflicts no punishment whatsoever but merely subjects those individuals to suits brought by the Attorney General to recover excessive compensation. The government cannot prevail in such suits without proving ''in an appropriate district court of the United States'' that the individuals in question gave ''less than a reasonably equivalent value in exchange'' for the ''compensation'' the government seeks to avoid as a ''fraudulent transfer.'' H.R. 1575, Section 2. Even if the ultimate recovery of such compensation were deemed punitive rather than regulatory, that recovery would take place only pursuant to trial in an Article III court, a far cry from the trial by legislature against which the Bill of Attainder Clause is directed. See Selective Service System v. Minnesota Public Interest Research Group, 468 U.S. 841, 851–53 (1984); Nixon v. Administrator of General Services, 433 U.S. 425, 472–73 (1977); United States v. Brown, 381 U.S. 437, 458–61 (1965); United States v. Lovett, 328 U.S. 303 (1946). As I explained in my constitutional law treatise, ''The essence of the bill of attainder ban is that it proscribes legislative punishment of specified persons—not of whichever persons might be judicially determined to fit within properly general proscriptions duly enacted in advance. . . . Its application necessarily depends on the presence of improper specification by the legislature of the individuals singled out for punishment. . . . [N]o attainder may be said to have resulted from the mere fact that the set of persons having the characteristic [designated by the legislature] might in theory be enumerated in advance and that the set is in principle knowable at the time the law is passed.'' Laurence H. Tribe, American Constitutional Law 643 (2d ed. 1988). In this instance, moreover, the ''set of persons having the characteristic'' of receiving what H.R. 1575 deems a ''fraudulent transfer'' is not knowable in advance, in part because the characteristic is by no means self-defining and requires factual development in each individual case and in part because the statute would operate not just retrospectively to transfers made between September 1, 2008, and the date of the bill's enactment as law but also prospectively from that date forward.

The remaining constitutional questions raised about H.R. 1575 are somewhat more plausible superficially but in the end are all without merit.

The first of those remaining questions is whether setting aside completed transfers of compensation from functionally insolvent entities receiving more than the designated amounts of federal funds to keep them afloat would amount to a ''taking'' of financial resources from the recipients of those transfers to benefit the federally-supported entities from which the transfers had come and could thus trigger an obligation on the part of the Federal Treasury to provide ''just compensation'' to the transferees—which would, of course, defeat the entire purpose of the bill insofar as its ultimate aim is to avoid a waste of federal tax revenues. The answer is that the Takings Clause is simply inapplicable. Federally imposed obligations to make monetary payments to third parties are not properly characterized as ''takings'' at all under the Takings Clause of the Fifth Amendment. Indeed, such obligations have never been subjected to the Takings Clause by a Supreme Court majority. Although four Justices, writing for a plurality in Eastern Enterprises v. Apfel, 524 U.S. 498 (1998), invoked the Takings Clause to review a law imposing such financial obligations, a majority of the Court in that case—including both Justice Kennedy, concurring in the result, id. at 539–47, and Justice Breyer, dissenting in an opinion joined by Justices Stevens, Souter, and Ginsburg, id. at 554–57—squarely held the Takings Clause altogether inapplicable to such mandated monetary transfers, noting that ''application of the Takings Clause [to such financial obligations] bristles with conceptual difficulties,'' id. at 556 (Breyer, J., joined by Stevens, Souter, and Ginsburg, JJ.), difficulties that in my view would be completely insuperable. To be sure, this conclusion of the five Justices in Eastern Enterprises is not itself a holding of the Supreme Court, see When The Dissent Creates The Law: Cross-cutting Majorities And The Prediction Model of Precedent, 58 Emory L.J. 207, 216, 240 (2008), but it affords a strong basis for predicting what the Court would hold in any case presenting the issue today, especially in light of the fact that Justice O'Connor, the author of the plurality opinion viewing the Takings Clause as applicable, has been replaced by Justice Alito, and that Chief Justice Rehnquist, who joined the O'Connor opinion, has been replaced by Chief Justice Roberts. Moreover, the analysis of the five Justices who deemed the Takings Clause inapplicable seems to me logically unassailable.

Those five Justices explained why the Takings Clause is ''the wrong legal lens,'' id. at 554, through which to view such measures. Either ''the Government's imposition of an obligation between private parties, or [its] destruction of an existing obligation, must relate to a specific property interest [such as an interest in a specific parcel of land or a specific item of personal or intellectual property] to implicate the Takings Clause.'' Id. at 544 (Kennedy, J., concurring in the judgment and dissenting in part) (italics added). The financial liability that would be imposed on the transferee by the operation of H.R. 1575, and the monetary recovery to the transferor that enforcement of this liability against the transferee would entail, ''no doubt will reduce [the] net worth'' of the transferees who are subject to the law's avoidance provisions, ''but this can be said of any law which has an adverse economic effect.'' Id. at 543 (Kennedy, J.). A decision to apply the Takings Clause to a measure that, like HR 1575, requires only the restoration of improperly transferred funds and not the confiscation or transfer of any specific property interest ''would expand an already difficult and uncertain rule [treating some regulatory measures as takings] to a vast [new] category of cases not [previously] deemed . . . to implicate the Takings Clause,'' id. at 542, and ''would throw one of the most difficult and litigated areas of the law into confusion, subjecting [every level of government] to the potential of new and unforeseen claims in vast amounts.'' Id. There is no realistic prospect that the Supreme Court would plunge headlong into that thicket by applying the Takings Clause to any measure like H.R. 1575, nor is there any good reason for any court or lawmaker to do so.

This is even more obviously correct when the federally imposed obligation to make monetary payments to third parties ripens only with a judicial determination that those subjected to the obligation were wrongfully enriched in the first instance and when the payment obligation has the character of avoiding that unjust enrichment so as to restore the status quo ante. The implicit theory underlying the seminal case of Calder v. Bull, 3 U.S. 386 (1798), was that a government-mandated transfer from one private party to another was either a naked redistribution of wealth and thus beyond the powers the people ceded to government under the original social compact or an act of corrective justice and thus a violation of the separation of powers unless taken pursuant to a judicial determination of prior wrong. Tribe, American Constitutional Law, supra, at 561, 571 & n.9; Thomas Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 357 (8th ed. 1927). Precisely such a determination forms the heart of the transfer authorized by H.R. 1575. To call it a compensable taking would thus be incoherent.

Admittedly, the Coal Act provision at issue in Eastern Enterprises was ultimately found to be unconstitutional. But that result followed only because the Coal Act, ''in creating liability for events which occurred 35 years [before its enactment,] ha[d] a retroactive effect of unprecedented scope,'' id. at 549 (Kennedy, J.), and was viewed by five Justices as being in no meaningful sense ''remedial'' in purpose, id., leading Justice Kennedy to the conclusion, as a matter of substantive due process, that the measure was understandable only as '''a means of retribution against unpopular groups or individuals.''' Id. at 548 (quoting Landgraf v. USI Film Products, 511 U.S. 244, 266 (1994)). But ''[s]tatutes may be invalidated on due process grounds only under the most egregious of

circumstances,'' id. at 550, circumstances that four Justices deemed absent even with respect to the extreme measure at issue in Eastern Enterprises and that are absent by any conceivable measure with respect to H.R. 1575. This conclusion is strongly reinforced by a long string of Supreme Court rulings concluding that nothing beyond a standard of reasonableness, usually amounting to a bare showing of rationality, constrains retroactive federal legislation in the economic sphere. United States. v. Carlton, 512 U.S. 26, 30–31 (1994); Pension Benefit Guaranty Corporation v. R.A. Gray & Co., 467 U.S. 717, 729–30, 733 (1984); Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16–18 (1976).

The second remaining question is whether changing the lens from that of the Takings Clause (or the Due Process Clause) to that of the Ex Post Facto Clause would provide a sounder basis for attack by those seeking to challenge H.R. 1575. Again, the clear answer is no. Ever since Calder v. Bull, 3 U.S. 386 (1798), the Ex Post Facto Clause ''has [been] considered . . . to apply only in the criminal context,'' Eastern Enterprises, supra, at 524, 538 (Thomas, J., concurring). Measures that are not the functional equivalent of criminal punishment are not subject to the clause. Although Justice Thomas has indicated that ''[i]n an appropriate case [he] would be willing to reconsider Calder and its progeny to determine whether a retroactive civil law that passes muster under . . . Takings Clause jurisprudence is nonetheless unconstitutional under the Ex Post Facto Clause,'' id., there is no prospect that others would join him in taking so radical a step. And, more than that, it is hard to imagine that even Justice Thomas would regard H.R. 1575 as presenting ''an appropriate case'' for reconsideration of a principle with so venerable a pedigree.

There is also venerable precedent supporting the general principle that neither the Ex Post Facto Clause nor the Due Process Clause stands in the way of congressional measures authorizing the federal government to rescind even privileges as basic as U.S. citizenship when the means by which such privileges were obtained indicate that they never rightfully belonged to those from whom the government is authorized to recover them. See Johannessen v. United States, 225 U.S. 227, 240–43 (1912). In upholding a congressional measure reversing a decision that would have permitted an instrumentality of the Cuban government to recover the proceeds from a sale of sugar wrongfully expropriated by the Cuban government, a district court quoted the Johannessen Court's observation of the underlying principle that ''[t]here is no such thing as a vested right to do wrong.'' Banco Nacional de Cuba v. Farr, 243 F. Supp. 957, 979 (S.D.N.Y. 1965), aff'd, 383 F.2d 166 (2d Cir. 1967), cert. denied, 390 U.S. 956 (1968) (quoting Johannessen, 225 U.S. at 241–42). That principle, too, supports the constitutionality of H.R. 1575.

LAURENCE H. TRIBE,
*Carl M. Loeb University Professor.**

*University affiliation listed for identification purposes only.

MARCH 24, 2009.

Hon. JOHN CONYERS, Jr.,
Chair, House Judiciary Committee, House of Representatives, Washington, DC.

Hon. LAMAR S. SMITH,
Ranking Member, House Judiciary Committee, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE CONYERS AND REPRESENTATIVE SMITH: I appreciate the opportunity to share with you my analysis of the constitutionality of the proposed Manager's Amendment to The End the GREED Act. Although I am currently abroad teaching a mini-course on American constitutional law to French law students, I have had the opportunity to closely read the pending bill. As I explain below, I believe that The End the GREED Act, specifically as revised in the proposed Manager's Amendment, is unquestionably constitutional. Each of the powers deployed to enact this bill is plenary, and these powers—individually and collectively—provide an unusually strong, unassailable constitutional foundation for the proposed Manager's Amendment to The End GREED Act.

First, The End the GREED Act is based on Congress' Article I power ''to enact uniform laws on the subject of Bankruptcies.'' The bankruptcy power is a unique, plenary power of the Congress. Indeed, the Supreme Court has held that this power may be used to impair contracts; and in Wright v. Union Central Life Insurance Company, 304 U.S. 502, 513–54 (1938), the Supreme Court declared that an ''adjudication in bankruptcy is not essential to the jurisdiction [that Congress has in the field in bankruptcies.] The subject of bankruptcies is nothing less than the 'subject of relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his and their relief'' (citation omitted). The Court ruled, in other words, that the Congress is not confined to addressing insolvency (or its prospects or consequences) in the context of bankruptcy proceedings. This law, particularly the section authorizing a federal civil cause of action for fraudulent transfers, is plainly consistent with that longstanding understanding of the scope of the bankruptcy clause.

Second, The End the GREED Act is based in part on Congress' plenary power under Article I to regulate interstate commerce. For instance, section (c) easily satisfies all of the requirements that the Court has recognized with respect to federal regulations of private economic conduct. In United States v. Lopez, 514 U.S. 549 (1995), the Supreme Court recognized that pursuant to its power to regulate interstate commerce the Congress had the authority to regulate three categories of private conduct or affairs—the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affected interstate commerce. Ten years later, in Gonzales v. Raich, 545 U.S. 1 (2005), the Court explained that it would only employ the rational basis test to assess the constitutionality of a regulation of economic conduct that was either part of a comprehensive regulatory scheme or could if aggregated substantially affect interstate commerce. There is no question that The End the GREED bill, including section (c), is a regulation of economic transactions, which, if aggregated, could substantially affect interstate commerce. As such, this bill would be subject to the most deferential judicial review possible and easily pass constitutional muster.

Besides Congress' plenary bankruptcy and commerce powers, The End the Greed Act is supported by the Congress' spending power. The conditions imposed by the bill satisfy the requirements for spending measures that the Supreme Court has set forth over the years: They are germane to the purposes of the expenditures; the conditions imposed by the bill are clear and unambiguous; recipient entities have no fundamental right to contract and thus are not giving up a fundamental right in exchange for compliance with the conditions attaching to the funds that they are receiving; and the recipient of the funds are not being forced or coerced to take money from the federal government. Moreover, the courts have been extraordinarily deferential to the Congress in their assessment of the constitutionality of the requirements imposed by the Congress' spending measures: In fact, the Supreme Court has not struck down a spending clause enactment since 1936. I am confident that this spending measure will fare no differently than any of the other spending measures subjected to judicial review since 1936.

I am also confident that The End the GREED bill is not vulnerable to a Takings Clause challenge. First, as I have indicated, the Supreme Court has recognized that the bankruptcy power may be used to impair private contracts. Second, the Supreme Court has usually upheld federal regulations of private contracts that have been challenged under the Taking Clause. See David H. Carpenter, CRS Report for Congress, Constitutional Issues Relating to Proposals to Impose Interest Rate Freezing/Reduction on Existing Mortgages, February 15, 2008, at 4. There is no good reason to think any court would treat The End the GREED Act any differently. Indeed, The End the GREED Act does not run afoul of the Supreme Court's balancing test set forth in Penn Central v. City of New York, 438 U.S. 104 (1978), for determining when regulations effect a taking for purposes of the Takings Clause. In this case, the conduct that is the subject of the regulation is not only arising in an area that is traditionally ''heavily regulated'' but also the federal government is obviously not operating in bad faith or its regulation is not designed to benefit only a very few people as opposed to the general public.

I hope this analysis will be of some help to you and the Committee. It is a great privilege to share it with you. If you have any questions or if I can be of further service to you or the Committee, I hope you will not hesitate to let me know.

Very truly yours,

MICHAEL J. GERHARDT,
Samuel Ashe Distinguished Professor of Constitutional Law & Director of the UNC Center on Law and Government, UNC at Chapel Hill Law School.

Ms. JACKSON-LEE of Texas. The reason we wanted to be extraordinarily thoughtful is that we knew these questions would be asked, but let me tell you the simplicity of what this legislation speaks to: At the same time, let me go on record, Congresswoman JACKSON-LEE from Houston, Texas:

I am in support of the Nation's financial markets, investment houses. They have been at our back for a number of years. They have invested your moneys, your 401(k)s. Capitalism has, in fact, worked, but abuse does not work, so we speak today about abuse, not about crumbling the financial houses, the investment houses. We want them to be strengthened. Young people every day are graduating from college and are saying, ''I want to be an investment banker.'' They want to help grow the economy. We are not unsupportive of that.

In fact, in my own congressional district, it used to be American General. I have AIG employees. I applaud them. They come up to me on the street. I want them to know I appreciate their work in the insurance business—in protecting and in insuring everything from whistles, to haystacks, to Hollywood actors, to the transportation modes that you travel on—but we have got to be able to protect your tax dollars.

Let me tell you why this bill works. Attorney General Cuomo made it work. He issued subpoenas. What do we get? Some $50 billion back—and more growing—from AIG. It shows that the long hand of the law can be effective. The $160 billion given to executives is more than most Americans will see ever in their lifetimes. This is a simple response to it. What it does is it allows the Attorney General to recover prior excessive payments to employees made by the company. It allows the government, as a creditor, to show that the excessive payments that were made have no bearing on the work. It is permissive. It allows. It does not suggest that, in fact, there is a coup d'etat, that the Attorney General can do it without any oversight.

□ 1315

They must go into court. That makes a difference. The judge must ultimately say, You know what? I agree with the petitioner/the attorney general/the government as creditor or I disagree.

Second, it allows the Attorney General to limit payments to company executives to 10 times the average nonpayment wages just as it would have been if the case was forced into bankruptcy. This is a fair assessment if a company has taken Federal dollars, and $700 billion given to these companies in October of 2008. Most of them bought up your baby banks, not put that money out to help Americans.

So Mr. Speaker, I think what is key here is that this is reasonable. We have constitutional scholars who have indicated that you are within the constitutional framework. Why would the Judiciary Committee want to eliminate those barriers.

And then secondly and thirdly, we thank the employees that are doing their job every day trying to make this economy work. But what we say to the taxpayers is, if there is ever a committee that has to play the enforcement role to enhance the Constitution, to gather in those who have gone outside the boundaries of reason, who are abusive in issuing moneys to people who are part of the problem, it is the Judiciary Committee, and the Attorney General that complements the work of the Secretary of the Treasury, and our very able leader in the White House, who is constructively trying to put this capitalistic system back on its feet. Then it has to be those of us with the responsibility of enforcement to ensure that we provide the coverage for taxpayers who cannot speak for themselves.

I rise enthusiastically to support H.R. 1575 for the very reason that we will be derelict if this committee, the holders of the Constitution, did not come to the floor and provide this thoughtful legislation that provides you with the protection of evidence that you have already seen in the moneys that have been returned under the New York State Attorney General. Imagine the wielding of that action on behalf of all of the people of the United States.

Support H.R. 1575.

Mr. Speaker, I rise in strong support of H.R. 1575, the "End Government Reimbursement of Excessive Disbursements (End Greed) Act." I want to thank my colleague Congressman JOHN CONYERS, Jr. of Michigan for introducing this important legislation, and I urge my colleagues to support this bill.

BACKGROUND

Mr. Speaker, since August 2008, the federal government has invested hundreds of billions of dollars in private financial institutions. The credit crisis deepened in September when the federal government put Fannie Mae and Freddie Mac into conservatorship after it became clear that the financial situations of two of the nation's largest mortgage purchasers were rapidly deteriorating.

On September 14, 2008, the impact of the crisis widened as global financial services company Merrill Lynch agreed to sell itself to Bank of America, investment bank Lehman Brothers filed for bankruptcy and international insurer and financial services company American Insurance Group ("AIG") asked the federal government for a $40 billion bridge loan.

On September 23, 2008, then-Treasury Secretary Paulson and Federal Reserve Chairman Ben Bernanke appeared before Congress asking for a $700 million rescue plan to buy and resell mortgage backed securities citing fears of a recession if the government did not act.

On October 3, 2008, Congress authorized $700 billion for the Treasury to buy troubled assets to prevent disruption in the economy. One week after the $700 billion was authorized, the Bush Administration decided that it would use a portion of the $700 billion to recapitalize some of the nation's leading banks by buying their shares. The idea was to help healthy banks continue to provide loans to businesses and consumers. This did not happen. Instead, banks began to acquire smaller banks that were not given access to the $700 billion.

Funds were used to pay employee bonuses. The payment of employee bonuses and the use of TARP funds to do so, was expressly prohibited by the TARP bill. Despite this prohibition, the nation's largest banking and financial institutions continued to pay employee bonuses using the TARP funds. This bill puts the teeth in the original TARP bill and provides a mechanism for these financial institutions to return the funds they wrongly used.

Our constituents are worried about the Golden Parachutes that they see given to big business while they struggle to pay mortgages, keep the electricity on, and send their children to college. The saving of corporate executives while unemployment rates continue to go up, has driven many Americans to wonder what has happened to corporate responsibility and accountability.

Mr. Speaker, H.R. 1575, the "End Government Reimbursement of Excessive Executive Disbursements (End GREED) Act," applies to companies that have received more than $10 billion in federal financial assistance since September 1, 2008. The bill ends the unjust enrichment of the corporate executives who wrongly benefitted from their companies' receipt and misuse of TARP funds. As discussed further below, the bill has two key components.

First, it creates a federal fraudulent transfer statute that will allow the Attorney General to recover prior excessive payments to employees made by the company. This allows the government, as a creditor, to show that excessive payments were made bearing no relationship to fair value and to recover those payments for the company.

Second, on an ongoing forward basis, it allows the Attorney General to limit payments to company executives to ten times the average non-management wages, just as would have been the case if the company had been forced into bankruptcy. In addition, the bill authorizes the Attorney General to issue a subpoena to obtain pertinent information from these companies about employee bonus and compensation payments.

I urge my colleagues to support this bill. It is the right thing to do and prevents unjust enrichment by the bank and financial institution executives. The TARP funds were originally intended to be used by the banks to continue to provide services to the public. The TARP funds were not supposed to be used for the executives and bankers to get engorged and rich.

Mr. SMITH of Texas. Mr. Speaker, I will be the remaining speaker on this side.

I will reserve the balance on my side.

Mr. CONYERS. Mr. Speaker, I have no further speakers.

I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I would like to close by reiterating that this bill is misguided and should be opposed for many reasons.

The AIG bonuses were unwise, but what was fraudulent about them? How can bonuses Congress and the President specifically ratify through the stimulus bill be fraudulent? Bonus retribution rests on anger, not sound policy. It will undermine the Federal Government's ability to recruit bank rescue participants.

President Obama has urged us not to act out of anger, and Secretary Geithner has finally just announced a toxic assets relief program relying heavily on private participation. The markets responded to Secretary Geithner by rallying strongly. Why would we scare the private institutions away now?

State fraudulent conveyance law is already working. New York Attorney General Andrew Cuomo has used New York State law tools to force at least 15 of the top AIG bonus recipients to return their bonuses. He has recouped at least $50 million. He expects to recoup all bonuses paid to U.S. recipients, and he and other State authorities may recoup bonuses that went overseas.

H.R. 1575 puts executive compensation decisions into a multitude of district judges' different hands. H.R. 1575 cannot constrain executive compensation. It just leaves it to over 1,000 district judges to arbitrarily determine whether compensation exceeds a reasonably equivalent value for services.

The House just passed H.R. 1586. We don't need to take a follow-up action.

Just 2 weeks ago, the House passed H.R. 1586 to go after the AIG bonuses under the Tax Code. H.R. 1575 is redundant and poses some of the same risk. So why does that make sense?

H.R. 1575 is not only unwise, it is unnecessary. It is not only unnecessary, it is the product of a ransacking of regular order. And not only that, it will hamper our economic recovery.

Mr. Speaker, I just want to say to my colleagues that Republican leader JOHN BOEHNER, Whip ERIC CANTOR, and Conference Chairman MIKE PENCE are all going to vote ''no'' on this legislation.

I strongly urge a bipartisan ''no'' vote on H.R. 1575.

I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I close regretfully lamenting the comments of my good friend, LAMAR SMITH, the ranking member on this committee, because he may not have sensed the outrage of the American people in terms of the fact that these outrageous bonuses were being arrogantly issued out with government funds that were by the billions, that were going to corporations to supposedly save them from bankruptcy. And so for him to ignore the fact that at least 47 States already have these laws, to think that there would be a constitutional problem with the government in this very limited case directing the courts to, on a case-by-case basis, review their appropriateness is rather astounding.

So I would like to personally make myself available, particularly to new Members of this great body of the 111th Congress, to please consult with me before you do anything that will prevent us from having a long friendship and get to know each other a lot better in the Congress.

Mr. CONYERS. Mr. Speaker, I submit the other two law professor letters for the RECORD.

MARCH 24, 2009.

Hon. JOHN CONYERS, Jr.,
Hon. LAMAR SMITH,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN CONYERS AND CONGRESSMAN SMITH: I am writing to express my opinion that the fraudulent transfer provisions of H.R. 1575 pass constitutional muster. I am writing in my capacity as an expert on fraudulent transfer law, not on behalf of any group or individual.

I am the Harry A. Bigelow Distinguished Service Professor at the University of Chicago. I joined Chicago's faculty in 1980, was Director of its law and economics program from 1992 to 1994, and served as its Dean from 1994 to 1999. I have been a visiting professor at Stanford, Harvard, and Yale. Currently a Director of the American College of Bankruptcy, I was Vice Chair of the National Bankruptcy Conference from 1997 until 2004. My publications include a number of articles on fraudulent transfer law.

I begin by emphasizing that the fraudulent transfer provision of H.R. 1575 has modest scope. It creates a new federal procedure, but the substantive right in question has existed under state law for a long time. In every jurisdiction, creditors (including the United States) have the ability to avoid transfers made by an insolvent or financially troubled debtor for less than reasonably equivalent value. Indeed, more than half the states have enacted the Uniform Fraudulent Transfer Act (''UFTA''), which uses nearly identical statutory language.

Apart from the UFTA being a state-based procedure and generally broader in scope, the only substantive difference between the UFTA and H.R. 1575 is on the narrow question of the time at which insolvency or unreasonably small capital is judged. Under H.R. 1575, it is at the time of the payment, while under the UFTA. It is the time that the contract is entered into. Such a difference, however, should not be of great moment. Congress has enacted fraudulent transfer rules before (typically in bankruptcy legislation) and has departed more substantially from the nonbankruptcy rule. For example, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 enacted a fraudulent transfer provision that allows recovery against insider employees who receive more than reasonably equivalent value and it contains no insolvency requirement or unreasonably small capital requirement at all.

Because H.R. 1575 largely replicates rights that the United States already possesses under state law, there seems little doubt that Congress has the power to enact it. While the statute does reach, among other things, transfers that have already taken place, this has been the case with previous fraudulent conveyance statutes enacted by Congress, most recently in 2005. I am not aware that anyone has ever suggested that these were constitutionally suspect.

H.R. 1575 is not an ex post facto law, as it involves only civil liability. See Calder v. Bull, 3 U.S. 386 (1798). Nor is it a bill of attainder as it applies generally to entities that have received a particular type of federal funding. The only remotely colorable constitutional argument against H.R. 1575 is that it violates the due process rights of the transferees because of the statute's retroactive effect. This should not, however, create a constitutional problem, as long as Congress's intent to apply it retroactively is expressed clearly.

In Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976), the Supreme Court noted that it ''is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.''

On the rare occasions in which it has struck down legislation that has had a retroactive effect, the Court has emphasized that, to constitute a due process violation, it must cross a significant threshold, such as, in one case, prospective liability on account of conduct that a company had ceased many decades before. While ''legislation might be unconstitutional if it imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability, and the extent of that liability is substantially disproportionate to the parties' experience,'' as a general matter ''Congress has considerable leeway to fashion economic legislation, including the power to affect contractual commitments between private parties.'' Eastern Enterprises v. Apfel, 524 U.S. 498, 529–30 (1998).

Legislation, such as H.R. 1575, that largely tracks existing state law cannot take private parties by surprise. In this case, the basic principle—that financially troubled debtors cannot give their assets away—has been part of Anglo-American law for centuries. See Twyne's Case, 3 Coke 80b, 76 Eng. Rep. 809 (1601).

If you or your staff have any questions or would like further information, I would be happy to be of assistance.

Sincerely,

DOUGLAS G. BAIRD.

UNIVERSITY OF CALIFORNIA,
Los Angeles, CA, March 24, 2009.

Re H.R. 1575, 111th Congress, 1st Session.

Hon. JOHN CONYERS, Jr.,
Chairman, House Committee on the Judiciary, Washington, DC.
Hon. LAMAR SMITH,
Ranking Member, House Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN CONYERS AND RANKING MEMBER SMITH: Chairman Conyers has asked me to analyze whether the fraudulent transfer provisions in the Manager's amendment to H.R. 1575 violate the United States Constitution. For the reasons set forth below, it is my view as a professor of law that the fraudulent transfer provisions of the Manager's amendment to H.R. 1575 are constitutional on their face and as applied to avoid payments of excessive compensation made under contracts entered into before the date of enactment.

The Manager's amendment to H.R. 1575, prepared for floor consideration in the House of Representatives, seeks to authorize the Attorney General to file a civil action to avoid, as fraudulent transfers, certain payments of excessive compensation made by entities who received more than $5 billion in federal government funds on or after September 1, 2008. It does so by vesting the Attorney General with two kinds of fraudulent transfer avoiding powers.

First, section 2(1)–(2) gives the Attorney General the power to avoid constructive fraudulent transfers made for less than a reasonably equivalent value if the company making the payments either was insolvent or possessed an unreasonably small capital on the date of the payments. Both insolvency and unreasonably small capital are determined without consideration of the federal government funds or lines of credit. Second, the legislation authorizes the Attorney General to stand in the shoes of an actual unsecured creditor of the payor who could avoid the payments under other applicable law to avoid excessive compensation payments to the same extent.

Having extensive familiarity with the interface of bankruptcy, insolvency, and constitutional law, it is my view as a scholar that the fraudulent transfer provisions of the Manager's amendment to H.R. 1575 are constitutional on their face and as applied to avoid payments of excessive compensation made under contracts entered into before the date of enactment. The Commerce Clause, Bankruptcy Clause, and Necessary and Proper Clause provide ample congressional power to enact this legislation. See U.S. Const., art. I, § 8, cls. 3, 4 & 18.

Even though the United States did not put recipients of federal government funds into bankruptcy, conservatorship, or receivership as a condition of receiving those funds, H.R. 1575 could be supported under the Bankruptcy Clause. In Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 466 (1982), the Court stated, ''although we have noted that '[t]he subject of bankruptcies is incapable of final definition,' we have previously defined 'bankruptcy' as the 'subject of relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief.' * * * Congress' power under the Bankruptcy Clause 'contemplate[s] an adjustment of a failing debtor's obligations.' '' (citations omitted) As the Court noted in Continental Illinois

National Bank & Trust Co. of Chicago v. Chicago, Rock Island & Pacific Railway Co., 294 U.S. 648, 667–68 (1935), the Bankruptcy Clause applies to regulate insolvent companies as well as those that are bankrupt: ''While attempts have been made to formulate a distinction between bankruptcy and insolvency, it has long been settled that, within the meaning of the [Bankruptcy Clause], the terms are convertible.''

Moreover, under the Commerce Clause, H.R. 1575 is valid regulatory legislation applicable to companies that do business in interstate commerce.

Furthermore, the legislation properly invokes fraudulent transfer law remedies that have been part of Anglo-American bankruptcy and insolvency laws since enactment of the Statute of 13 Elizabeth in England in 1571. These laws, in their modern form, are part of the statutory or common law of every state as well as the federal bankruptcy code. They permit the avoidance of actual intent or constructive fraudulent transfers. In pertinent part, constructive fraudulent transfer laws operate to permit the avoidance of transfers made for less than a fair consideration or reasonably equivalent value while the transferor is insolvent (in either the balance sheet or equity sense) or left with an unreasonably small capital.

Many of the companies that received federal government funds were undoubtedly insolvent in the balance sheet or equity sense or left with an unreasonably small capital before the receipt of the funds. Had the United States not intervened to advance the federal government funds, the excessive compensation payments would have been avoidable in a bankruptcy or receivership, or, alternatively, under applicable fraudulent transfer laws to the extent they were not given in exchange for reasonably equivalent value or fair consideration. Indeed the contracts under which these payments were made themselves might have been avoidable as fraudulently incurred obligations under these laws, at least to the extent they authorize payments in excess of the fair value of services rendered.

When a business is insolvent, unable to pay its debts as they mature, or left with an unreasonably small capital, the assets of that business can be considered to be equitably owned by its creditors. The fraudulent transfer laws prevent a business from giving away assets that it does not equitably own. Therefore there is a strong historical legal underpinning for application of fraudulent transfer principles in the Manager's amendment to H.R. 1575.

Had the United States not made available the federal government payments, these excessive payments would have been avoidable in many different scenarios. It undoubtedly was never the intention of the United States to make federal government funds available to enable a recipient entity to facilitate fraudulent transfers. Accordingly there is a rational basis making it appropriate for Congress to enact regulatory legislation to prevent that result and for a court to enforce H.R. 1575 to avoid the excessive payments. Indeed, in addition to statutory remedies, a court of equity might exercise equitable powers of reformation or recharacterization to facilitate this result.

Nevertheless, entities resisting disgorgement of the transfers might seek to challenge the constitutionality on several grounds. Recipients of excessive payments might allege that the legislation violates their contract rights. The response is that congressional impairment of contract rights is not unconstitutional. First, although the Manager's amendment to H.R. 1575 permits the court to interfere with contractual obligations, it is clear that the Contracts Clause of the Constitution only limits impairment of obligations of contracts by the states and does not limit federal power to impair contractual obligations. See U.S. Const., art. I, §10.

Second, because the avoidance only takes place in a federal court judicial proceeding based on adequate notice and an opportunity to be heard, there is no denial of due process in violation of the Fifth Amendment. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 307 (1950) (considering due process under the Fourteenth Amendment; the analysis would be similar under the Fifth Amendment).

Third, under H.R. 1575, there is no taking of private property for public use without just compensation in violation of the Fifth Amendment. Courts have held that the Bankruptcy Code's authorization of lien avoidance does not implicate a taking under the Fifth Amendment. See, e.g., Travelers Ins. Co. v. Bullington, 878 F.2d 354, 359 n.6 (11th Cir. 1989); Yi v. Citibank (Md.) N.A. (In re Yi), 219 B.R. 394, 401 (E.D. Va. 1998). Here, recipients of the excess payments do not enjoy liens in property, but simply contract rights under contracts that are also avoidable. The Court has upheld the power of Congress to limit contractual compensation rights without causing violation of the Fifth Amendment. See Reconstruction Fin. Corp. v. Bankers Trust Co., 318 U.S. 163, 168–70 (1943) (77 railroad reorganization case in which claims for compensation for services, attorneys fees, and expenses of indenture trustee of secured mortgage bonds was referred to interstate commerce commission for determination). By limiting avoidance of compensation claims only to the extent they exceed reasonably equivalent value, H.R. 1575 places a ''reasonable limitation'' on the permissible amount of compensation disbursements. Under the Supreme Court's reasoning in Kuehner v. Irving Trust Co., 299 U.S. 445, 452, 455 (1937) the placement of such a reasonable limitation does not violate the Fifth Amendment, even though it results in the destruction of a creditor's contractual remedies.

Thus, constitutional challenges to H.R. 1575 should fail. And even if they succeed, at best the recipient would have a claim against the United States under the Tucker Act for any excessive payments disgorged.

In order to let you put this analysis in context, let me share with you my qualifications to make this analysis. After graduating from Harvard Law School cum laude in 1974, I served as Associate Counsel to the House Committee on the Judiciary, working primarily with Republican members from 1974–1977 on bankruptcy law reform, among other issues. As a staff member, I was one of the principal drafters of the 1978 Bankruptcy Code. Since then, I have devoted my entire career to the pursuit of bankruptcy law and scholarship. After leaving the Hill I commenced working as a bankruptcy lawyer and also served as a consultant on bankruptcy matters to the House Judiciary Committee until 1982, well past enactment of the 1978 Bankruptcy Code. I also served as a consultant to the Department of Justice on bankruptcy matters during 1983–1984.

I commenced teaching bankruptcy law in 1979 as an adjunct professor at the UCLA School of Law and became a full time professor there in 1997, after teaching at Harvard Law School in 1995–1996 as the Robert Braucher visiting professor from practice.

My interest in bankruptcy legislation has continued over the years. I served on the legislation committee of the National Bankruptcy Conference for several years, acting as its Chair from 1992–1999. Chief Justice Rehnquist appointed me to serve on the Judicial Conference's Advisory Committee on Bankruptcy Rules from 1992–2000.

During my career, I have paid particular attention to the interface between bankruptcy law and the United States Constitution. While serving as a congressional staff member, I co-authored a House Judiciary Committee Report in 1977 correctly predicting that it would be unconstitutional to give a grant of broad pervasive jurisdiction to non-tenured bankruptcy judges. See H.R. Rep. No. 95–595, 95th Cong., 1st Sess. 23–39 (1977). The United States Supreme Court validated this position in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

I have served as amicus curiae to the courts on the intersection of bankruptcy and constitutional law, most recently in Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440 (2004) where the Court adopted the amici suggestion of an in rem exception to a state's assertion of sovereign immunity in bankruptcy cases. Within the past few months, I have authored a book ''Bankruptcy and the Supreme Court,'' which devoted an entire chapter to bankruptcy and constitutional law.

Please let me know if you have additional questions with respect to this important legislation. I appreciate the opportunity to be of service.

Sincerely yours,

KENNETH N. KLEE.

Ms. WATERS. Mr. Speaker, I rise in strong support of the End GREED Act, H.R. 1575. We worked on this bill in the Judiciary Committee, and with bipartisan support, I believe that we made significant improvements over the original bill.

This narrowly crafted measure gives the Attorney General the ability to recover the most egregious bonuses by entities that receive or have received more than $5 billion in direct capital investment by the U.S. under TARP or HERA by filing a civil action in federal court. Every state in the U.S. has some form of similar fraudulent transfer statute, including my home state of California.

The Attorney General could only do so where the entity was insolvent and paid excessive compensation to an officer, director, or employee who provided less than reasonably equivalent value in exchange. This applies to bonuses paid after September 1, 2008.

This legislation takes another critical step in executive compensation by reaching bonuses made at the end of 2008. For example, more than $3 billion in bonuses were paid by Merrill Lynch late last year.

This bill also provides a mechanism for recovering bonuses paid to non-citizens who would be unaffected by the tax provision Congress recently passed. New York Attorney General Cuomo reported that only 47 percent of AIG bonuses were paid to U.S. citizens. Therefore, this bill authorizes the Attorney General, after consultation with the Treasury Secretary, to subpoena witnesses and to obtain necessary information relevant to the bonuses.

Finally, Mr. Speaker, I know some of the critics of this legislation have raised questions about the constitutionality of this bill. Please let me add to the RECORD the comments of several prominent constitutional scholars who have confirmed that the bill is constitutional. Here's what some of the constitutional scholars have said about this bill:

Prof. Laurence Tribe (Harvard)—''Having carefully reviewed the text of the bill, I believe it stands on solid constitutional ground.''

Prof. Doug Baird (Univ. of Chicago)—''Because H.R. 1575 largely replicates rights that

the United States already possesses under state laws, there seems to be little doubt that Congress has the power to enact it.''

Prof. Michael Gearhardt (UNC)—''I believe that The End GREED Act is unquestionably constitutional. Each of the powers deployed to enact this bill is plenary, and these powers—individually and collectively provide an unusually strong, unassailable constitutional foundation for The End GREED Act.''

Prof. Ken Klee (UCLA)—''It is my view as a professor of law that the fraudulent transfer provisions of the Manager's amendment to H.R. 1575 are constitutional on their face and as applied to avoid payments of excessive compensation made under contracts entered into before the date of enactment.''

Mr. Speaker, I urge my colleagues to support H.R. 1575, the End GREED Act.

Mr. CONYERS. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 1575, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

RAISING A QUESTION OF THE PRIVILEGES OF THE HOUSE

Mr. FLAKE. Mr. Speaker, I rise to a question of the privileges of the House and offer the resolution previously noticed.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 312

Whereas, The Hill reported that a prominent lobbying firm, founded by Mr. Paul Magliocchetti and the subject of a ''federal investigation into potentially corrupt political contributions,'' has given $3.4 million in political donations to no less than 284 members of Congress.

Whereas, the New York Times noted that Mr. Magliocchetti ''set up shop at the busy intersection between political fund-raising and taxpayer spending, directing tens of millions of dollars in contributions to lawmakers while steering hundreds of millions of dollars in earmark contracts back to his clients.''

Whereas, a guest columnist recently highlighted in Roll Call that ''. . . what [the firm's] example reveals most clearly is the potentially corrupting link between campaign contributions and earmarks. Even the most ardent earmarkers should want to avoid the appearance of such a pay-to-play system.''

Whereas, multiple press reports have noted questions related to campaign contributions made by or on behalf of the firm; including questions related to ''straw man'' contributions, the reimbursement of employees for political giving, pressure on clients to give, a suspicious pattern of giving, and the timing of donations relative to legislative activity.

Whereas, Roll Call has taken note of the timing of contributions from employees of the firm and its clients when it reported that they ''have provided thousands of dollars worth of campaign contributions to key Members in close proximity to legislative activity, such as the deadline for earmark request letters or passage of a spending bill.''

Whereas, the Associated Press highlighted the ''huge amounts of political donations'' from the firm and its clients to select members and noted that ''those political donations have followed a distinct pattern: The giving is especially heavy in March, which is prime time for submitting written earmark requests.''

Whereas, clients of the firm received at least $300 million worth of earmarks in fiscal year 2009 appropriations legislation, including several that were approved even after news of the FBI raid of the firm's offices and Justice Department investigation into the firm was well known.

Whereas, the Associated Press reported that ''the FBI says the investigation is continuing, highlighting the close ties between special-interest spending provisions known as earmarks and the raising of campaign cash.''

Whereas, the persistent media attention focused on questions about the nature and timing of campaign contributions related to the firm, as well as reports of the Justice Department conducting research on earmarks and campaign contributions, raise concern about the integrity of Congressional proceedings and the dignity of the institution.

Now, therefore, be it: *Resolved,* that (a) the Committee on Standards of Official Conduct, or a subcommittee of the committee designated by the committee and its members appointed by the chairman and ranking member, shall immediately begin an investigation into the relationship between the source and timing of past campaign contributions to Members of the House related to the raided firm and earmark requests made by Members of the House on behalf of clients of the raided firm.

(b) The Committee on Standards of Official Conduct shall submit a report of its findings to the House of Representatives within 2 months after the date of adoption of the resolution.

The SPEAKER pro tempore. The resolution qualifies.

MOTION TO TABLE

Mr. HALL of New York. Mr. Speaker, I move to lay the resolution on the table.

The SPEAKER pro tempore. The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, this 15-minute vote on tabling House Resolution 312 will be followed by 5-minute votes on adopting House Resolution 305 and House Resolution 306; and suspending the rules with regard to H.R. 1575 and House Resolution 290.

The vote was taken by electronic device, and there were—yeas 217, nays 185, answered ''present'' 16, not voting 13, as follows:

Roll No. 175

YEAS—217

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Frank (MA)
Fudge
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Higgins
Hinchey
Hinojosa
Hirono
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kissell
Klein (FL)
Kratovil
Kucinich
Langevin
Larsen (WA)
Lee (CA)
Lewis (GA)
Lipinski
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McMahon
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rohrabacher
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth
Young (AK)

NAYS—185

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Bean
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bono Mack
Boozman
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Childers
Coffman (CO)
Cole
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx

Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Halvorson
Harper
Heller
Hensarling
Herger
Herseth Sandlin
Hill
Himes
Hodes
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kosmas
Lamborn
Lance
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Loebsack
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
Mica
Miller (FL)
Miller (MI)
Minnick
Mitchell
Moran (KS)
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Sullivan
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Visclosky
Walz
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

ANSWERED ''PRESENT''—16

Barrett (SC)
Bonner
Butterfield
Castor (FL)
Chandler
Conaway
Dent
Diaz-Balart, L.
Hastings (WA)
Kline (MN)
Latham
Lofgren, Zoe
Myrick
Poe (TX)
Walden
Welch

NOT VOTING—13

Barton (TX)
Becerra
Kaptur
Larson (CT)
Levin
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schauer
Shuster
Thompson (MS)
Westmoreland

□ 1359

Messrs. DEAL of Georgia and McINTYRE changed their vote from ''yea'' to ''nay.''

Mr. GORDON of Tennessee changed his vote from ''nay'' to yea.''

So the motion to table was agreed to.

The result of the vote was announced as above record.

A motion to reconsider was laid on the table.

WELCOMING FORMER SPEAKER JIM WRIGHT

(Mr. DOGGETT asked and was given permission to address the House for 1 minute.)

Mr. DOGGETT. Madam Speaker, on behalf of the Texas congressional delegation—the Democrats in that delegation—this is a proud day for us to welcome a distinguished Texan who rose from Weatherford, Texas, to serve here with the legendary Sam Rayburn and then to preside over this Chamber.

To formally introduce him, I would yield to the dean of our delegation, Congressman ORTIZ.

Mr. ORTIZ. Thank you. What an honor today, Madam Speaker, to have a great American among us. I had the privilege and honor of serving with the Speaker when I first came here back in 1982. He was always accessible, fair, and a great leader.

We are just so happy, Mr. Speaker, that you're with us today and continue to give the Texas delegation, and other Members, a lot of good input and a lot of history. We're happy to have you with us.

Mr. DOGGETT. Madam Speaker, Speaker Jim Wright, for both all those, who have had not a chance to serve with him, he's here to say hello as well as to colleagues with whom he served, like old RALPH HALL over there and others of our colleagues.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Without objection, 5-minute voting will continue.

There was no objection.

PROVIDING FOR CONSIDERATION OF H. CON. RES. 85, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010

The SPEAKER. The unfinished business is the vote on adoption of House Resolution 305, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mrs. TAUSCHER). The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 234, nays 179, not voting 18, as follows:

[Roll No. 176]

YEAS—234

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Langevin
Larsen (WA)
Lee (CA)
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Teague
Thompson (CA)
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NAYS—179

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Barrow
Bartlett
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Kucinich
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Taylor
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp

Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—18

Barton (TX)
Doggett
Frank (MA)
Honda
Larson (CT)
Levin
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schauer
Schmidt
Sherman
Thompson (MS)
Tierney
Waters
Welch
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining on this vote.

□ 1409

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 1664, PAY FOR PERFORMANCE ACT

The SPEAKER pro tempore. The unfinished business is the vote on adoption of House Resolution 306, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 236, nays 175, answered ''present'' 1, not voting 19, as follows:

[Roll No. 177]

YEAS—236

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Bright
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Lee (CA)
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Thompson (CA)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NAYS—175

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Braley (IA)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—1

Cantor

NOT VOTING—19

Barton (TX)
Berman
Brown, Corrine
Burgess
Kingston
Klein (FL)
Larson (CT)
Levin
Lofgren, Zoe
Miller, Gary
Oberstar
Pallone
Pascrell
Rangel
Sanchez, Loretta
Schauer
Schmidt
Thompson (MS)
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. JACKSON of Illinois) (during the vote). There are 2 minutes remaining in this vote.

□ 1417

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

END GOVERNMENT REIMBURSEMENT OF EXCESSIVE EXECUTIVE DISBURSEMENTS (END THE GREED) ACT

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 1575, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 1575, as amended.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 223, nays 196, not voting 12, as follows:

[Roll No. 178]

YEAS—223

Abercrombie
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Cao
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costello
Courtney
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kaptur
Kennedy
Kildee
Kilroy
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Lee (CA)
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)

Markey (MA)
Massa
Matsui
McDermott
McGovern
McIntyre
McNerney
Meek (FL)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Taylor
Teague
Thompson (CA)
Tierney
Titus
Tonko
Towns
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Yarmuth

NAYS—196

Ackerman
Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Bean
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Capito
Cardoza
Carter
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Costa
Crenshaw
Crowley
Cuellar
Culberson
Davis (KY)
Deal (GA)
Dent
Dreier
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Harper
Hastings (WA)
Heller
Hensarling
Herger
Himes
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
Kanjorski
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McHenry
McHugh
McKeon
McMahon
McMorris Rodgers
Meeks (NY)
Mica
Miller (FL)
Miller (MI)
Minnick
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Nadler (NY)
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (MI)
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schock
Schrader
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Sullivan
Tauscher
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tsongas
Turner
Upton
Walden
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Wu
Young (AK)
Young (FL)

NOT VOTING—12

Barton (TX)
Kilpatrick (MI)
Larson (CT)
Levin
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schauer
Schmidt
Thompson (MS)
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining on this vote.

□ 1427

Messrs. CARDOZA, COSTA, KIND, and NADLER of New York changed their vote from ''yea'' to ''nay.''

Mr. HILL changed his vote from ''nay'' to ''yea.''

So (two-thirds not being in the affirmative) the motion was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LARSON of Connecticut. Mr. Speaker, today I was unable to attend four votes due to my presence at a funeral in New Jersey. I would have voted "yes" for the following missed votes:

On the motion to table H. Res. 312, on raising a question of the privileges of the House (rollcall vote 175); on agreeing to H. Res. 305, a measure to consider H. Con. Res. 85, to set forth the congressional budget for the United States Government for fiscal year 2010 (rollcall vote 176); on agreeing to H. Res. 306, providing for consideration of H.R. 1664, to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 (rollcall vote 177); and on the motion to suspend the rules and pass the End GREED Act (rollcall vote 178).

MOMENT OF SILENCE IN REMEMBRANCE OF MEMBERS OF ARMED FORCES AND THEIR FAMILIES

The SPEAKER. The Chair would ask all present to rise for the purpose of a moment of silence.

The Chair asks that the House now observe a moment of silence in remembrance of our brave men and women in uniform who have given their lives in the service of our Nation in Iraq and Afghanistan and their families, and of all who serve in our Armed Forces and their families.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Without objection, 5-minute voting will continue.

There was no objection.

HONORING FOUR SLAIN OAKLAND POLICE OFFICERS

The SPEAKER. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 290, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and agree to the resolution, H. Res. 290.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 15, as follows:

[Roll No. 179]

YEAS—417

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
Latta
Lee (CA)
Lee (NY)
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul

McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Myrick
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pastor (AZ)
Paul
Paulsen
Payne
Pelosi
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sarbanes
Scalise
Schakowsky
Schiff
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—15

Barton (TX)
Clarke
Green, Gene
Kilpatrick (MI)
LaTourette
Levin
Miller, Gary
Moran (VA)
Pallone
Pascrell
Sanchez, Loretta
Schauer
Schmidt
Thompson (MS)
Westmoreland

□ 1437

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days, on H.R. 1664, to revise and extend their remarks and insert into the RECORD extraneous material thereon.

The SPEAKER pro tempore (Mr. HIMES). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PAY FOR PERFORMANCE ACT

The SPEAKER pro tempore. Pursuant to House Resolution 306 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1664.

□ 1438

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards, with Mr. JACKSON of Illinois in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time. The gentleman from Massachusetts (Mr. FRANK) and the gentleman from Georgia (Mr. PRICE) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I want to begin by recognizing the two Members who are the main authors of this bill, and I will begin with 2 minutes for the gentleman from Florida (Mr. GRAYSON).

Mr. GRAYSON. Mr. Chairman, we offer H.R. 1664, the Pay for Performance Act. The Pay for Performance Act is based on two simple concepts: 1, no one has the right to get rich off taxpayer money, and 2, no one should get rich off abject failure.

The U.S. Government spent $170 billion to stabilize AIG, and it now owns 80 percent of that company. Yet recently AIG paid more than $165 million in bonuses to 73 employees with this taxpayer money. We should not be paying an arsonist to put out his own fire, and we should not be paying an executive to ruin his own bank.

Mr. Chairman, an economy in which a bank executive can line his own pockets by destroying his company with risky bets is an economy that will spiral downward to failure. And a government that hands out money to such executives is a government that fails to protect its own taxpayers.

H.R. 1664 is designed to allow responsible compensation to those who work for companies running on taxpayer money. The bill freezes current bonus payments for executives and employees of companies that have accepted capital investments from the TARP program until that investment capital is paid back to the government. It allows for new compensation and bonus arrangements to be made, as long as they are based on performance standards and are not excessive or unreasonable. These standards must be crafted by the Treasury Secretary within 30 days and approved by the Federal Financial Institutions Examination Council.

Our job is to act on behalf of taxpayers to fix our economy, and we do so today with this bill. The restrictions in this bill apply only to financial institutions that have taken capital investments from the taxpayer, and they are commonsense restrictions. Pay cannot be excessive or unreasonable, and bonuses must be based on performance standards. If the banks want to avoid, for some reason, these commonsense restrictions, there's a very simple way for them to do so. Just pay the bailout money back to the government, and that's what the banks say they want to do. I know that taxpayers in my district will happily take it back.

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield the gentleman an additional 30 seconds.

Mr. GRAYSON. I asked the CEO of AIG when he came to testify before the Financial Services Committee, is it more important to protect bank executives who have lost billions of dollars and still get millions of dollars worth of pay, or to protect us? The answer to that question is now before this body, and I know which side I'm on.

Mr. PRICE of Georgia. Mr. Chairman, I am pleased to yield 1 minute to my friend from Texas (Mr. CULBERSON).

Mr. CULBERSON. Mr. Chairman, the bill before the House is simply political cover for liberals who rushed their $800 billion stimulus bill through the House, ensuring these AIG bonuses would be paid. You know, Mr. Chairman, if the Members had more than 12 hours to read this 1,100 page, $800 billion stimulus bill, we might have been able to spot problems like this before Members were forced to vote. And in fact, Mr. Chairman, one of the Members who voted for this stimulus bill is the sponsor of the legislation before us, Mr. GRAYSON. I'd like to ask the gentleman from Florida if he would yield for a question. I will yield my time, Mr. GRAYSON. I'd like to yield to you, please, sir, for a question please, sir. Mr. GRAYSON, thank you very much. Because I would like to ask the gentleman from Florida—I thank you, Mr. GRAYSON. If I could, before I yield, very quickly, if I could, sir, would you please answer yes or no if you read the 1,100-page stimulus bill before the vote.

The CHAIR. The time of the gentleman has expired.

Mr. PRICE of Georgia. I yield the gentleman an additional minute.

Mr. CULBERSON. Did you read the bill before the vote?

□ 1445

Mr. CULBERSON. There is your answer, Mr. Chairman.

It is, I think, a terrible injustice to the taxpayers of America that the liberal leadership of this House is jamming through $800 billion spending bills with very few committee hearings, with less than 12-hours' notice, without the opportunity for Members to read the bill, with a majority that promised to be the most transparent, accountable and honest majority in Congress in history, underneath a President who promised that he would not sign a bill

that was not laid out for at least 5 legislative days. The Member from Florida walks away from the microphone, the author of the amendment before us, who cannot even tell us if he read the bill.

American taxpayers deserve better in a time of economic crisis. When we are guardians of the Treasury, our responsibility is as trustees—to protect our children and grandchildren from financial ruin. In 60 days, Mr. Chairman, this liberal majority has spent over $1.3 trillion, money our kids cannot afford.

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. Regular order.

The CHAIR. Members should address the Chair even when engaged in a colloquy.

Mr. FRANK of Massachusetts. Mr. Chairman, I will yield myself as much time as I may consume.

This is really extraordinary. What you have just heard is a denunciation of something that was done by the Congress a few weeks ago and a refusal to undo it. I have never seen people, Mr. Chairman, so attached to something they hate. This is presumably a psychological disorder which I am not equipped to diagnose.

The objection of the gentleman from Texas was that, when the recovery bill was passed, it was passed too quickly. We signed it that night. It included a provision that should not have been in there. This bill takes it out. It takes it out in a way that makes sure it will have had no effect, because it dealt with something in the past, and it is undone by this.

Speaking about being undone, my Republican colleagues were being undone by the loss of their whipping boy.

Mr. CULBERSON. Mr. Chairman, will you yield?

Mr. FRANK of Massachusetts. I will yield.

Mr. CULBERSON. Mr. Chairman, truly, all we ask is for transparency. All we ask is for time for the taxpayers and for the people of America to read the bill.

Mr. FRANK of Massachusetts. I will take back my time.

The bill under consideration is 5½ pages. I believe even the gentleman from Texas could have read it by now, and if the gentleman from Texas has not been able to read this 5½-page bill, I will talk long. Even if you read slow, you'll get it done.

The point is that this bill undoes what he is complaining about. Note the refusal to address the subject. The complaint was that the amendment in the recovery package said that bonuses in the past given by AIG or by anybody else would not be covered by the restrictions in that bill. This undoes it. This takes it away. My colleagues on the other side are kind of like kids who have had a toy bear or a blanket, and this security blanket means a lot to them. Their security blanket is being able to complain about something that happened before the break. This bill undoes what happened before the break and makes it a nullity. They at some point, Mr. Chairman, have to outgrow the security blanket.

Now, of course, here is the real problem. They do not want to vote for a bill that restricts excessive pay and unreasonable bonuses. The gentleman from Texas has now had a chance to read the bill and has a question for me about this bill.

Mr. CULBERSON. Will the gentleman yield?

Mr. FRANK of Massachusetts. Yes.

Mr. CULBERSON. Mr. Chairman, truly, in all sincerity, I would ask only if you as chairman would promise us that you would lay these bills out for 72 hours before the vote so that the American people could read the bill. My objection is to the 1,100-page $800 billion stimulus which was laid out for 12 hours.

Mr. FRANK of Massachusetts. I will take back my time to say that this is the bill that came out of the Financial Services Committee, and this was not out for 72 hours. It was out for much more than 72 hours. We, in fact, marked up the bill, with amendments, in an open markup last Wednesday. We voted on it on Thursday.

Mr. CULBERSON. Thank you.

Mr. FRANK of Massachusetts. No. I'm sorry. The gentleman wants to debate a bill that was passed in February. He can have all of the Special Orders he wants in order to beat that dead horse, because it is a dead horse, Mr. Chairman. This bill that he does not want to debate the merits of, that he is probably prepared to vote against and is looking for some reason to, undoes what was done back then for the recipients of TARP funds. So that is the issue. This bill was marked up in committee. It was fully debated in committee.

Mr. CULBERSON. This bill——

Mr. FRANK of Massachusetts. I'm sorry. The gentleman has twice asked me to yield for questions.

The CHAIR. The gentleman from Massachusetts controls the time.

Mr. FRANK of Massachusetts. I have twice yielded to the gentleman for questions, which I must say, in all parliamentary decorum, to me, did not seem to substantially add to the quality of the debate, because we are on this bill that he does not want to talk about. This bill was out. It was debated. It has been laid forth. We have amendments that will be considered to be adopted that were also made public for some time. Here is the point:

This bill addresses what Members on the other side complained about. Apparently, they regret that fact. They would rather complain than have us undo the source of their complaints, so that is why they are dealing so unhappily with this legislation.

Now let me get back to the merits of this bill. It says, if you have received capital contributions under the TARP, like AIG—AIG, by the way, was originally, of course, given money under the Bush administration, by the Bush-appointed head of the Federal Reserve and with the approval of the Bush-appointed Secretary of the Treasury. It later got TARP funds.

From the Senate, from the Senator of Connecticut, we then saw restrictions. He deserves credit for adding restrictions when no one else had pushed for them. He did not get all of the restrictions that he should have gotten, which was because of other people objecting. There was a requirement that the restrictions not be retroactive. Members complained about that. This bill fixes it. Let me emphasize again: This bill undoes the exemption of retroactive bonuses from the darned language. I don't understand why people are opposed.

Mr. CULBERSON. Would the gentleman yield?

Mr. FRANK of Massachusetts. No. Let me explain this to the gentleman from Texas. I yielded to him twice. I am not going to continue to let the gentleman from Texas evade the issue by not debating this bill. He has his own time. I am not going to waste the limited time we have to explain this bill with this kind of continued lament for the passage of a complaint.

What the bill says—and what I want to stress—is that it is only for people who get capital funds under the TARP. This does not interfere with small business lending. It does not interfere with people participating in the impaired asset program, and I can guarantee that it will not be so extended.

It says, if you get a capital contribution under the TARP bill, as long as you have that contribution, you cannot make payments that are excessive and unreasonable. You can give bonuses if they are performance-based, and it repeals what the Republicans have been complaining about.

Mr. Chairman, in closing, let me say I condole them on their loss. Their attachment to what they hated is truly impressive, but they are going to have to live with the fact that we are going to undo that and that they are now going to have to talk about what this bill does.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I yield 1 minute to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Chairman, I do want to talk about this bill, but it is very difficult to talk about this bill without also talking about the bill that it is going to undo. What I would like to point out—and I am sorry I did not think of this sooner—is that this bill really is redundant, and if it is not political theater, then I don't understand why we have to have the words ''executive or employee'' in this bill. I assume that every executive is also an employee. If this bill is not written as political theater, then we would simply say ''any employee'' because an executive is an employee.

So I would like to ask the gentleman from Massachusetts if he would ask the

Rules Committee to take a friendly amendment to take out the word ''executive'' because it is redundant.

I would also like to point out that, this morning, when I spoke about the sponsor of the bill and about his ambition to get this bill passed, I neglected to say that I have heard that he has told people he wants to be the first freshman to pass a bill. That is very ambitious, but I think he has found a good piece of political theater.

The CHAIR. The time of the gentlewoman has expired.

Mr. FRANK of Massachusetts. Regular order.

The CHAIR. The gentleman from Massachusetts controls the time.

Mr. FRANK of Massachusetts. I thank you, Mr. Chairman.

I now recognize for 2 minutes——

Ms. FOXX. Mr. Chairman, would the gentleman yield?

The CHAIR. The gentleman from Massachusetts controls the time.

Ms. FOXX. I was hoping he would ask——

Mr. FRANK of Massachusetts. Regular order, Mr. Chairman.

The CHAIR. The gentleman from Massachusetts controls the time.

Mr. FRANK of Massachusetts. Mr. Chairman, I am going to yield myself 30 seconds to say:

Apparently, there are two alternative strategies that the minority has in discussing this bill: one, discuss a bill that was passed 6 weeks ago; two, ignore the rules of the House and just talk whenever they feel like it. Neither one seems, to me, to advance debate.

I now yield 2 minutes for serious conversation to the gentleman from Connecticut (Mr. HIMES).

Mr. HIMES. Mr. Chairman, I rise today in support of H.R. 1664. This is a commonsense measure to protect American taxpayers by making sure that their hard-earned dollars are used carefully and wisely in our efforts to stabilize our financial institutions. Let us be very clear about one thing: No one is happy that the TARP was necessary. We have far better uses for our money than stabilizing the very institutions that helped drive this economy into a ditch, but into a ditch it went, and we need to pull it out.

President Bush, Secretary Paulson and this very House decided in October of last year that we would pump billions of dollars into these firms. Now, like it or not, the dollars are there. So the only question that matters is: Should we look after those dollars? Should we, as the Representatives of the American people, look after their dollars to make sure that they are used wisely? The answer to that question must be ''yes.''

H.R. 1664 says one thing to TARP recipients: Pay your people, but do so reasonably and according to their performance. Pay reasonably and according to performance. The bill asks the Secretary of the Treasury to develop guidelines for those things. It does not ask the 435 Members of Congress but, rather, Treasury.

I expect that compensation committees and boards of directors around this country will be very interested in those guidelines because they know that it is their job to craft reasonable, performance-based compensation for their companies and for their shareholders. They have a fiduciary obligation to their shareholders. Like it or not, the American people are now shareholders, and we, as their Representatives have a clear fiduciary obligation to the American taxpayer. We have a clear interest in aligning the interests of the employees in the banks we now own with the interests of the American taxpayers. You do that through performance-based compensation. You do that by supporting this bill that aligns pay with performance.

Mr. PRICE of Georgia. Mr. Chairman, I yield 1 minute to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Chairman, Mr. HIMES is leaving, and I wanted to ask him a question, but I noticed that the majority party is getting their Members off the floor as quickly as they possibly can today so that we do not have a chance to ask them any questions.

I believe that Mr. HIMES voted for the stimulus bill, and what I wanted to ask him was whether or not he had read the bill before he had voted for it, but as I said, I think they are doing a very good job of getting their Members off the floor so they can't be put on the record in any way.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Chairman, I rise to engage Chairman FRANK in a colloquy.

First, I want to state on the record that I have, in fact, read this bill, and this colloquy is regarding this bill.

During the past few months, legitimate business travel for meetings, events and incentive programs has dramatically decreased across the country, especially in my district of Las Vegas. The decline is due, in part, to the state of our economy but also to the perception that Washington is seeking to limit these legitimate business practices. This negative perception has created an environment where every business in the United States is beginning to question whether or not they should hold a meeting, an event or incentive travel programs.

As you know, Mr. Chairman, every canceled meeting or event means less business for the hotels, conference centers, restaurants, and small companies across the country that cater to business travelers. Hardworking, middle-class Americans like those in my district—and I have 10½ percent unemployment, not the CEOs—are the people who ultimately pay the price if companies continue to cancel business meetings and incentive travel.

I would like to clarify with the chairman that nothing in this bill or in the amendments to be offered today would discourage or limit the use of meetings, events and incentive travel organized by a company to serve legitimate business purposes. Is that the chairman's understanding?

I yield to the chairman.

Mr. FRANK of Massachusetts. Yes.

This bill deals only with compensation, not with travel. The gentlewoman referred to incentive travel. Any incentives that were performance-based would be fully allowed. If by selling a certain number of things you earned a trip, that would be allowed. So it specifically does not deal with travel for the business. It would allow performance-based incentives for this or for any other purpose.

□ 1500

Ms. BERKLEY. I thank the gentleman for clarifying the legislation and the language.

Mr. PRICE of Georgia. Mr. Chairman, I am pleased to yield 5 minutes to the deputy ranking member of the Financial Services Committee, the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. Mr. Chairman, I guess we could call this a Big Government week because we're going to roll out a big budget, it has big deficits, increases our national deficit to a larger number, going to bring out big tax increases.

But you know, a lot of discussion has been had about all of the things that the Federal Government's involving themselves in. And the word ''outrage'' keeps coming up. And many of us were outraged about the level of the bonuses that we found out were being paid at AIG. I think what—more than an outrage about bonuses I think the American people are outraged at the level of money that's being invested of their hard-earned taxpayer money into these entities. We find out that now the American people are investors in banks, insurance companies, probably soon to be in the automobile business; and in fact, you're going to get an extended warranty from the United States Government. And what people are wondering and are outraged about is, when does this Big Government, Big Brother, when is the end of this train?

One of the concerns that I have is that we now have—people were outraged about GSEs, and now we have TSEs, and that's taxpayer-supported entities. And people that used to get outraged in this body because we were trying to listen in on foreign enemies, worried about their individual rights—and now we have no problem, though, for the United States Government to start determining what is reasonable compensation in this country.

Am I outraged about the bonuses? I am more outraged that we would relegate to government and to government employees for them to sit down and determine whether that is a reasonable compensation. People say. Well, this is only foreign entities that we've invested capital into. But, you know, that's always the way policy gets started in this country. It starts

off with a little bit of a foot in the door and pretty soon, the gorilla is completely in the room.

So down the road, if I am a small businessman and I have an SBA loan, for example, I am wondering if at some point in time the SBA calls up and says, You know what? You're taking too big a salary out of your company so we're going to set a reasonable set salary for you. What does that do to entrepreneurialism in this country? What about people that are participating in other government programs? Is the government then going to start saying, Well, we've looked and we know that you have got a contract. So you're one of the small business contractors that has a government contract. And, you know, we've looked at your IRS records and you're making a lot of money off of that contract. We think maybe we ought to renegotiate that contract because you're making too much money.

Now, that sounds farfetched, but I would guarantee you if we were to roll back this conversation a year ago and you would tell the American people that they are going to own banks, they are going to own insurance companies, that they are going to own automobile companies, that they are going to have over $5 or $6 trillion of their money committed to these entities, people would have laughed about it. But this is really no laughing matter, Mr. Chairman. This is serious.

This government, this country was founded on the principles of individualism, empowerment and not for government to be big. In fact, there are tea parties occurring all across this country because people are outraged about this. The same outrage that over 230, 240 years ago people were outraged at how the King was treating the colonists in this land called America. And they were tired of the King telling them what they could do, how much money they could make, and who was privileged and who was not privileged. And yet we're now starting down that same trail with this bill today.

What should have happened here is that we should have taken a reasonable amount of time to determine how this money was going to be distributed, term sheets should have been put together if we're going to invest American taxpayers' money, we ought to know exactly what that money is going to be used for, how it's going to be used. If we want to limit salaries, you do that before you pass out the money.

But that is all really a smokescreen. What the conversation and debate in all of this time that we ought to be using today is we ought to be talking about how are we going to get the American taxpayers' money back. People want to focus on the bonuses, and they messed up, they cut a deal with the White House in the middle of the night, had people put things in the bill to cover them so that they didn't have to lose face. You know, the $170 million in bonuses is a big deal, but let me tell you what a big deal is $170 billion in money that we invested in AIG.

Mr. Chairman, let's return America back to the American people. Let's not infringe upon their rights, let's not start down the road where government starts telling us how much money we can make, what we will do with our money. And I urge the people to vote against this bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

This is really an interesting debate we're having within the Republican Party.

The first speakers were critical of the bill which passed in the recovery bill because it limited Senator DODD's restrictions on compensation and said they wouldn't apply retroactively. As I said, it was Senator DODD who initiated the notion of further restrictions. And many of the Republicans were upset that it didn't go far enough.

But now we have the deputy leader of the Republican side objecting that we're going too far, directly contrary to the complaints that we didn't apply these retroactively, he's upset that we applied them at all. And he says it's an interference with free enterprise.

Let's stress again. And I do know, he did say this is a revolt against King George in effect. And it is. King George Bush. Because we are dealing here with a program initiated under the Bush administration. We are dealing here when we talk about AIG with a grant of funds that came without any congressional input with the approval of the Bush administration.

We did, some of us, raise the compensation issue last fall. Yes, we did. We said that if you're going to take government money, you accept some compensation restrictions. The gentleman from Texas—and I do note that he's left the floor. I think the gentleman from Texas is entitled to leave the floor. I don't think having made a speech you have to sit here and listen to some of the other speeches. I have to because I am the manager of the bill. I wish I didn't have to listen to some of these speeches, particularly the repetitive ones about the bill 6 weeks ago. But since commenting on people leaving the floor is in vogue, I thought I would become fashionable at least in this regard.

But here's the point. We say if you receive TARP funds capital infusion, you accept some restrictions. That is no more an interference with free enterprise than any other contracting rule the Federal Government has. And as to the gentleman from Texas's suggestion, he said, Oh, but this isn't the problem. The problem is where it will go.

Now, Mr. Chairman, I have observed that when people are opposed to something but don't have confidence in the persuasive quality of the arguments on the particular issue, they migrate to what would happen if it was applied in a wholly different context. It will not be applied in a wholly different context.

I speak for myself and the majority leader, Mr. HOYER. This bill is confined to people who take a capital infusion under the TARP. It will not be extended to any other participant in the impaired asset program, in the small business lending program, in the higher education lending program. I would not, as chairman, convene a meeting for such a bill. The majority leader would not bring one to the floor. Again, there is zero chance of that happening.

But when Members complain about something that might happen that won't happen, it is because they are against what is happening but don't have the confidence that if they said it, people would believe it.

Let's go back to what this bill does. It undoes the restriction on retroactivity that had been a cause of such outrage among the Republicans, and I repeat again. They appear to have become so attached to their outrage that they are even more outraged that they won't be able to be outraged any more.

Secondly, we say that if you receive a capital infusion under the TARP program and only a capital infusion, you may not make salary payments that are excessive or unreasonable and you can give bonuses as long as they are performance-based, such as in restricted stock or in other ways.

I await Members on the other side—because a number of them have spoken, but not one of them has objected to the bill on its merits. The gentleman from Texas said, Well, if you took this principle and went further, it would be a problem. The other Members said, Isn't it too bad we did something 6 weeks ago that we're now undoing? I have yet to hear an argument against this bill.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I am pleased to yield to the gentleman from Alabama (Mr. BACHUS) such time as he may consume.

Mr. BACHUS. Mr. Chairman, every day brings news of a new government program, a new government intervention, a new government mandate, or a new government tax. Most of them share the same thing: they are large.

This bill claims to be about executive compensation. But what it really is is just another step expanding the size, the involvement—and more importantly—the control of the Federal Government into not only the private sector but into all aspects of our lives.

That's our concern. Yes, it's about this bill. But, yes, Mr. Chairman, it is about much more than this bill. You're right about that.

Sometimes the expansion is subtle, as in the case of this bill. Sometimes it's more direct, more obvious, like the budget that we will vote on as soon as tomorrow. We are witnessing in light speed in just the past few months—and then the budget will pass in the next few years as it goes into effect—a relentless and massive expansion of the

Federal Government. And I, for one, Mr. Chairman, am concerned. Outraged? I would say ''fear'' and ''concern'' are better. But I do believe that as the years go by and we look back on what we've done and what we will do in this next year, I believe the American people will be outraged.

As a Member, I took an oath to uphold the principles of the Constitution which intentionally and specifically limited the power of the central government. Would our forefathers have ever considered giving the government a say on how much a private citizen earned, the so-called say-on-pay? In reading both the Constitution and the Federalist Papers, it clearly appears they would not.

I think most Americans believe our Founding Fathers had it right. I applaud the chairman's honesty. For years, he has advocated a government role in limiting the amount of salaries.

Later tonight, we will consider a budget. As we have said repeatedly—and we are going to say again today—it spends too much, it taxes too much, and it borrows too much. It expands the government control on a scale that we've not seen before, not even in the New Deal. It spends more money in this administration than was spent from the time of George Washington to George Bush. The majority criticized Bush for the deficits, and now they will double and triple them in the next 10 years under their proposal.

The scope and reach of this legislation is breathtaking. If you had told me a month ago—and I will recognize the chairman. I will yield to him in a minute when I get to the particulars on this bill.

If you had told me a month ago that Congress wanted to increase the tax burden on charitable contributions, I would have said it's an April Fool's joke. But the fact is that if donations to charities go down, the government will say it has to step in. But there will be a big difference. The government will be choosing what it wants to support and how. It can support groups like ACORN instead of my local church or local charity. Instead of allowing people to support their own causes and make their own choices about their charitable contributions, the government will expand into what will obviously and clearly be a restriction on private charities as their funds are restricted.

□ 1515

Unfortunately, it wasn't an April Fool's Day joke, and that's what is being proposed this very week, restricting private contribution, and there's a pattern developing here.

Just this week, we saw a government mandate to change the management of General Motors. Regardless of what you think about the performance of the CEO—and I don't think it was good. I, for one, do not defend his stewardship. But do we want the Federal Government making such far-ranging decisions on hiring and firing and setting salaries and job descriptions for everyone from the manager to the receptionist?

This is all about government control, government command and control, running an economy, not according to free enterprise principles, which many of my Democratic colleagues admittedly and honestly don't agree with. It is about making business decisions based not on competitiveness but based on social goals.

Does anyone really believe that a government that is about to add $10 trillion to our debt, to our children and our grandchildren, has any expertise at all in telling the private sector how to turn a profit?

During the campaign, President Obama said, ''So if somebody wants to build a coal-powered plant, they can. It's just that it will bankrupt them because they're going to be charged such a huge sum for all the greenhouse gas that's being emitted.''

Later today, we will take a step down that road with cap-and-trade. We're going to raise every American's utility bill if that utility is fired by coal.

We hear the government will require the automobile makers to produce green cars. No one argues with the idea of cleaner-burning cars, but maybe someone should ask consumers whether they can afford to spend several thousand dollars more to buy them or whether such a policy will end the need for taxpayer support. I think not. I think it will make General Motors less profitable, and the taxpayer investment will certainly be at risk.

This is the problem with government getting involved in the management of business. Decisions will be based on the government's political agenda and not sound economics. There will be no limits to how far this can go and will go.

Will the government start telling companies we'd like to review your advertising to see if you're sending the right message or spending too much? Will the government tell drug companies, who market similar products, we think there's too much competition, maybe you should combine products or merge to make prices cheaper? Now, you don't have to do that, but if you do business with the government, you do. Some believe less competition leads to lower prices. I don't think this is the case at all.

Now, the legislation before us today, it gives the Treasury Secretary and a board, all unelected, headed by a Harvard professor, wide discretion to formulate performance-based compensation standards for hundreds of banks across America. Who does the legislation apply to? Let me read the legislation: Compensation payment to any executive or employee under any existing compensation arrangement.

Any executive or employee? Line 23 on page 2, Mr. Chairman. Every employee. There is nothing in this legislation to prevent the Secretary from deciding that one measure of performance is where the loan officers are approving loans to favored constituencies that the administration may believe are entitled to a loan or to credit. That was precisely the type of government allocation of capital and decisions that helped lead us into the housing bubble and the collapse of Freddie and Fannie, at a cost of hundreds of billions of taxpayer money.

In 1999, I introduced into the RECORD on this House floor the article from the New York Times, not a friend of the minority, which said, first, the government directed that you would make home loans to people with poor credit, and then it went further and said not only with poor credit but without a down payment. Part of the reason we're here today is because the government did that. There's no question that we need more performance-based pay decisions, but the government deciding and judging the performance of employees and private companies? The Secretary of the Treasury deciding whether an employee is performing? I think not.

The answer is not a dramatic expansion of government control. That hasn't worked in any country. It didn't work in Russia. It didn't work in China. It's not working in North Korea, and it's not working in Cuba.

The American economy has always attracted entrepreneurs and business investment because it has been free of the political risk present in developing and socialist countries. We have attracted investment and have maintained a strong currency because of the belief in foreign investors, whom we depend on and must have to support not only this economy but the spending that is proposed. In fact, more than half the borrowing going forward for this new budget will have to be borrowed from citizens in just three foreign countries. Without those assumptions, the budget doesn't work. Without the assumptions, there's more deficits. Without those assumptions, without that foreign investment, we default on our obligation.

As I say, we have attracted investment and a belief that we in America are productive, specifically because of the belief that our government does not take arbitrary and punitive actions to negatively affect business operations. It doesn't break contracts, it doesn't confiscate property, and it doesn't set salaries.

Let me close by saying I honestly fear, Mr. Chairman, that this bill and the overall thrust of what we are hearing from this administration is tilting that delicate balance. The implications for our competitiveness as a country, our economy, and the prosperity of our citizens and their freedoms are disturbing.

In the end, America has succeeded by putting its faith not in government but in the people. That's what the Constitution is all about, and I, for one, will always trust the people and always distrust the government. I make no

apology for that. The solution is not this bill. What we need is a strategy to get the government out of the bailout business, out of the taxpayer bailout business, with no further intrusions into what should have been and needs to be and will need to be in the future, private decisions.

Mr. Chairman, you and I can come to an agreement, and that agreement can be no further government bailout. That is the only way to avoid more government interference, more government control, and ultimately, the loss of not only our freedom but our prosperity. I appreciate the honest differences here, but I accept fully your statement that we on this side are outraged. We're fearful, we're concerned, and we become more so every day.

Mr. FRANK of Massachusetts. How much time remains on each side?

The CHAIR. The gentleman from Massachusetts has 14 minutes remaining. The gentleman from Georgia has 6½ minutes remaining.

Mr. FRANK of Massachusetts. I yield myself such time as I may consume.

I heard the gentleman from Alabama say that we should not get into this business of fixing compensation. Someone claiming to be the gentleman from Alabama last year voted for legislation which included the following. It was the rescue plan. The gentleman voted for it when it passed.

On page 12 of that bill, there's a heading, section 111, ''Executive Compensation and Corporate Governance.'' The gentleman from Alabama voted for this. So did the rest of the Republican leadership. They did it at the request of President Bush and of Secretary Paulson and of Chairman Bernanke, not heretofore known for their socialism. But the gentleman from Alabama voted for exactly what he now decries.

It is a grant of authority to the Secretary of the Treasury to require—I'm now quoting. He shall require that the financial institution meet appropriate standards for executive compensation and corporate governance. It goes beyond much of this bill, corporate governance. The standard shall be effective for the duration of the period that the Secretary holds an equity or debt position in the financial institution. So the gentleman voted for this when the Republicans were in power. Circumstances apparently change opinions.

In fact, there's also this great inconsistency. For a month now, the Republicans have been complaining that in the recovery bill we adopted a provision as the Congress which limited the reach of the government's intervention into compensation. That was the part about retroactivity. This undoes that limitation. So, in the name of limiting government, the gentleman denounces the bill that would undue the limitation that his party has been denouncing. There is a fundamental gap that can only be explained, it seems to me, by something other than the merits.

Given what the gentleman from Alabama said—we've got to get the government out of this—why was he then opposed, if he was, to the language that limited its retroactive application? In fact, if you believe that one of the big arguments is that we changed the rules after the fact, he should have been for that limitation.

The arguments about free enterprise and not understanding the principles are just nonsense, Mr. Chairman. We're not debating free enterprise. We're debating how best to make it work.

I think Franklin Roosevelt helped save free enterprise. I think rules help save free enterprise. I think when Secretary Paulson in the Bush administration called for more regulation of credit default swaps and collateralized debt obligations, we'll probably be getting an announcement that they will be opposed to that, because that's what we are going to be going forward trying to do.

Yes, the government does have a role in this, but to return to this bill, which the gentleman only briefly discussed, it does do what the gentleman voted for last fall, and by the way, the argument that the government was responsible—the gentleman said in 1999 this started. I was not going to refer to the history, but from 1995 through 2006, Members of the Republican Party controlled this Chamber, and they controlled it tightly. If, in 1999, the gentleman from Alabama, as a member of the Republican majority on the Financial Services Committee thought there was a problem, they should have done something about it.

The gentleman from Alabama was, for a time later on, the chairman of the Financial Institutions Subcommittee, which had jurisdiction over lending standards. Some of us wanted to pass a bill to limit abuse of subprime lending. Yes, that happened, Mr. Chairman, in the House. It happened in 2007, after we became the majority, and let me say now I think we still have the potential for the bad loans to be made.

When this House returns after the April break, we will have in committee arguments on the floor legislation that will stop precisely the kind of loans that the gentleman from Alabama decried, and I await with interest what the votes will be.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, we have no more speakers on this side, so until the chairman is ready to close, I will reserve.

Mr. FRANK of Massachusetts. I yield 4 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. This bill does three things. First, it requires the issuance of regulations defining excessive and unreasonable compensation and applies them only to those who are holding our capital. As the Chairman pointed out, similar legislation is already law and was voted in favor of by the Republican leadership.

□ 1530

The bill we passed in October of last year specifically required the Treasury to issue appropriate standards for executive compensation—not for every company in America, but for those that are holding our money. Clearly, this new language will provide additional impetus for Treasury to issue appropriate regulations.

There are other things the bill does. First, it deals with excessive bonuses and the provision that Senator DODD is now famous for having added to the recovery legislation.

As I think every Member of this House knows, Senator DODD had a provision that he added—and he was prevailed upon to cause his provision not to apply to preexisting contracts.

Since then, those on the other side of the aisle have done two things that strike me as inconsistent. They have denounced Senator DODD's amendment and the philosophy behind it, and they have denounced the fact that it doesn't apply retroactively to preexisting contracts. This is like announcing that you detest the taste of broccoli and complaining that you didn't get a double helping. It makes no sense except for those who simply want to find something to denounce.

This bill eliminates the exception that Senator DODD has been so viciously criticized for by the other party. If you vote against this bill, then you are embracing the very exception that many of you have been vilifying.

Third, this bill has a disclosure provision that I authored. It says that companies that are holding our TARP money must disclose how many of their employees are getting a total compensation package of over $5 million; how many have a total compensation package of over $3 million; how many over $1 million. Why? Because if the American people are putting up the money, they have a right to know.

Now the self-styled ''defenders of capitalism'' say that we've got to protect these companies from the influence of the taxpayer. How is capitalism actually supposed to work? Those who provide the capital and take the risk are supposed to have some control. That's real capitalism. The taxpayers are taking the risk with these companies. We hope to get our money back. As soon as we do, the companies can operate as they will.

Instead, we're told that we need a kind of cancerous capitalism—a system that works like this: Socialism for the risks, capitalism for the rewards.

I don't think Adam Smith would have voted for the TARP bill. The gentleman from Alabama did. I voted against it. But I do think that economist Adam Smith—not our colleague from Washington—would vote ''yes'' on this bill because those who provide the capital should control—or have at least some control—of the enterprise. And that includes some control over compensation.

To say instead that firms should take our money but not listen to our ideas on how it should be used, that isn't

capitalism. That is socialism for the rich.

Mr. FRANK of Massachusetts. How much time do I have remaining, Mr. Chairman?

The CHAIR. The gentleman from Massachusetts has 6½ minutes remaining. The gentleman from Georgia has 6½ minutes remaining.

Mr. FRANK of Massachusetts. I will be the closing speaker so the gentleman may proceed.

The CHAIR. The Chair recognizes the gentleman from Georgia.

Mr. PRICE of Georgia. Thank you, Mr. Chairman.

It's been an interesting discussion, there's no doubt about it. We've talked about executive compensation, we've talked about a problem that arose—a specific problem that arose when Senator DODD put that language in the bill in the middle of the night—in the spending bill.

The interesting thing about it, Mr. Chairman, is that the bill to remove that language is 11 lines long. It's just 11 lines long. It's not 6 pages long.

So if we were to do what some in this body on the other side say—the only thing we're here to do, which is to remove that language—it would be H.R. 1673 from Mr. LUNGREN. That's the bill that would remove the 11 lines that make it so that that backroom deal for AIG executives would be stricken.

So I think it's important that we appreciate what's going on. I appreciate the comments from the gentleman from California, who did indeed, I think appropriately, describe what was in the bill. It's important that our colleagues look at this bill. It's not too long. Six pages. We can indeed read it. I hope some of my colleagues will read it.

The title of the bill: To amend executive compensation and to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

When you read the bill and get to who's going to define all that, which is really the question, Mr. Chairman—who's going to define that. Usually, we think that in a market economy, in the United States economy, in the economy that has allowed more success and more opportunity for more individuals than any nation in the history of mankind, that the way that we define compensation and performance in the market is in the private market, not in the government.

So on page 3 it says that no payment would be able to provide for compensation that is unreasonable or excessive as defined in standards established by the Secretary. The Secretary of the Treasury is going to tell us what is unreasonable and what is quality performance.

Well, the Secretary of the Treasury, let's look at his biography, Mr. Chairman. Oh, my goodness. He's the ninth president and chief executive officer of the Federal Reserve Bank of New York, which began when he began his service there in 2003. It's a wonderful job. But what experience does he have in setting compensation? In fact, what experience does the government have in setting compensation?

He first joined the Department of the Treasury in 1988. Let me think a moment, Mr. Chairman. That means 21 years of service for the Department of the Treasury or in the Federal Government. Well, that's wonderful, and he's to be commended for it, but what experience does he have and why would the Nation want him to be deciding what compensation and performance standards are for this Nation?

Maybe it was in his education. He went to Dartmouth College, bachelor's degree in government and Asian studies in 1983. Wonderful institution. Great study. Master's in international economics and East Asian studies in 1985.

Mr. Chairman, not to slight the Secretary of the Treasury, but the American people do not believe that the Secretary of the Treasury ought to be setting compensation limits for anybody.

Why? Why does all this feel so strange? It's because we're in a political economy. We're no longer in the market economy that the American people know and love and embrace.

What does a political economy look like? Well, the gentleman from California described it. He said, Because of the disclosure provisions, the American people, who are putting up the money, have a right to know. Well, sure they have a right to know. But that's not what a market economy is.

He says that the people have a right to know and set the limits because this is capitalism. No. Capitalism was bastardized a year or more ago when we started down this road that, Mr. Chairman, I opposed every step of the way. Because we pointed out then this is where we'd get. We would get to be debating on the floor of this House what kind of compensation members in the private sector ought to have.

Well, Mr. Chairman, that's a dangerous place to be. It's a dangerous place to be because it leads Presidents to thinking that they can remove CEOs from private companies. That's where it leads to. It leads Members of Congress to believe that they can call on the Treasury Department to get money out of previous bills that have been passed in Congress even though the institution in their district doesn't qualify under the rules that have been provided.

Mr. Chairman, it's a dangerous place to be. And it violates the Constitution. I know it's a quaint document, Mr. Chairman. We don't think about it much anymore. But article I, section 9 says, ''No bill of attainder or ex post facto law shall be passed.'' Mr. Chairman, this bill is each. It is each.

Mr. Chairman, this is a bad step. It's a bad and a dangerous step for this Congress. It adds to the dangerous and reckless—and reckless—policies of this administration that the American people recognize as not being consistent with American fundamental principles—the market principles that have made this Nation the greatest Nation in the history of mankind.

Mr. Chairman, I urge my colleagues to recognize this bill for what it is, and that is a bill that this Congress ought not adopt.

I yield back the balance of my time.

Mr. FRANK of Massachusetts. I yield myself the remaining time, first to say that this dangerous step was of course taken—if you think it's a dangerous step—last fall, when, with the support of the Republican leader and the Republican whip and the ranking Republican on the committee, Congress passed a bill which had a section on executive compensation and corporate governance.

This one called on the Secretary to set appropriate standards. Frankly, excessive and unreasonable is a tighter limitation. Unlike this one, it isn't just the Secretary of the Treasury—it is the Secretary of the Treasury, in accordance with, and has to get the approval of the head of the FDIC, Ms. Bair, the Comptroller of the Currency. Yes, there's a consultation with the head of the oversight board. She has no vote on it. The votes are from the regulators.

Let's stress again—this only applies, this bill, to people who voluntarily keep capital infusions from the Federal Government. If they don't like it, they can return the money. That's what an assault on free enterprise is.

The ranking Republican said before that anybody who does business with the Federal Government might be subjected to that. No, that's not remotely true. It certainly isn't true in the bill.

The bill explicitly says that if you do business with one of the covered entities, you're not covered by this. It explicitly says that.

Not being able to argue against this bill on the merits, they then say, Well, what happened if it was applied 16 different other ways? I don't think it should be. I didn't know it won't be.

Again, when people argue against what is not in the bill, but what might come, it's because they have no confidence in their arguments against the bill.

We did adopt, with a majority of Senate Republicans, the leadership—not quite a majority—but the leadership of House Republicans on these issues, President George Bush—we've already adopted rules that say, quite sensibly, if you take the Federal money, there are some restrictions. And if you don't like it, give the money back.

Now the gentleman from Georgia said, Oh, but the bill goes too far because it doesn't just repeal what we did. And he talked about the Lungren bill. I hadn't heard about the Lungren bill. The reason is that the Lungren Republican bill was introduced after we had made clear what we were going to do on Monday, 2 days before we marked up the bill. It was not called to my attention. No member of the Republicans

on the Financial Services Committee said, Let's just do it this way.

We had an open markup. The Lungren bill could have been offered as an amendment by any Republican member of the committee. They did not do it. If they forgot, Mr. LUNGREN himself could have come to the Rules Committee and asked that it be made in order as amendment. They did not do it.

They quietly introduced a bill, made sure that no one noticed it; called it to no one's attention; deliberately refrained from offering it as an amendment at an open markup, when they could have; deliberately refrained from going to Rules Committee and asking that it be made in order; and now they're complaining that it wasn't adopted.

The fact is this: The Republicans regret losing the provision that was added mistakenly, in my judgment, in the hurried deliberations, hurried conclusion on the recovery bill.

The gentleman from California mentioned this. The Senator from Connecticut offered restrictions. The Members on the other side baffle me sometimes—sometimes more than others. They are critical of restrictions. The gentleman from Connecticut offered restrictions on compensation. Presumably, they would denounce him for that. But as the gentleman from California pointed out, they are objecting to offering restrictions, and then they're objecting because somebody persuaded him the restriction shouldn't be so restrictive.

Now we also have in here a provision that this will lead people to give back TARP money. At an earlier stage, before I think they reconsidered the total inconsistency of it, some of the Republicans said, Oh, this is a problem because it will give back TARP money. Of course, these are the same people who said they wished there was no TARP.

So, first they don't want restrictions, then they complain because the restrictions are not made retroactive, then they complain when we take away the provision that restrictions wouldn't be retroactive. First they say they don't want any TARP at all, then they worry there will be a smaller TARP because people will give the money back.

Here is the essential element of this bill. Apparently, my Republican colleagues do not want to say to the largest financial institutions that—and we're going to adopt an amendment, I hope, that limits this to the larger institutions because the community banks have been unfairly tarred by this. They didn't make the mistakes that led us here. They weren't part of the Republican majority from 1995 to 2006 that passed no legislation on Fannie Mae and Freddie Mac, that passed no regulation on subprime lending, that did nothing about any of the abuses in other areas, all of which we tried to correct when we came to power in 2007.

□ 1545

But what we have is a bill that says if you get capital infusions of $250 million or more from the Federal Government and you decide to keep that money, then you should not make payments that are excessive or unreasonable.

People said, what is that? Well, you know when you are running a company, you try to hold your expenses down to the least possible. You pay your employees, frankly, as little as you can get and still have them work. But there has been an exception to that at the top levels. We do say retention bonuses are a mistake, where people say, I have the secret to the formula and if you don't bribe me, I'm going to quit. We are saying, No, don't give into that. Give them performance bonuses, as you can do.

So these are the issues, two pieces of this bill: Do we undo the restriction on retroactivity that was in the recovery bill that has been so denounced, and then do they lose their major source of ability to denounce? And, do you say to a bank that has taken more than $250 million in Federal funds: For as long as you voluntarily decide to keep that money, do not make bonus payments that are not performance-based and do not make excessive and unreasonable payments?

Members have invoked the American people. I do not think the American people stand wholly behind the proposition that people should be able to keep the Federal money, not voluntarily return it, and then disregard any rules about who gets what.

I do believe it is possible for institutions to use performance bonuses and to make payments that are not excessive or unreasonable, that will go, as the gentleman from California has pointed out on many cases, into the millions of dollars a year to some of the top people. These will be people who will be very well paid, people who will be much better paid, I guarantee you, than the auto workers who have borne the brunt of the Republican decision that it is okay to restrict.

By the way, where were my colleagues who want free enterprise and no interference with wages when the Senator from Tennessee, Mr. CORKER, was trying to drive down the wages of auto workers, American auto workers, and saying that the American auto workers shouldn't get the wages that are paid by the American companies?

There is every argument being given here. But what I do not understand, as I listen to these inconsistent arguments that have no weight, what is it about saying that if you take Federal money voluntarily, you can't make excessive payments that troubles them?

Mr. VAN HOLLEN. Mr. Chair, I rise in support of H.R. 1664, the Pay for Performance Act.

I'm honored today to join my colleagues in supporting the Pay for Performance Act, a measure designed to ensure that taxpayers' dollars are used wisely to protect our financial institutions, and I want to applaud the work done on this issue by Representatives GRAYSON and HIMES. The recently disclosed AIG bonuses highlight the potential for abuses of the public trust by companies rewarding employees with excessive compensation—all on the taxpayer dime. This legislation will ensure that companies receiving TARP funds tie pay to performance. I am particularly pleased that this bill includes a provision I authored requiring full disclosure of compensation and perks for the family members of employees working for these companies.

Mr. CANTOR. Mr. Chair, my wife currently receives compensation from a financial institution that would be covered by the provisions of H.R. 1664. I have determined that this constitutes a direct personal and pecuniary interest under clause 1 of Rule III of the Rules of the House and thus I will be answering "present" on any question related to H.R. 1664 put to the House or to the Committee of the Whole House.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The amendment in the nature of a substitute is as follows:

H.R. 1664

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

SECTION 1. PROHIBITION ON CERTAIN COMPENSATION.

(a) PROHIBITION ON CERTAIN COMPENSATION NOT BASED ON PERFORMANCE STANDARDS.—Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended by redesignating subsections (e) through (h) as subsections (f) through (i), and inserting after subsection (d) the following:

''(e) PROHIBITION ON CERTAIN COMPENSATION NOT BASED ON PERFORMANCE STANDARDS.—

''(1) PROHIBITION.—No financial institution that has received or receives a direct capital investment under the Troubled Assets Relief Program under this title, or with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank, under the amendments made by section 1117 of the Housing and Economic Recovery Act of 2008, may, while that capital investment remains outstanding, make a compensation payment, other than a longevity bonus or a payment in the form of restricted stock, to any executive or employee under any existing compensation arrangement, or enter into a new compensation payment arrangement, if such compensation payment or compensation payment arrangement—

''(A) provides for compensation that is unreasonable or excessive, as defined in standards established by the Secretary, in consultation with the Chairperson of the Congressional Oversight Panel established under section 125, in accordance with paragraph (2); or

''(B) includes any bonus or other supplemental payment that is not directly based on performance-based measures set forth in standards established by the Secretary in accordance with paragraph (2).

Provided that, nothing in this paragraph applies to an institution that did business with a recipient of a direct capital investment under the TARP.

''(2) STANDARDS.—Not later than 30 days after the date of enactment of this subsection, the Secretary, with the approval of the agencies

that are members of the Federal Financial Institutions Examination Council, and in consultation with the Chairperson of the Congressional Oversight Panel established under section 125, shall establish the following:

''(A) UNREASONABLE AND EXCESSIVE COMPENSATION STANDARDS.—Standards that define 'unreasonable or excessive' for purposes of subparagraph (1)(A).

''(B) PERFORMANCE-BASED STANDARDS.—Standards for performance-based measures that a financial institution must apply when determining whether it may provide a bonus or retention payment under paragraph (1)(B). Such performance measures shall include—

''(i) the stability of the financial institution and its ability to repay or begin repaying the United States for any capital investment received under this title;

''(ii) the performance of the individual executive or employee to whom the payment relates;

''(iii) adherence by executives and employees to appropriate risk management requirements; and

''(iv) other standards which provide greater accountability to shareholders and taxpayers.

''(3) REPORTING REQUIREMENT.—

''(A) IN GENERAL.—Any financial institution that is subject to the requirements of paragraph (1) shall, not later than 90 days after the date of enactment of this subsection and annually on March 31 each year thereafter, transmit to the Secretary, who shall make a report which states how many persons (officers, directors, and employees) received or will receive total compensation in that fiscal year in each of the following amounts:

''(i) over $500,000;

''(ii) over $1,000,000;

''(iii) over $2,000,000;

''(iv) over $3,000,000; and

''(v) over $5,000,000.

The report shall distinguish amounts the institution considers to be a bonus and the reason for such distinction. The name or identity of persons receiving compensation in such amounts shall not be required in such reports. The Secretary shall make such reports available on the Internet. Any financial institution subject to this paragraph shall issue a retrospective annual report for 2008 and both a prospective and retrospective annual report for each subsequent calendar year until such institution ceases to be subject to this paragraph.

''(B) TOTAL COMPENSATION DEFINED.—For purposes of this paragraph, the term 'total compensation' includes all cash payments (including without limitation salary, bonus, retention payments), all transfers of property, stock options, sales of stock, and all contributions by the company (or its affiliates) for that person's benefit.''.

(b) REVISION TO RULE OF CONSTRUCTION.—Section 111(b)(3)(D)(iii) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(b)(3)(D)(iii)) is amended by inserting before the period the following: '', except that an entity subject to subsection (e) may not, while a capital investment described in that subsection remains outstanding, pay a bonus or other supplemental payment that is otherwise prohibited by clause (i) without regard to when the arrangement to pay such a bonus was entered into''.

The CHAIR. No amendment to the committee amendment is in order except those printed in House Report 111–71. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111–71.

Mr. FRANK of Massachusetts. I rise to offer that amendment.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FRANK of Massachusetts:

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike ''nothing in this paragraph'' and all that follows through ''under the TARP'' and insert ''an institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008''.

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

''(3) CLARIFICATION RELATING TO SEVERANCE PAY.—For purposes of this subsection, a compensation payment or compensation payment arrangement shall not include a severance payment paid by an employer in the ordinary course of business to an employee who has been employed by the employer for a minimum of 5 years upon dismissal of that employee, unless such severance payment is in an amount greater than the annual salary of such employee or $250,000.''.

In the matter proposed to be inserted by section 1(a) of the bill, in subsection (e)(4)(B) (as redesignated by the previous amendment), insert before the period the following: ''or for the benefit of that person's immediate family members''.

At the end of the bill, insert the following new section:

SEC. 2. EXECUTIVE COMPENSATION COMMISSION.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221), as amended by section 1, is further amended by adding at the end the following new subsection:

''(j) EXECUTIVE COMPENSATION COMMISSION.—

''(1) ESTABLISHMENT.—There is hereby established a commission to be known as the 'Commission on Executive Compensation' (hereinafter in this subsection referred to as the 'Commission').

''(2) DUTIES.—

''(A) STUDY REQUIRED.—The Commission shall conduct a study of the executive compensation system for recipients of a direct capital investment under the TARP. In conducting such study, the Commission shall examine—

''(i) how closely executive pay is currently linked to company performance;

''(ii) how closely executive pay has been linked to company performance in the past;

''(iii) how executive pay can be more closely linked to company performance in the future;

''(iv) the factors influencing executive pay; and—

''(v) how current executive pay incentives affect executive behavior.

''(B) CONSIDERATION OF PROPOSALS.—The Commission shall consider, in addition to any recommendations made by members of the Commission or outside advisers, the effects of implementing increased shareholder voice in executive compensation.

''(3) REPORT.—

''(A) IN GENERAL.—Not later than 90 days after the date on which all members of the Commission have been appointed, the Commission shall deliver a report to the President and to the Congress containing—

''(i) recommendations for legislative action;

''(ii) recommendations for executive action, including actions taken by the Department of the Treasury or any other agency for which the Commission has recommendations; and

''(iii) recommendations for voluntary actions to be taken by recipients of a direct capital investment under the TARP.

''(B) MINORITY VIEWS.—The report required under subparagraph (A) shall be accompanied by any separate recommendations that members of the Commission wish to make, but that were not agreed upon by the Commission for purposes of the report required under subparagraph (A). Such separate recommendations must take the form of a proposal for aligning executive pay with the long-term health of the company.

''(4) COMPOSITION.—

''(A) The Commission shall be composed of 9 members, appointed as follows:

''(i) 1 member appointed by the Council of Economic Advisers.

''(ii) 1 member appointed by the Speaker of the House of Representatives.

''(iii) 1 member appointed by the Senate Majority Leader.

''(iv) 1 member appointed by the House Minority Leader.

''(v) 1 member appointed by the Senate Minority Leader.

''(vi) 1 member appointed by the Chairman of the Financial Services Committee of the House of Representatives.

''(vii) 1 member appointed by the Ranking Member of the Financial Services Committee of the House of Representatives.

''(viii) 1 member appointed by the Chairman of the Banking, Housing, and Urban Affairs Committee of the Senate.

''(ix) 1 member appointed by the Ranking Member of the Banking, Housing, and Urban Affairs Committee of the Senate.

''(B) Each appointing entity shall name its member within 21 days of the date of the enactment of this subsection.

''(C) Any vacancy in the Commission shall be filled in the same manner as the original appointment.

''(5) ACTIVITIES.—

''(A) The Chairman of the Financial Services Committee of the House of Representatives shall select one member to serve as the Chairman of the Commission, and such Chairman will call to order the first meeting of the Commission within 10 business days after the date on which all members of the Commission have been appointed.

''(B) The Commission shall meet at least once every 30 days and may meet more frequently at the discretion of the Chairman.

''(C) The Commission shall solicit and consider policy proposals from Members of Congress, the financial sector, academia and other fields as the Commission deems necessary.

''(D) The Commission shall hold at least two public hearings, and may hold more at the discretion of the Chairman.

''(6) ACTIONS BY THE COMMISSION.—A decision of a majority of commissioners present at a meeting of the Commission shall constitute the decision of the Commission where the Commission is given discretion to act, including but not limited to, recommendations to be made in the report described in paragraph 3.

''(7) STAFF.—The Chair may hire at his or her discretion up to seven professional staff members.

''(8) TERMINATION.—The Commission shall terminate 30 days after the date on which the Commission submits its report to the President and the Congress under paragraph 3.

''(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

The CHAIR. Pursuant to House Resolution 306, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, this is an amendment that reflects the debate that we had to some extent in the committee. Some Members on both sides raised questions about ambiguity. That is why you have markups.

For example, we want to make it very clear that this applies only to institutions that have received and voluntarily retained capital infusions.

So, as a later amendment offered by one of our Republican colleagues does, that I hope is adopted, it reinforces that you don't become subject to these limitations on compensation just because you do business with an institution that gets the investment. One Republican Member said, well, what about people who buy or sell mortgages from Fannie Mae and Freddie Mac? We make it very clear that they would not be covered.

We did make it clear that where people have earned severance pay and their salary was $250,000 or less, that the severance pay is not greater than $250,000, or the annual salary, that earned severance pay could be paid under previous contracts. We always intended that. We wanted to make sure. And it does create a commission on executive compensation to study a system, because some people thought, well, we haven't done it well enough.

Now, I have one other point, Mr. Chairman. Would it be in order for me to make a unanimous consent request for a modification of the amendment?

The CHAIR. It is in order.

Mr. FRANK of Massachusetts. The gentlewoman from North Carolina said that she thought it was a mistake to refer to both executive or employee, because executives are employees. And in the interest of that grammatical position, I ask unanimous consent to amend the manager's amendment to incorporate the point made by the gentlewoman from North Carolina, and strike the words ''executive or.''

The CHAIR. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment No. 1. offered by Mr. FRANK of Massachusetts:

Add at the end of the amendment:

On page 2, line 23—delete ''executive or''.

On page 4, line 14—delete ''executive or''.

The CHAIR. Is there objection to the request of the gentleman from Massachusetts?

Mr. PRICE of Georgia. Mr. Chairman, reserving the right to object, I just received this.

My understanding is that this is removing the words ''executive or'' among those individuals who would come under the jurisdiction of determining what compensation ought to be or performance ought to be, so that it would read that ''any employee.'' Is my understanding correct?

Mr. FRANK of Massachusetts. If the gentleman would yield, yes, that was the point raised by the gentlewoman from North Carolina. I think that effectuates her point.

Mr. PRICE of Georgia. And I appreciate that. Continuing to reserve the right to object, my sense is that what this is, is actually a clarifying amendment to a greater intent by the Members on the majority side who——

Mr. FRANK of Massachusetts. Mr. Chairman, I withdraw my unanimous consent request.

The CHAIR. The request is withdrawn.

Mr. FRANK of Massachusetts. Mr. Chairman, I guess we get a sense of what is happening here. The gentlewoman from North Carolina raised the point that, frankly, didn't seem to me one of the most important ever to be raised. It said we had some redundancy in the bill. Lawyers, of course, hate redundancy, as we all know. They are belt and suspenders opposed to it.

I tried to accommodate the gentlewoman from North Carolina. It touched off an entirely unnecessary debate eating up the time. If the Members are prepared to accept this at some point, in the spirit of conciliation I will offer it again, but not to be the subject for extra debate time which intrudes on the Members' time.

The manager's amendment, as I said, clarifies points that were raised, as I just tried to do with the gentlewoman from North Carolina, tried to give some assurance. Sometimes the atmosphere gets so partisan that that effort of conciliation becomes too difficult, so I will leave it where it is.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Nebraska (Mr. TERRY).

The CHAIR. Does the gentleman rise in opposition to the amendment?

Mr. PRICE of Georgia. I claim the time in opposition to the amendment.

The CHAIR. The gentleman from Georgia is recognized for 10 minutes.

Mr. PRICE of Georgia. And I yield 2 minutes to the gentleman from Nebraska (Mr. TERRY).

Mr. TERRY. Let's go over the chronology of events here.

We had a stimulus bill that was 1,100 pages, and there was a provision within the stimulus bill that was the opposite of the intentions of the House and the Senate, where language from the original versions and intentions of the House were stripped out in the middle of the night with only a few people in the room, which we have now subsequently learned that at least two of the people in the room were Secretary Geithner of the White House's Cabinet, and Senator DODD.

Now, I heard an earlier speaker, the gentleman from California, saying something about how we are deriding this one statement. They are right, because this one statement protected the bonuses, specifically protected the bonuses that became the outrage of America.

This stimulus bill, with this language protecting it that was inserted by the White House and Senator DODD, who has received about $200,000 in campaign contributions from AIG, by the way, that doesn't get mentioned on the floor too much. This was then brought to the floor, 1,100 pages, put before this body without an opportunity to read, a promise to us and American people that we would have 48 hours to read a complex bill when we had very few hours to read this bill.

And now we are in what we call the coverup or cover your rear stage, because the people who voted for that stimulus are now running for cover.

The CHAIR. The time of the gentleman has expired.

Mr. PRICE of Georgia. I yield the gentleman an additional 1 minute.

Mr. TERRY. We went through this exercise a week or so ago when we wanted to tax the bonuses at 90 percent. And so I ask the original so-called author, ostensible author of this bill, Mr. GRAYSON, if he even read the bill. And I would yield to Mr. GRAYSON for an answer.

Okay. I guess we won't get an answer of whether or not he read the bill.

What we found out is that now the public is still outraged because they are mad at the coverup between the Cabinet and Senator DODD and this body's participation in it. So we are going to take now an extra measure in our CYA efforts and develop a bill that now will make the Federal Government intrude to the very core of any business that accepted a dollar of TARP dollars, where now the Treasury comes in without any expertise and sets the salaries for the secretaries on up.

Mr. FRANK of Massachusetts. I yield myself 2½ minutes to comment on the most extraordinary display of illogic ever inflicted on this Chamber.

The gentleman complains that the restriction was adopted, but now complains that we are going to undo it.

And the gentleman is leaving the Chamber. Let me say to him, I understand differences of opinion, but I do resent the suggestion that I am trying to cover anything up. As chairman of the committee, I——

Mr. TERRY. Will the gentleman yield?

Mr. FRANK of Massachusetts. No. I brought a bill to the committee for a markup. We had an open markup. People could have offered any amendment they wanted. We then brought the bill to the floor. We went to the Rules Committee. I urged some——

Mr. TERRY. Would the gentleman yield for a clarification?

Mr. FRANK of Massachusetts. I will yield.

Mr. TERRY. For a clarification, when you said brought to markup, are you referring to the so-called Grayson bill that you brought to the markup, or the original stimulus?

Mr. FRANK of Massachusetts. I reclaim my time. The answer is obvious. No, the stimulus bill did not come to a committee which had no jurisdiction over it, as the Member well knew. I am talking about the accusation that a bill to correct a mistake is a coverup.

The illogic of that is overwhelming. The lack, I think, of commitment here to public policy is striking. The gentleman is complaining about a mistake, and he calls an attempt to correct a mistake a coverup. What is the coverup? This is a bill that was debated openly in a markup, it was debated openly in the Rules Committee. It is being debated openly on the floor.

This accusation of coverup is not, it seems to me, a serious contribution to a debate on the merits. But there is also the fundamental inconsistency on the Republican side. They were opposed, and the gentleman said this bill is going to get us deeper into the affairs of corporations. How? By repealing something the gentleman was opposed to.

If in fact the provision he didn't like hadn't been put in there in the first place, we wouldn't have been so deeply into it. This is simply, let's find something to complain about. Let's ignore logic.

The gentleman says he doesn't want us more deeply into corporations. Well, then he should have been for that restriction. Indeed, his quarrel with Senator DODD is not that he only got part of what he wanted, but that he moved it at all. Because, remember, it was Senator DODD who initiated the further restriction.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I am pleased to yield to the gentleman from New Jersey (Mr. GARRETT) for 5 minutes.

Mr. GARRETT of New Jersey. I thank the gentleman from Georgia. And I also thank the gentleman from Massachusetts, for I agree with him, as most Americans do, with regard to the underlying bill here as far as the apparent excesses, as far as the salaries that some people made when they were underperforming companies. And I share the concern that taxpayers have, and I share the chairman's concern with regard to his overall amendment that he makes to the bill. But the underlying bill here, however, has three or four fundamental problems.

One, it is unconstitutional, as some have said; secondly, it has an uncalled for retroactive effect; thirdly, there is this unfairness as we treat disparate individuals within the same company; and, fourthly, there is certainly a harmful impact upon the very programs that our now Secretary of the Treasury wishes to implement.

□ 1600

On the unconstitutionality portion, I am unclear, as are outside experts who have looked over this legislation, to see exactly how it is within the powers of the U.S. Congress, as much as we may like to do so sometimes, to simply go in and abrogate contracts that were voluntarily made by willing parties on either side. Regardless of whether the fact is that those companies or those individuals may be receiving Federal dollars or not, whether there is a constitutional ability to do so is a question I think that this body should be addressing and how that can be answered.

The second aspect is the retroactivity effect. Some of the provisions in this bill I could probably come to agreement with. But to step in here, after the fact, and say that we are now going to go back, backwards in time and look at those very same corporations who had entered into contracts, had activity prior to their receiving TARP funds or other Federal dollars or investments, capital investments, and now saying, we are going backwards and we will basically open up agreements and open up terms of deals over there and look back on them, seems to be an activity that Congress should not engage in.

Prospective is another matter. For companies or banks or other financial institutions that want to engage and receive Federal dollars, absolutely. They should be knowing what the terms of the deal are on the table. And if they accept them today, then those are the deals going forward. But to go backwards in time really raises, as I said before, an unconstitutional aspect.

Finally, the unfairness as far as the disparate treatment that you may receive within the same company. I think the basic outrage that most Americans have on this situation is when we read in the paper the multimillion dollar deals or bonuses that people received, especially in those failing companies, and say, How do they receive millions and millions of dollars? Well, this bill addresses that. Fine. But it also addresses that secretary who may be just working there on weekends or part-time or even full-time making slightly over $10 an hour or more. That secretary comes within the confines of this bill too. The custodian or other worker in the business would also fall within the purviews of this legislation.

Now the answer might be, well, we are still going to look to see whether their payment is reasonable or excessive. But why we would pick on those individuals who did absolutely no wrong and to say that now Congress is going to be scrutinizing your salaries and see whether or not you were paid far too much for the activities that you did in the company is beyond me.

Finally, the fourth portion, harmful. Secretary Geithner comes out, finally, after several failed attempts with his plan on how we are going to get out of this global morass that we are in right now, and how does he want to do it? He and the White House have opened their doors to the free enterprise system, the capitalist markets, and the banking and the financial institutions, as they did this past week and said, Come on board. Work with us as teammates in this. We want to make you partners. Partners? What partner wants to hook up with somebody that if you are successful, there may be other legislation like this that will go in and claw back the money that you made? If you're successful it may be clawed back. And I have heard some people say, If you're unsuccessful, maybe you will be penalized.

And I appreciate the fact that the chairman in Rules Committee yesterday said, to paraphrase, he said, Fear not. If it goes through my committee, I would not permit such language to go forward. And I appreciate that. But as the chairman knows, the bill we did, I think it was last Thursday, the 90 percent tax, to the best of my knowledge, did not go through your committee. You and I may have liked it to. But it did not.

So we have seen the way this House operates. When the mood drives the Speaker or the majority leader, they can pass a bill through. A 90 percent tax that basically makes the Tax Code the penal code and punishes people for activity that they never realized was unlawful or inappropriate before, did not go through his committee. So to all of the best wishes of the chairman, he unfortunately, may not have that ability to block that provision going forward as much as he and I might wish that he did. So the legislation that is before us still puts that harmful impact upon him.

And finally, if I still have some time, we have to ask the larger question, what actually does this do at the end of the day? Is it window dressing? Maybe.

The CHAIR. The time of the gentleman has expired.

Mr. PRICE of Georgia. I yield the gentleman 1 additional minute.

Mr. GARRETT of New Jersey. What did we actually do? Well, it puts language in here which says that there cannot be excessive or unreasonable compensation. Yesterday, again, at Rules Committee, somebody from our side of the aisle and someone from the other side of the aisle asked, What is excessive or unreasonable compensation? And quite candidly, they said they couldn't answer the question. They will leave it to someone else.

I'm not sure if that is the right answer to that question. If you're going to have legislation like this, and I don't support the legislation, but if you're going to have legislation like this, you should be doing it the way we dealt with Fannie and Freddie when we had that situation and say, We don't want anybody making more than X, and take the responsibility as Congress and say, We are going to put the dollar amounts in it. This doesn't. This abrogates that to a Secretary of the Treasury who can come up with who knows what? It could be $1 million. It could be

$10 million. It could be $100,000. It could be $50,000.

We should not be putting this ambiguity in here. It doesn't answer the question. It is just one more way to say that this is a potentially harmful, unconstitutional, retroactive legislation to the overall global climate that we are in today.

Mr. FRANK of Massachusetts. Mr. Chairman, I have only one speaker remaining.

Mr. PRICE of Georgia. I have no speakers remaining, and I will consume the rest of our time when the gentleman is ready to close.

Mr. Chairman, may I ask how much time remains?

The CHAIR. The gentleman from Georgia has 1 minute remaining. The gentleman from Massachusetts has 5 minutes remaining.

Mr. PRICE of Georgia. Mr. Chairman, I think it is important to appreciate that this bill is very far-reaching. It is not just a simple little exclusion of an amendment that was inserted in the middle of the night on the previous $1 trillion spending bill that the majority passed.

It includes compensation arrangements and includes compensation limitation potential by the Secretary of the Treasury. It also includes performance-based standards that are also defined by the Secretary of the Treasury. Now what does that mean? The performance in the bill or the performance of an individual executive or employee to whom the payment relates? The adherence by executives or employees to appropriate risk management requirements? And ''other standards which provide greater accountability to shareholders and taxpayers.''

What is all that?

Well, Mr. Chairman, I would suggest that we don't know what all that is. And that is why the American people are so concerned about these issues. Because they know that the faith that they have in the American system of government and the American marketplace does not rest in the Secretary of the Treasury. It does not rest in the government. It rests in the ingenuity and the vitality of the American people. And that is where they want it to remain.

The CHAIR. The time of the gentleman from Georgia has expired.

Mr. FRANK of Massachusetts. Mr. Chairman, first, I appreciate the generosity of the gentleman from New Jersey when he accepts the fact that I intend to do this through the committee that I chair. He then suggested, however, that we might lose control of this. I'm talking now about the ability to restrict the recipients of the capital infusion. And he talked about a tax bill that didn't come out of the Committee on Financial Services and a bill just voted on today, defeated, out of Judiciary.

But I will assure him, given the support of the leadership on the Democratic side, of the importance of restricting this to recipients of capital infusions. Both of those bills included that same restriction. The Committee on Financial Services had no great input into the tax bill. But the writers of that bill accepted our language that applied only to recipients of a capital infusion. Similarly, the Judiciary bill applies only to recipients of the capital infusion. And I have now put every other chairman on notice about assurances that will be there.

The other thing the gentleman from New Jersey said indicates the split on the Republican side. He denounced retroactivity. There is a good argument against retroactivity, and the courts may have to decide it. But remember that unlike the gentleman from New Jersey with his consistency to principle, a large number of Republicans, including the gentleman from Nebraska, have been denouncing the administration and the Senate precisely for accepting the principle that you don't go retroactive. The gentleman from New Jersey said, ''Don't be retroactive.'' But most of the other Republicans have been saying, ''How dare you not go retroactive?''

The provision that kindled all the anger that was put into the recovery bill was a provision that says, ''Don't apply these rules retroactively.'' The gentleman from New Jersey says, ''Don't apply the rules retroactively''?

I guess he is lucky that his colleagues have decided not to denounce him. He is a very nice guy. That is probably what has charmed them. But he has just articulated precisely the principle that has led to that firestorm of attack.

Now again, this bill undoes that. Members said, Oh, but it does more than that. And there is an implicit suggestion that if only, if we had only done that, it would have been okay. But I repeat, the bill that only does that was introduced 2 days before the markup. I don't read every bill that is introduced. No Member of the Republican's minority on the committee offered an amendment to reduce this only to that repeal. No Republican in the House came to the Rules Committee and said, You know, that provision, that is a terrible provision. Let's get rid of it.

They don't want to get rid of it, Mr. Chairman, because they want to be able to attack it. Some of them want to attack retroactivity, and some of them want to attack a bar on retroactivity.

As to the standards, in the first place, members of the minority have consistently—I guess it scares people more—misstated the authority here. It is to the Secretary of the Treasury and the Federal Financial Institutions Examination Council, a five-member body, three of whom are George Bush appointees; the Comptroller of the Currency, Mr. Duggan; the head of the FDIC, Ms. Bair, and the chairman of the Federal Reserve, Mr. Bernanke. They are three of the five members of this committee, and they are not advisory. The oversight panel is an advisory role.

The five members of the Federal Financial Institutions Examination Council, people with long experience in regulating financial institutions, are the ones that have to sign off on any regulations. So why is it simply the Secretary of the Treasury? The gentleman from Georgia read off the biography of the Secretary of the Treasury. He went to Dartmouth. Apparently that is a prerequisite today for Secretaries of the Treasury, as Mr. Paulson did. But what about Ms. Bair's experience? What about Mr. Duggan's experience? What about others who are in that position who have had long experience both in the private sector, as they have, and as bank regulators?

This is an effort to caricature the bill. By the way, last year, the Republican majority of the Senate, President Bush, the Republican leadership of the Financial Services Committee and the Republican leadership of the House voted for a bill that gave more discretion to the Secretary of the Treasury alone. I understand that times change. But a change in political control should not lead to such a rapid change in political opinion. And if retroactivity is a terrible thing, then retroactivity shouldn't have been the cause of all that argument.

I repeat again. This says if you take Federal money under the capital infusion program, you cannot issue excessive or unreasonable payments, which is what AIG did. And they didn't just do the top executives. Why do we cover everybody? Because AIG and others could cover everybody. And it says, ''Let's undo the mistake that was made during the recovery.''

Obviously, the manager's amendment is not controversial. It has just been the forum for more extended debate. I hope the manager's amendment is adopted.

The CHAIR. The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. CARDOZA

The CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111–71.

Mr. CARDOZA. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. CARDOZA:

In subsection (e) of the matter proposed to be inserted by section 1(a), add at the end the following:

''(4) COMMUNITY FINANCIAL INSTITUTION EXEMPTION.—

''(A) IN GENERAL.—The Secretary may exempt community financial institutions from any of the requirements of this subsection, when the Secretary finds that such an exemption is consistent with the purposes of this subsection.

''(B) COMMUNITY FINANCIAL INSTITUTION DEFINED.—For the purposes of this paragraph,

the term 'community financial institution' means a financial institution that receives or received a direct capital investment under the Troubled Asset Relief Program under this title of not more than $250,000,000.''.

The CHAIR. Pursuant to House Resolution 306, the gentleman from California (Mr. CARDOZA) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. CARDOZA. Mr. Chairman, I yield myself such time as I may consume.

I rise today in support of my amendment. My amendment allows the Secretary of the Treasury to exempt community bank TARP participants from compensation standards established by the Secretary as long as they have not received more than $250 million in TARP funds and as long as doing so is consistent with the intent of this bill.

The community banks were not the bad actors that led to the collapse of our credit markets, and we need them to be a part of the solution to our economic recovery. They are known for their prudent lending practices and their commonsense compensation policies, which is why the vast majority of them remain well capitalized and ready to lend.

By painting community banks with the same brush as the financial institutions that abused the trust of the taxpayers and their shareholders, we are unfairly adding to the regulatory burden of these community banks, and we run the risk that they will drop out of the Capital Purchase Program.

I do not support outrageous bonuses that were paid out of TARP funds to irresponsible executives. But I also do not support burdening community banks with overbearing regulations that are in response to actions made by the larger institutions.

My amendment will make sure this doesn't happen by allowing the Treasury Secretary to concentrate his efforts on where the problem existed in the first place and not in our community banks. It will also encourage the participation of more community banks in the Capital Purchase Program and will enhance their role as leaders in the economic recovery.

I want to thank Chairman FRANK for working with me to craft this amendment and to support my efforts to protect community banks from unfairly burdensome regulations.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. CARDOZA. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I thank the gentleman because this is important not just for what it does but for what it says. Community banks have not been the source of this problem. They didn't make bad subprime loans. They didn't get into CDOs. They have been unfairly blamed and to some extent burdened. And it should be our commitment, and we are, we are trying to do this in other ways, with the FDIC assessment. The gentleman from California has been a leader in this. This is a chance for us, in effect, to apologize to community banks for criticism that was undeserved and to assure them that we will try to insulate them from actions that should not occur that would penalize them for things that they didn't do wrong.

I thank the gentleman for his leadership.

□ 1615

Mr. CARDOZA. I thank the chairman for his leadership on this and for his help crafting this amendment. I thank his staff for the same.

Mr. FRANK of Massachusetts. If the gentleman would yield further, I would note that I'm going to introduce a letter from Camden Fine, the president and CEO of the Independent Community Bank Association.

MARCH 31, 2009.

Re Support Cardoza Amendment to H.R. 1664.

DEAR REPRESENTATIVE: On behalf of the Independent Community Bankers of America, and its 5,000 members, I strongly urge you to support the Cardoza Amendment to H.R. 1664, the executive compensation legislation applicable to TARP recipients. The Cardoza Amendment recognizes that community banks do not engage in the unreasonable and excessive compensation practices that are at the heart of the TARP bonus scandals.

As a result of prudent lending practices and common-sense compensation policies, the majority of community banks remain strongly capitalized and ready to do their part to aid economic recovery through lending to households and small businesses. Recognizing the important role community banks play in our recovery, both the Obama and Bush Administrations have encouraged community banks to participate in the TARP Capital Purchase Program. The Program provides additional resources to participating community banks to enhance their role as catalysts for economic recovery in their local communities.

Unfortunately, efforts to rein in excessive and unreasonable compensation practices of MG and others have also reached the community banks. The broad-brush approach to addressing compensation abuses needlessly and unfairly adds to the regulatory burden of community banks participating in the Capital Purchase Program. It would be a shame if well-intended, but misdirected, regulation of bank employee compensation forces community banks to withdraw from the program or not sign up in the first place.

The Cardoza Amendment takes a targeted approach to the regulation of executive and employee compensation by allowing the Secretary of the Treasury to concentrate his efforts where the problems existed in the first place—the largest financial institutions. The amendment allows the Secretary to exempt community financial institutions from the compensation standards established under H.R. 1664, if the Secretary finds that an exemption is consistent with the purposes of the new legislation. For purposes of the exemption, a community financial institution is an institution that receives or has received not more than $250 million under the Capital Purchase Program.

The Cardoza amendment will encourage the participation of community banks in the Capital Purchase Program and enhance the community bank industry's role as leaders in our economic recovery. Thank you for considering our views.

Sincerely,

CAMDEN R. FINE,
President and CEO.

Mr. PRICE of Georgia. Mr. Chairman, I claim the time in opposition, though I am not opposed.

The CHAIR. Without objection, the gentleman from Georgia is recognized for 5 minutes.

There was no objection.

Mr. PRICE of Georgia. Mr. Chairman, I want to commend my friend from California for introducing this amendment. I think that it's a good idea, but in my view, doesn't go far enough. I would also point out that it is purely arbitrary, and that gets to the heart of the challenge that we have here, the arbitrary nature of what we're deciding.

Small financial institutions should be automatically exempt from this legislation. The best approach to protecting the taxpayers' investment in private business is through stronger oversight and accountability, not by further entrenching government in the operations and management of hundreds of businesses across America, many of which are community and regional banks that did nothing, as my friends have commented, to create the current financial challenge.

Indeed, given the government's track record in piling up huge deficits and mismanaging a wide range of Federal programs, there is little reason to believe that it will have any more success in running private enterprises.

The amendment leaves the discretion to the Secretary of the Treasury to exempt community financial institutions from the legislation's compensation prohibitions.

I would suggest, Mr. Chairman, that rather than leaving this responsibility to the Treasury Secretary who, I might add, failed to block the AIG bonuses and who, by his own admission, has a very full plate these days. Why not simply exempt smaller TARP recipients entirely from the government micromanagement of compensation levels for all employees that this bill imposes?

I would reserve the balance of my time.

Mr. CARDOZA. I have no further speakers, Mr. Chair. I reserve to close.

Mr. PRICE of Georgia. Mr. Chairman, how much time remains?

The CHAIR. The gentleman has 3½ minutes remaining. The gentleman from California has 2 minutes remaining.

Mr. PRICE of Georgia. Mr. Chairman, I yield the balance of our time to Mr. BACHUS from Alabama.

Mr. BACHUS. Mr. Chairman, I just want to ask the sponsor a question. You have included in the original, in the legislation before us, it includes all financial institutions who accepted TARP money; is that correct?

I ask the chairman of the full committee.

Mr. FRANK of Massachusetts. Capital infusions from TARP. There are other forms of TARP money, but accept capital infusions of TARP money.

Mr. BACHUS. This only involves capital infusions.

Mr. FRANK of Massachusetts. Only the capital infusions, the gentleman from Alabama's idea, as I give him credit for.

Mr. BACHUS. What about AIG? Would they be included?

Mr. FRANK of Massachusetts. Yes, because AIG did get a TARP capital infusion.

Mr. BACHUS. So it's all TARP.

Mr. FRANK of Massachusetts. They didn't originally, as the gentleman knows, but there was subsequently a TARP addition to.

Mr. BACHUS. And I'm sincerely trying to—and I think amendment is an improvement. And I think the basis for it, as you both said, we don't want to limit the salaries of people who were not at fault.

I think what this bill, Mr. FRANK, what, Chairman FRANK, you're attacking is what you've called a, and I know the sponsor of the bill said last night that the people who have been ripping off the American taxpayer by stealing money and sucking it into their own pockets.

Mr. FRANK of Massachusetts. If the gentleman would yield, I never used that language. That's not my language

Mr. BACHUS. That was his. But I guess what I'm saying, I think the philosophy behind this bill is we, the taxpayers, are going to come into people who caused this problem and limit their salaries; at least that's what he has said on two or three occasions.

But I guess my question to you, what about the institutions that have not caused any of the problem and were urged to take the money by the Secretary of the Treasury, and even those last week, you know, again, the President, last week, urged these companies to keep the money and not to return it. And I guess——

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. BACHUS. Yes.

Mr. FRANK of Massachusetts. Well, the President and I agree a lot, but not all the time. I'd like people to return the money. It's good for the taxpayers. It's a sign that they are stable, and we specifically amended the law to allow them to return it, and I encourage them to return it.

Mr. BACHUS. But now do you realize, and I believe the chairman is sincere, do you realize that while you're urging them to return it, the President and the Secretary of the Treasury are saying, please don't return it because when you do, it will restrict or reduce lending?

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. BACHUS. Yes.

Mr. FRANK of Massachusetts. If it's going to reduce their lending, then they probably shouldn't return it. But there are other things that people do with it. And I understand. But if the gentleman is asking me do I understand that I'm disagreeing to some extent with the President and the Secretary of the Treasury, yes, sometimes that happens.

If the gentleman would yield, the Secretary of the Treasury apparently sponsored the restriction against retroactivity. He is on the side of the gentleman from New Jersey (Mr. GARRETT) against retroactivity. I am here with a bill that undoes something the Secretary of the Treasury did.

Mr. BACHUS. But my question to you, Chairman FRANK, is, this bill applies to all employees of all these institutions, does it not?

Mr. FRANK of Massachusetts. If the gentleman will yield. Yes, because in AIG we had hundreds of people—yes, it does.

Mr. BACHUS. Yes, it does. It covers every employee and every financial institution, the several hundred who were actually urged last week by this President to keep the money and which we're getting a 5 percent dividend.

The CHAIR. The time of the gentleman has expired.

Mr. CARDOZA. Mr. Speaker, just today, the New York Times reported that four small banks were returning our TARP funds because of the onerous regulations they find themselves having to comply with. If we apply the same regulations to small banks that we do to the big ones, more community banks will opt out of the TARP program, and I think to some disadvantage to districts like mine that are suffering so badly.

My amendment will make sure that they can take TARP funds and still not have to deal with some of these regulations. I think that's a positive movement in the right direction.

I actually thank Mr. BACHUS for saying that this was a step in the right direction, and I enjoy working with him and my colleague from Georgia.

I urge the adoption of this amendment.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from California (Mr. CARDOZA).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. MEEKS OF NEW YORK

The CHAIR. It is now in order to consider amendment No. 3 printed in House Report 111–71.

Mr. MEEKS of New York. I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. MEEKS of New York:

In subsection (e)(1) of the matter proposed to be inserted by section 1(a)—

(1) strike ''has received or receives a direct capital investment under the Troubled Assets Relief Program under this title'' and insert ''receives a direct capital investment under the Troubled Assets Relief Program under this title after the date of enactment of this subsection''; and

(2) strike ''any existing compensation arrangement'' and insert ''any compensation arrangement other than a compensation arrangement entered into prior to the date of enactment of this subsection''.

The CHAIR. Pursuant to House Resolution 306, the gentleman from New York (Mr. MEEKS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New York.

Mr. MEEKS of New York. Mr. Chairman, I, like most Americans, was deeply upset and emotionally charged when I learned of the bonuses that AIG gave to its employees.

I, like most Americans, believe strongly that if you receive taxpayer dollars, you should have standards to limit abuses. I believe that this bill does begin to set those standards, but with just one flaw.

To correct this flaw, I had to contemplate, because some have said this amendment may not be the safest thing for me to do. Some say, for the sake of expedience, this may not be the political thing for me to do. And others say for the sake of vanity, it definitely may not be the popular thing to do.

But I'm reminded of Dr. King, who said, there comes a time when one must take a position that is neither safe, nor political, nor popular, but one must take that position because it's the right thing to do.

The rule of law and economic growth have been critically linked in the development of our Nation. The strength of our laws allows investors to trust that they can do business here. A legal system like ours provides protection and has allowed investors to innovate and take risks unsurpassed anywhere else in the world.

Right now we are undergoing a necessary and painful examination of our system of regulation and of our financial markets and the risks that were taken. However, we have to be careful that, in this process of correction and damage control, we do not do more harm than good. I fear that if we legislate changes to the rules in the middle of the game, we begin to undermine the trust that has made us so strong.

Do we really want to be dismantling confidence in our laws now?

This body should be the safety measure against arbitrary governance, not the entity that ushers it in. Just because we can do it doesn't mean we should. Yes, we can take retroactive action. We have that sovereign right. And Congress has acted accordingly in the past. But we should do so carefully and in a limited and not a broad way.

The Supreme Court has made it clear that Congress has the right to act retroactively, but its right is not unfettered. And our Founding Fathers were strong in their concern about breaching contracts. James Madison summed it up this way: Bills of attainder, ex post facto laws and laws impairing the obligation of contracts, are contrary to the first principles of the

social compact and to every principle of sound legislation.

I am concerned about unintended consequences that will impact the jobs linked to the financial services industry in the United States and the potential impact on our economic recovery efforts. The fact is, in New York, there aren't just fat cats on Wall Street. There are everyday people that commute to their jobs from my district. Those jobs are directly and indirectly linked to the financial services sector, and as the sector goes, so goes their jobs.

I just heard from one company that is losing approximately 1,000 people a week, many going to foreign competitors, and they aren't able to hire enough employees to replace them.

I've also heard from companies that are nervous about participating in public/private partnerships because of the uncertainty that Congressional action could cause. Our actions are having a chilling effect on government efforts to partner with the private sector in meaningful ways.

In closing, Mr. Chairman, and to sum up, let's do something. Yes, we must do something. But let's do something that won't have unintended consequences. Let's not do something that will make an already difficult economic situation far worse and perhaps irreversibly so. Let's not cut off our nose to spite our face.

I find myself, for the reasons outlined, concerned about H.R. 1664, even as I support most of its provisions and its intent.

And I urge my colleagues to support this amendment.

I retain the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I claim the time in opposition, though I am not opposed to the amendment.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. Parliamentary inquiry, Mr. Chairman.

The CHAIR. The gentleman is recognized for his parliamentary inquiry.

Mr. FRANK of Massachusetts. I am in opposition to the amendment. Does that give me priority in claiming the time?

The CHAIR. The time in opposition is reserved for an opponent of the amendment.

Mr. FRANK of Massachusetts. I am an opponent of the amendment.

Mr. PRICE of Georgia. Mr. Chairman, parliamentary inquiry.

The CHAIR. The gentleman from Georgia is recognized.

Mr. PRICE of Georgia. If I claim the time in opposition, does the minority have the right to claim that time?

The CHAIR. It is the discretion of the Chair to recognize for the time in opposition someone truly opposed to the amendment. However, in exercising that discretion, the chair might consider balance in the control of time for debate.

Mr. FRANK of Massachusetts. Mr. Chairman, I would respond this way. I think fairness on an important issue requires that there be a balanced debate. The gentleman previously said he was not in opposition. Neither was I. I did not try to claim the time. But I believe the spirit of parliamentary debate is vitiated if there are two proponents and no opponent. The rule calls for an opponent and a proponent. I claimed the time. The gentleman has said he was not in opposition to it, and I am. I do believe in fairness, and I believe fairness requires that it be a balanced debate.

Mr. PRICE of Georgia. Parliamentary inquiry.

The CHAIR. The gentleman from Georgia will state it.

Mr. PRICE of Georgia. Does the chairman of the committee not have time available to him on general leave?

The CHAIR. Not time for debate.

Mr. BACHUS. Mr. Chairman, would the gentleman who is controlling the time yield to the ranking member?

The CHAIR. The gentleman from Georgia does not control the time. The gentleman has not been recognized for control of the time nor has the gentleman from Massachusetts. The chair is responding to a parliamentary inquiry.

The gentleman from Georgia is recognized for the purpose of his parliamentary inquiry.

□ 1630

Mr. PRICE of Georgia. Mr. Chairman, I claim the time in opposition.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Chairman, parliamentary inquiry.

The CHAIR. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. The gentleman has said he is not in opposition, so how could he get the time in opposition preferred over someone who is in opposition?

The CHAIR. The gentleman from Georgia has stated that he is opposed.

Mr. FRANK of Massachusetts. Point of order, Mr. Chairman. The gentleman from Georgia, 2 minutes ago, said he was not opposed. I don't think the conversion was that rapid. He said he was rising in opposition even though he was not in opposition. He clearly stated that.

The CHAIR. The Chair will take the gentleman from Georgia at his word.

The gentleman from Georgia is recognized for 5 minutes in opposition to the amendment.

Mr. PRICE of Georgia. Mr. Chairman, I would point out that the amendment is a curious one. It points out the challenge that we have when we march down this path of a political economy—where Members of Congress are deciding specific items for private enterprises and where the Secretary of the Treasury is about to be given remarkable authority, whether it is retroactive or prospective. That is why many of us on our side of the aisle oppose this kind of launch into a political economy where the government controls winners and losers from the very beginning.

If, in fact, the challenge were to protect taxpayers, as our friends on the other side of the aisle say, if Democrats were so eager to protect taxpayers, then why would they not commit to ending taxpayer-subsidized bailouts? That is the simple solution to all of this, Mr. Chairman.

The reason we are here in this circuitous logic of Washington is that the taxpayers are benefiting private industry. The solution to this, Mr. Chairman, is to make it so we are not putting taxpayer liability, hard-earned taxpayer money, on the table for private industry.

Why don't they guarantee that they will not provide the Treasury with any more TARP funds for the future?

POINT OF ORDER

Mr. NADLER of New York. Point of order, Mr. Chairman.

Mr. PRICE of Georgia. Why don't they encourage the Treasury to produce——

The CHAIR. The gentleman will suspend.

The gentleman from New York will state his point of order.

Mr. NADLER of New York. The gentleman from Georgia obtained the floor in opposition after stating that he was not opposed and then stating that he was opposed. We have not heard a word of opposition to the amendment. We have heard some skepticism about the bill, but we have not heard a word about opposition to the amendment. I think, as a matter of order, that we are entitled to hear opposition to the amendment so I can make up my mind on this amendment.

Mr. PRICE of Georgia. Point of order, Mr. Chairman.

The CHAIR. The gentleman is recognized for his point of order.

Mr. PRICE of Georgia. As a matter of fact, had the gentleman been listening to my debate, I pointed out, whether it was prospective or retrospective, that it was a bad idea for this Congress to adopt because it further launches us down the road of a political economy.

Mr. NADLER of New York. That is not in opposition to the amendment. That is in opposition to the bill.

The CHAIR. The chair discerns no cognizable point of order. The gentleman from Georgia has been recognized for the purposes of opposition to the amendment.

The gentleman from Georgia may continue.

Mr. PRICE of Georgia. May I inquire as to the time remaining?

The CHAIR. The gentleman from Georgia has 3½ minutes remaining. The gentleman from New York has 1 minute remaining.

Mr. PRICE of Georgia. Mr. Chairman, as I was saying, if our friends on the other side of the aisle were so enamored with wanting to protect the taxpayer, why wouldn't they encourage the Secretary of the Treasury and the Treasury Department to produce an exit strategy to this launch into a political economy that stifles creativity,

that stifles entrepreneurship, that stifles vision, that stifles the very vitality of the American system, a system that has created more opportunity and more success for more individuals than any Nation in the history of mankind?

Mr. Chairman, I would suggest that this amendment and others to this bill, to the underlying bill, are a launch in the wrong direction whether we are talking about prospective or retrospective activity on this amendment.

I am pleased to yield to my friend from Alabama for the remainder of our time.

Mr. BACHUS. Mr. Chairman, the gentleman who offered this amendment expressed some reservations about the underlying bill in that it would affect employees and executives who were not at fault and who, in some cases, did not ask for the money.

In the interest of fairness, I would like to hear from the chairman of the full committee as to whether or not he shares the gentleman's reservations and my reservations also. I would yield to the chairman.

Chairman FRANK, a member of the majority on your committee expressed strong reservations about this bill and about it affecting all employees.

At this time, I would like to yield the remaining amount of time to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. How much time is remaining that has been yielded to me?

The CHAIR. The gentleman from Georgia has 2 minutes remaining and I understand that the gentleman from Alabama has yielded that 2 minutes to you, Mr. Chairman.

The gentleman from New York has 1 minute remaining, and reserves the right to close.

Mr. FRANK of Massachusetts. I thank the gentleman from Alabama for a sense of fairness that I wish had been more present in the House.

We are here, talking about retroactivity. Again, this raises the central issue. People on the Republican side have been objecting to a provision added in the recovery bill that says ''no retroactivity.'' This does that again, so I don't understand. If people are genuinely opposed to the amendment added to the recovery bill, they cannot consistently be supportive of this amendment. The principle is the same.

Is the principle of no retroactivity a terrible abuse of the taxpayer or is it a matter of fairness? It cannot be both.

So Members who vote for this amendment are voting to ratify what was done in the recovery bill. If it passes, then people will not be able to argue that the recovery bill, without giving Members a chance to vote, took away an important part of the restriction, because that is the question. It is more than retroactivity in that sense. Although, the gentleman did want to modify the amendment, and I didn't think, at this late date, that that was appropriate. It even would allow some restriction on what you could do going forward depending on when people took the TARP money.

It says this would only apply as written—and I know the gentleman wanted to modify it. If you now have TARP money and do not refuse it, you are not covered by this. The amendment says, if you now have TARP money and decide to keep it, you are not covered by this. It is far too broad. It is broader even than the retroactivity. It says only those companies that now decide to take an infusion under TARP will be restricted. I know the gentleman wanted to change it at the last minute. I didn't think that was appropriate at the last minute.

The other part of it is this: The gentleman says he wants to protect anything already done. He wants to ban retroactivity. That is precisely what has gotten everybody excited about what the Senate put into the recovery bill.

Mr. SHERMAN. Mr. Chairman, I ask unanimous consent that the time on the amendment be extended on both sides by 30 seconds.

The CHAIR. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIR. The Chair recognizes the gentleman from New York.

Mr. MEEKS of New York. I recognize the gentleman from California for 30 seconds.

Mr. SHERMAN. I thank the gentleman.

Mr. Chairman, I would point out that the amendment, as written, means that the bill does not apply to any company that has already received a TARP infusion of capital. It applies only to those who receive infusions of capital in the future. The Treasury Secretary has announced that he is not going to make any infusions of capital in the future. He is going to use the TARP money for a completely different program. So the effect of the amendment is to gut the bill.

Mr. MEEKS of New York. The bill does not mandate it, and the sole purpose of this bill is as I indicated.

At one point, the President said we should be thoughtful and careful as we move forward, and I don't believe, in order of fairness, that in the middle of a game we can change the rules. Therefore, once the game is completed, then we should change the rules. I just think that there are ordinary people, not executives, who are affected by the bill.

I have talked to people in my district who are depending on certain funds and on certain contracts that were written before we got into the TARP money, and they need that to pay their mortgages. When you look at the effects on the City of New York, the mayor of the city has said, in the past 2 years, the firms on Wall Street have reported losses of more than $54 billion and may eventually lay off one quarter of their workforce. While the financial services sector directly employs only about 9 percent of our city's private sector, it accounts for more than one-third of its payroll, and those individuals in ancillary businesses therein are affected. Therefore, I am just trying to take care of those average, everyday Americans.

The CHAIR. The time of the gentleman has expired.

Mr. PRICE of Georgia. Mr. Chairman, I understand I have 30 seconds.

The CHAIR. The gentleman is correct.

Mr. PRICE of Georgia. I am pleased to yield my 30 seconds to the chairman of the committee.

Mr. FRANK of Massachusetts. I appreciate that, and I would emphasize the point made by the gentleman from California, which is, as drafted, the amendment would say that people who have had billions of dollars in TARP money are not covered by this amendment. Billions of dollars.

The question of the average worker is a bit of a straw employee. No one is talking about getting to that level, and that has not been the problem, but if you talk only about the top executives, AIG gave bonuses to hundreds of people. I don't believe anyone thinks secretaries are getting excessive and unreasonable amounts of money or huge bonuses.

Again, if you vote for this amendment, you are removing the debate about the part of the recovery bill that says no retroactivity.

The CHAIR. The question is on the amendment offered by the gentleman from New York (Mr. MEEKS).

The amendment was rejected.

AMENDMENT NO. 4 OFFERED BY MS. BEAN

The CHAIR. It is now in order to consider amendment No. 4 printed in House Report 111–71.

Ms. BEAN. Mr. Chairman, I rise in support of the amendment that I have authored with my colleague from New York, Congressman MCMAHON.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Ms. BEAN:

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

''(3) CONDITIONAL EXEMPTION.—

''(A) REPAYMENT AGREEMENT.—Paragraph (1) shall not apply to a financial institution that has entered into a comprehensive agreement with the Secretary to repay the United States, in accordance with a schedule and terms established by the Secretary, all outstanding amounts of any direct capital investment or investments received by such institution under this title.

''(B) DEFAULT.—If the Secretary determines that an institution that has entered into an agreement as provided for in subparagraph (A) has defaulted on such agreement, the Secretary shall require that any compensation payments made by such institution that would have been subject to paragraph (1) if the institution had not entered into such an agreement be surrendered to the Treasury.''.

The CHAIR. Pursuant to House Resolution 306, the gentlewoman from Illinois (Ms. BEAN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Illinois.

Ms. BEAN. Mr. Chairman, like many of our colleagues and constituents, we were outraged by bonuses paid to those who brought down AIG and the economy along with it.

Today's bill allows the Secretary of the Treasury to disallow unreasonable bonuses to employees of TARP recipients. Our amendment recognizes, as did Ranking Member BACHUS's just a few minutes ago, that some financial institutions who did participate in the TARP program did so because they were asked to by the Treasury or wanted to provide additional loans, not because they needed it or had failed in their businesses. While they expected compensation limits for top executives, they did not expect to be disallowed from providing bonuses company-wide.

The underlying bill allows for an institution to be free from the bonuses and compensation restrictions once it returns the entire direct Federal investment back to the government. This carries the risk of unintended consequences that could harm the very taxpayers we seek to protect.

First, if major financial institutions seek to exempt themselves from these restrictions by returning all of the Federal Government's TARP investment at once, they may need to raise capital through a major sell-off of equities or other assets. This kind of pressure on the market was a big contributor to the market crash last fall, and we should seek to avoid turning back the clock.

Second, if they were to pay back too quickly, their financial well-being could be jeopardized and could add instability to our credit markets.

This amendment is a commonsense approach, excepting companies who adhere to a repayment program as defined by the Treasury.

Over 500 financial institutions have received a direct capital investment up to this point. Four major institutions have begun to pay back their TARP investments, and many hope to do so making taxpayers whole again. Forcing institutions to return the money at once could decrease lending significantly and could further destabilize our economy. At the same time, those companies that do not agree to a repayment plan would be subject to bonus limits on unreasonable bonus payments.

I now would like to yield 2 minutes to Congressman MCMAHON from New York.

Mr. MCMAHON. Mr. Chair, I rise in support of this amendment which I offer along with my esteemed colleague from Illinois, Congresswoman BEAN.

Like all Americans, I was appalled at the bonuses from AIG. These bonuses were wrong in so many ways, and anyone with any sense of the frustrations and of the challenges that average Americans are facing knows these bonuses could not pass the smell test, but we must be thoughtful and measured.

Mr. Chair, we know the government has to play a role to keep our financial institutions solvent.

□ 1645

A bank failure of the size of some of our largest institutions would reverberate throughout the economy with the cascading effect not only on depositors but would greatly affect the ability of individuals to access credit. In my city of New York, these institutions also mean jobs, hundreds of thousands of them from the trading floors to the restaurants and the car services. We are intrinsically linked to the success of this industry, and I want to see it recover.

Our amendment is simple. When an institution which took TARP funds starts to pay back the TARP funds, we will lift these restrictions on pay. Merit bonuses are an important part of employee compensation in the financial services industry. And I know it is also important to my city because we are dependent on the income from the bonuses to pay for critical municipal services. They directly help to put teachers in schools, cops on the street, firefighters in the firehouses.

This amendment is an incentive for these companies to get back their financial health. Once companies that receive TARP funds start repaying the TARP funding, we will lift these restrictions. If you continue to repay, you will have the ability to reward longevity and performance with bonuses. If for some reason you stop repaying, then you fall under these restrictions of this bill.

All of us want to see the U.S. taxpayers made whole. This gives an incentive to the employees who are working at these companies trying to right the ship to know that when they turn their company around and pay back the taxpayer, they will be justly and fairly rewarded as well.

For these reasons, I urge my colleagues to support the Bean-McMahon amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I rise to claim the time in opposition.

The CHAIR. The gentleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, I would say by explanation I have consulted and I appreciate the cooperation of the members of the minority. The minority is not opposed to this bill. I am not opposed to the next amendment that's going to be offered. So we've agreed to take 5 minutes each, and I think we then have worked everything out so that on the next one, we will get an equality of time and there will be real opposition. And I appreciate the accommodation that the members showed in reaching this.

I understand the principle because it's one we have in the bill, but the question is on which end do you wait? The gentlewoman has suggested that people would want to pay it and they can't get it all paid at once, and that's true, and therefore, they should immediately be removed from the restrictions. But the alternative is this: They announced they are going to pay it, they plan to make the compensation adjustments, and they pay them—they simply defer them for a couple of months. In other words, it seems to me there are two possible arguments.

One is that the repayment period would be a very long period, in which case I wouldn't want there to be a tolling of the provision. The other is that the repayment period will be a fairly short period, in which case it's only a short period to have to wait until they pay the bonuses.

So I think that is a better way to deal with it. It is not an unreasonable position. The question is where do you do the risk.

This way they say we're going to repay, they do a repayment schedule, and as soon as they repay, they can make those payments. In other words, the entity that determines how long it will be is the repaying entity.

I think the good legal principle is it's the entity that controls the timing that bears the burden of a delay. If they delay too much, then they have a problem. If they do it promptly, then they don't have a problem because they can make the payments. And I do think with all the other burdens that you put on the secretary—and then I guess the other question is well what if people say they are going to repay, and for some reason they aren't able to make the scheduled payments. Do they have to rescind the bonuses? Do we get into that again?

So I would prefer to leave it as we have now. People can announce they're going to repay and the more quickly they repay, the more quickly they can make those payments, and there is nothing that stops them from telling people, By the way, we plan to repay, and as soon as we do, you'll get this raise, you'll get this bonus. I think that is a better way to go.

I reserve the balance of my time.

Ms. BEAN. Mr. Chairman, can I ask how much time I have left?

The CHAIR. The gentlewoman has 1 minute remaining.

Ms. BEAN. I will reserve.

The CHAIR. The gentleman from Massachusetts has 2½ minutes remaining.

Mr. FRANK of Massachusetts. Who has the right to close?

The CHAIR. The gentleman from Massachusetts has the right to close.

Mr. FRANK of Massachusetts. I have one remaining speaker, so I will reserve my right to close.

Ms. BEAN. Mr. Chairman, in response I would say that it's the Treasury that gets to decide what type of repayment plan, whether that's a long repayment or a short repayment. We had considered putting a monthly or

quarterly limit on it, maybe six quarters on it, but I would trust the Treasury's judgement to make sure that it would be done in a way that doesn't destabilize our markets.

And with that, I will yield back.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield my remaining time to the gentleman from California, Mr. SHERMAN.

Mr. SHERMAN. I thank the Chairman.

I think a lot of us would like companies to repay the TARP money as quickly as possible. I think that's true of those who voted against the bill, and I think it's true of many of those who voted in favor of it. And I might support this amendment if it was one that required companies to repay in a 6-month schedule, or a 1-year schedule.

But this amendment allows companies to escape all the provisions of the bill just by entering into a schedule of repayment that could be a 10-year schedule or a 15-year schedule. And I don't think that a company should be able to escape the bill just by repaying us the money over the next 10 or 15 years. After all, all of the companies who got the TARP money are supposed to be repaying it; many of them in a shorter period than over the next 10 or 15 years.

Fairness would say that we should not treat a company that's repaying us over a 15-year schedule differently than a company that has not entered into a particular repayment schedule.

So I would hope that we would defeat this amendment because the amendment, as written, would allow a large number of companies to escape the effect of the bill without doing much more than making a few monthly payments, potentially of a very small amount.

As to the issue of retroactivity, there is much discussion over what happened in the Senate, but here in the House, we didn't vote for this version of the Dodd amendment or that version of the Dodd amendment. We just had the conference report before us.

Those of us who voted ''yes'' on the conference report at least voted for a provision that would prevent crazy bonuses in the future. And there are many Members—in fact, the entire Republican side of the House who voted against the stimulus bill. That means they voted against a provision that would prevent huge $6 million AIG bonuses in the future. And their only excuse is, well, they would have hoped for an amendment that would have prevented the bonuses in the past.

When a bill comes before us that would prevent $6 million bonuses from being paid to AIG executives in the future, and you vote against the bill, it is a very small fig leaf to say that you are nonetheless opposed to excessive bonuses.

The CHAIR. The question is on the amendment offered by the gentlewoman from Illinois (Ms. BEAN).

The question was taken; and the Chair announced that the noes appeared to have it.

Ms. BEAN. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Illinois will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. BILIRAKIS

The CHAIR. It is now in order to consider amendment No. 5 printed in House Report 111–71.

Mr. BILIRAKIS. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will report the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. BILIRAKIS:

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike ''Provided that'' and all that follows through ''under the TARP'' and insert ''An institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008''.

The CHAIR. Pursuant to House Resolution 306, the gentleman from Florida (Mr. BILIRAKIS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

Mr. BILIRAKIS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, this Congress has an obligation to protect taxpayers. The $590 billion that was handed to Wall Street firms does not belong to Wall Street. That money is the property of the American people. The fact that I voted against the TARP legislation is no excuse for me to wash my hands of the matter. I have a duty to my constituents and to the American taxpayers to do everything in my power to protect their investment.

H.R. 1664 will impose restrictions on TARP recipients who refuse voluntarily to change their excessive compensation practices. However, those firms that are not receiving taxpayer dollars who directly engage in business with a TARP recipient must be assured they will not find themselves falling within the compensation restrictions of this bill.

The bill, as written, recognizes this and states that a company that did business with a recipient of TARP funds will not be subject to the requirements of the bill. This language gives assurance to the non-TARP recipients that it is safe to do business with those firms on taxpayer life support, which is vitally important to protect taxpayer investments.

However, this same language in the bill has the potential to inadvertently let most, if not all, TARP recipients off the hook.

For example, Goldman Sachs is a TARP recipient and has engaged in business with AIG, another TARP recipient. Since Goldman Sachs does business with a recipient of TARP moneys, then by the terms of the language of the bill, Goldman Sachs will no longer be subject to the requirements of the bill. And for that matter, AIG will not be subject to the requirements of the bill because AIG does business with Goldman Sachs which is a TARP recipient.

As you can guess, virtually all of the largest TARP recipients have done business with each other and therefore will escape the compensation restrictions of H.R. 1664 if this language is not corrected.

My amendment solves this problem by clarifying the language in the bill to eliminate the possibility of this unintended result.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. BILIRAKIS. Yes, I will yield.

Mr. FRANK of Massachusetts. I understand the gentleman from Georgia is going to take the time in non-opposition. I want to thank the gentleman from Florida for bringing this forward. It is important that we have this totally nailed down. Ambiguity is to be avoided at all costs, and he's performed a useful service with this amendment.

Mr. BILIRAKIS. Mr. Chairman, I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, through a previous understanding, I claim the time in opposition, though I am not opposed.

The CHAIR. Without objection, the gentleman from Georgia is recognized for 5 minutes.

There was no objection.

Mr. PRICE of Georgia. Mr. Chairman, I want to commend my friend from Florida for his appropriate reading of the bill and appropriate correction through this amendment in clarifying that TARP recipients will not be subject to the requirements as a result of doing business with a TARP recipient.

I would suggest, however, Mr. Chairman, that the reason that it feels so peculiar, this whole debate feels so peculiar is because the American people know that the reason we're standing here today is because we went beyond the bounds of what government ought to be doing. And so my friend from Florida recognizes an appropriate flaw in the underlying bill and has appropriately corrected it by his amendment.

But, Mr. Chairman, the real flaw is the action that this Congress has taken and this administration, and Mr. Chairman, the previous administration in moving our Nation into an economy that is no longer market-based but is politically based. That is a very dangerous place to be.

So I want to commend my friend from Florida for what he has done for his amendment.

I urge my colleagues to support this amendment.

I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Chairman, I strongly recommend that the Members vote favorably on this very important amendment.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. BILIRAKIS).

The amendment was agreed to.

□ 1700

AMENDMENT NO. 6 OFFERED BY MR. DEFAZIO

The CHAIR. It is now in order to consider amendment No. 6 printed in House Report 111–71.

Mr. DEFAZIO. I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. DEFAZIO:

At the end of the bill insert the following:

(c) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Subsection (f)(2) of section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended—

(1) by striking ''shall not be binding'' and inserting ''shall be binding''; and

(2) by striking ''and may not be construed'' and all that follows and inserting ''and any compensation payment arrangement not approved by such a vote may not be entered into by the TARP recipient.''.

The CHAIR. Pursuant to House Resolution 306, the gentleman from Oregon (Mr. DEFAZIO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Oregon.

Mr. DEFAZIO. I rise in support of the bill, and I'm very favorable to the say-on-pay provision. I'm going to propose that we actually add to that provision, but first, I've been a bit bemused by the debate today and listening from my office to hear from the Republican side that they're saying, well, it's the Democrats' fault that there aren't more meaningful restrictions, but we're against these meaningful restrictions. So I'm going to give them a chance here to maybe be a little more consistent because I'm going to offer a free-market approach to enhancing protections for stockholders and taxpayers against excessive corporate executive remuneration. It's a free-market approach, and it's also a democratic approach because it would allow the owners of the company, the stockholders, to cast not just an advisory vote but a binding vote on corporate compensation.

Now, I know we're going to hear concerns about this, and perhaps again they will be extraordinarily inconsistent on their side of the aisle, bemoaning the fact that we didn't do this earlier but not wanting to do it now in a more meaningful way.

But the issue here is very real. The growth in corporate compensation has been extraordinary. We've gone from a 40:1 ratio to the average worker 25 years ago to nearly 400:1 in many cases now, and Americans are justifiably outraged, and they're particularly outraged when it's sometimes now their taxpayer money which is going to support these lavish lifestyles.

We have examples of some corporations that have recently gone to binding votes. NBIA after a rather disastrous year has gone there. You can expect that their stockholders are going to be a little cranky about the corporate compensation. Carl Icahn supports this provision. And the Netherlands has adopted this. In the Netherlands, the way it works is it's prospective. The next year's salary package has to be approved by the stockholders in a vote.

Now, the bill does refer, the provision regarding say-on-pay, to the SEC, and I would leave that intact so it would be up to the SEC to figure out how this might work. Perhaps there's already an egregious pay package in effect and voting against a prospective package wouldn't even get at the underlying—I can understand that some people would say that this needs a little work, but I trust the SEC to get there.

With that, I yield to the chairman.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding.

He's raised a very important issue. My attitude on this amendment is almost certainly yes but not yet. He's raised some of the questions. There's a little bit too much to give to the SEC. They will ultimately have to administer it. I would give him my word—he remembers he voted for it in 2007, the say-on-pay bill, when we first brought it in the House. It was then advisory. I believe it is time to consider going further and as part of the whole corporate governance, because an alternative is to simply empower the shareholders more to have real control of the board.

So I intend to vote ''no'' now with the commitment to the gentleman from Oregon that this will be seriously studied in our committee later this year.

Mr. DEFAZIO. With that, I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, I claim the time in opposition.

The CHAIR. The gentleman from Georgia is recognized for 5 minutes.

Mr. PRICE of Georgia. Mr. Chairman, as one amendment after another continues to show, this is a very dangerous road we're on, and I would underscore that for this amendment.

This amendment fundamentally undermines the purpose of a board of directors. This says that the shareholders, the owners of the company, will set the compensation for individuals not at the board of directors level but on down in the company.

Now, why should we stop there, Mr. Chairman? Why should the shareholders not decide where the corporate headquarters is? Why should the shareholders not decide, in a binding way, what type of business endeavor the company goes into, whether it expands into this area or that area? Why should the shareholders not decide on any employment decision?

Well, Mr. Chairman, the answer is very clear, and that is because that's not the way to retain whatever remnant we have left of a vital American economic system.

My friend cites the nation of the Netherlands, the European companies. Mr. Chairman, there's a reason that the American economy has been the greatest economy in the world, and that's because of the structure that we have that allows shareholders to participate in appropriate, nonbinding decisions.

What are their options as shareholders if they don't like the way a company is running? Well, they have two, and you know what they are, Mr. Chairman. They could vote ''no'' or vote for a different board of directors, which is their direct input into the running of the company, which gives it that vitality and that vibrancy. Mr. Chairman, they can sell their shares. That's the beauty of the system.

My friend from Oregon wants to have the shareholders be not just the owners but the managers of the company. You talk about dampening the vitality and the spirit of the American entrepreneur. You talk about inserting into the board of directors' room a situation where you can't begin to expand in a way that you ought to expand. You can't begin to grow your business in the way that you want because the next step from here, Mr. Chairman, is to move it on to further discussions and debates and decisions within the board of directors.

Mr. Chairman, this is truly a very poor idea. It's an idea that this Congress should not embrace. It's an idea that, again, further gets us down to the Congress deciding in a very political way who ought to be winners and losers. You can just imagine the logical extension of the waywardness of this kind of amendment.

So I urge my colleagues to vote ''no'' on the amendment.

I reserve the balance of my time.

Mr. DEFAZIO. I believe I have the right to close. Does he have further speakers?

The CHAIR. The gentleman from Georgia has the right to close.

Mr. DEFAZIO. Okay. Well, then I yield myself the balance of my time.

The gentleman refers to the board of directors. He's apparently not particularly conversant with how those elections are set up so that it is extraordinarily difficult to nominate and/or replace anyone on boards of directors the way most corporate governance is set up.

You know, it's amazing to me that somehow those who have a direct interest, Americans who own the stock, they should just sell their stock. Well, maybe their stock's worth half what it was last year because of crumby management, and he says, well, just sell your stock because they lost half your money and let the CEO still get an exorbitant salary. Come on, is that a good decision? No.

The other alternative would be to actually allow the owners, in what I think is a fairly well-accepted form of government in the United States of America, those people to actually vote in a meaningful and binding way, as opposed to an advisory way, to a board

of directors who are all first cousins, who all serve on each other's boards, and all feather each other's nests and all compensate themselves very well. Come on, we all know how this works.

If you want to just stick up for the current system, then stop this sort of bifurcated argument, oh, the Democrats are really bad because they didn't do this earlier, and it was in another bill that could have been or should have been but we don't want to do it now, and we don't want to do it in a meaningful way. That's where the Republicans are coming down here, and I find it to be a most disingenuous argument.

With that, I yield back the balance of my time.

Mr. PRICE of Georgia. Mr. Chairman, what time remains?

The CHAIR. The gentleman from Georgia has 2 minutes remaining.

Mr. PRICE of Georgia. The gentleman, the author of the amendment says that it's difficult to vote on board of director elections. Well, it may be a little challenge to fill out a form that comes in the mail. It may be a bit of a challenge to get to headquarters to vote, but in fact, that's the way that shareholders have their input, and it's an appropriate way.

And the real response to his dilemma, his concern, is that if 50 percent, plus one, of the shareholders vote a member of the board of directors out, that member of the board of directors is gone, and therefore, there's the accountability. And that's imperative that we retain that.

What does this amendment mean? This amendment means, again, that the shareholders become not just the owners of the company but the managers of the company. And that's, again, Mr. Chairman, not the way that you allow and create a vibrant and incisive and wonderful entrepreneurial spirit across this land that has resulted in the remarkable success of the American economy.

What this amendment means is that pension plans and retirement plans are put at risk because if we allow shareholders to become not just owners of companies but managers of companies, then the result will be that companies will not be able to institute the kind of wonderful opportunities for their businesses and, hence, their shareholders.

So I urge my colleagues not to march further down this road. This is a road upon which we should not be; but, Mr. Chairman, we find ourselves moving headlong in the direction of greater governmental intervention into the private industry in a very dangerous way.

I urge my colleagues to oppose this amendment.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Oregon (Mr. DEFAZIO).

The amendment was rejected.

AMENDMENT NO. 7 OFFERED BY MRS. DAHLKEMPER

The CHAIR. It is now in order to consider amendment No. 7 printed in House Report 111–71.

Mrs. DAHLKEMPER. I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mrs. DAHLKEMPER:

In subsection (e)(1)(B), of the matter proposed to be inserted by section 1(a), insert after ''payment'' the following: '', whether payable before employment, during employment, or after termination of employment,''.

In subsection (e), of the matter proposed to be inserted by section 1(a), add at the end the following new paragraph:

''(4) COMPENSATION CONSIDERATIONS UNDER THE STANDARDS.—In establishing standards under this subsection, the Secretary shall consider as compensation any transfer of property, payment of money, or provision of services by the financial institution that causes any increase in wealth on the part of an executive or employee.''.

The CHAIR. Pursuant to House Resolution 306, the gentlewoman from Pennsylvania (Mrs. DAHLKEMPER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Pennsylvania.

Mrs. DAHLKEMPER. Mr. Chairman, I yield myself such time as I shall consume.

Mr. Chairman, I rise today to offer an amendment to H.R. 1664 to clarify and strengthen key provisions within this important legislation that provides crucial protection for taxpayer dollars.

I strongly support H.R. 1664, legislation that prohibits ANY institution that has received a direct capital investment under TARP from paying any employee compensation that is ''unreasonable or excessive.'' It also prohibits any bonus or payment that is not directly based on performance-based standards set by the Treasury Secretary. My constituents are demanding accountability from financial institutions that are receiving taxpayer assistance.

The amendment that I offer to you today speaks on behalf of those demands by closing loopholes that may exist in order to protect taxpayers as TARP-funded companies allocate bonuses to their employees. It specifies that H.R. 1664 includes payments made before, during, or after employment of the executive by the financial institution receiving a direct capital investment under the TARP section 1117 of the Housing Economic Recovery Act of 2008.

Furthermore, my amendment helps to clarify that prohibited executive compensation for purposes of this bill may take the form of money paid, property transferred, or services rendered.

There are many possible forms of compensation, and indeed, there's a virtual industry which specializes in nurturing this diversity. This amendment affirms the intent of H.R. 1664 by taking a very comprehensive view of the concept of executive compensation and, in turn, possible prohibited executive compensation.

Mr. Chairman, like most of my colleagues on both sides of the aisle, my district has been hit especially hard by this economic downturn. Traveling across my district, I have heard the same story from far too many middle-class families about how they're bearing the brunt of a faltering economy. In fact, many of my constituents who have worked hard and played by the rules have had to take a pay cut simply to keep their job.

Various small businesses across my district have had to make some hard choices. Many have had to reduce their workforce. Executives and workers alike have had to take sometimes up to 20 percent reductions in their income, while others have had to reduce their work week to 4 days.

As a small business owner myself, I understand firsthand that the small business community is struggling just to keep employees on the payroll and the lights on at the end of the day.

Mr. Chairman, my constituents work hard and meet their responsibilities every day. And their hard-earned tax dollars are being used to bail out companies, some of which were responsible for the economic downturn we have today. What they ask for in return is accountability, transparency, and to play by the same rules as everybody else.

The purpose of this legislation before us is to set up an operating framework to give taxpayers the confidence that the irresponsible actions of some of the bad actors will not be repeated again. The purpose of my amendment is to offer additional clarity to that end. All excessive bonuses at taxpayer expense are prohibited regardless of when the executive worked at the company. All excessive bonuses at taxpayer expense are prohibited regardless of what form they take.

Mr. Chairman, I came to Congress to represent the interests of my constituents on Main Street. That means putting in place important protections to safeguard taxpayer dollars. That's why I'm offering my amendment today.

I thank the chairman for working with me on developing this amendment and for his leadership, and that's why I urge a ''yes'' vote on my amendment.

I reserve the balance of my time.

Mr. BACHUS. Mr. Chairman, I rise to claim the time in opposition.

The CHAIR. The gentleman from Alabama is recognized for 5 minutes.

Mr. BACHUS. I yield myself 4 minutes and also ask the sponsor of the amendment if she would remain on the floor because I have a question for her, and also the gentleman from New Jersey has a question.

□ 1715

Mr. BACHUS. Mr. Chairman, the underlying bill applies to any executive

or employee of these companies. The amendment by Mrs. DAHLKEMPER defines payment as payment before employment, during employment, or after termination of employment, which almost appears to be almost a cradle-to-grave period of time.

Having said that, I have got specific concerns. I'd like to engage in a colloquy with the gentlelady from Pennsylvania about her amendment.

Would your amendment enable the Treasury Secretary to establish compensation standards for employees after they retire?

Mrs. DAHLKEMPER. If this is excessive, any time before or after.

Mr. BACHUS. So he could determine that any payment after they retire was excessive or unreasonable?

Mrs. DAHLKEMPER. Yes, it does.

Mr. BACHUS. Would those standards include retirement plans, pension plans, and retiree medical benefits provided by the company?

Mrs. DAHLKEMPER. Only while the investment is outstanding, if it's in violation of the rules.

Mr. BACHUS. You mean the Treasury Secretary could limit retirement benefits, pension benefits, and their medical benefits?

Mrs. DAHLKEMPER. If it's in violation of the rules.

Mr. BACHUS. If he thinks it's a violation. All right. Your amendment requires the Treasury Secretary to consider any increase in wealth on the part of the executive or employee as compensation. Would the gentlelady please provide what her definition of wealth is? Would wealth include retirement plans, pension plans, medical benefits?

Mrs. DAHLKEMPER. Yes, it does.

Mr. BACHUS. It does. In other words, the Secretary of the Treasury would have what I would consider sweeping rights to limit retirement benefits, medical benefits, and pension plans for any and all employees if he deemed that they were unreasonable or excessive or more than he deemed proper. Is that correct?

Mrs. DAHLKEMPER. If they're unreasonable and excessive.

Mr. BACHUS. The gentlelady understands that you're giving sole discretion to a few people to determine whether someone—in other words, all employees' pension, health, or retirement benefits are excessive. Is that what the gentlelady intended to do? That's what her amendment does.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. BACHUS. I yield.

Mr. FRANK of Massachusetts. In fairness to the gentlewoman, she's amending into the base of the bill. There had been a notion that you just did the top executives. AIG made it clear there could be hundreds of people covered.

Yes, I trust no Secretary of the Treasury that I've ever seen would say that a cost of living or even salary increase—but it does cover all employees because, as I said, the AIG and other experiences show hundreds of employees could be involved.

Mr. BACHUS. I understand what the chairman is saying. But this bill applies to all these financial institutions. I believe this is a sweeping definition of compensation.

The CHAIR. The time of the gentleman has expired. The gentleman has used 4 minutes of his 5 minutes.

The gentlewoman from Pennsylvania has 1½ minutes remaining.

Mrs. DAHLKEMPER. Mr. Chair, I think this is just a straightforward amendment that is basically closing loopholes. I urge a ''yes'' vote on this.

Mr. FRANK of Massachusetts. Will the gentlewoman yield to me?

Mrs. DAHLKEMPER. I yield.

Mr. FRANK of Massachusetts. Let me respond to the gentleman from Alabama. It does close loopholes. Golden parachutes are a form of retirement. We have cases where executives after retirement get the use of airplanes, get the use of other things. And it is true that it has only been executives. We have no contemplation that anybody would use this for lower level, average employees. But if you limit it to 5 executives, 10 executives in some of these large companies, yes, you do invite problems. And it would be a very easy thing to do to say, Okay, we're only going to give you this now, but once you retire, we'll give you all the extra money we couldn't give you in the first place. It is certainly the case that outsized retirement packages to a handful of favored employees has been a part of the problem.

Mr. BACHUS. Will the gentlewoman yield?

Mrs. DAHLKEMPER. I yield.

Mr. BACHUS. I would say, What if an employee upon his retirement is given stock in the company and 10 years after his retirement——

Mr. FRANK of Massachusetts. I ask the gentlewoman to yield me back the time.

Mrs. DAHLKEMPER. I yield.

Mr. FRANK of Massachusetts. Stock of that sort would not count. If it is stock that goes up in time, that is not a problem. Stock that is going to simply be regular stock, and it goes up, that's not covered.

The CHAIR. The gentlewoman from Pennsylvania controls the time.

Mrs. DAHLKEMPER. I reserve the balance of my time.

Mr. FRANK of Massachusetts. Would the gentlewoman yield further?

Mrs. DAHLKEMPER. I yield.

Mr. FRANK of Massachusetts. The other problem is this. The gentleman from Alabama, my good friend, is apparently assuming that the TARP will live forever, because by the time a lot of these people have been retired, we hope they have paid back the TARP funds.

The CHAIR. The time of the gentlewoman has expired.

Mr. BACHUS. I ask unanimous consent that each side be given an additional 1 minute.

The CHAIR. Is there objection to the request of the gentleman from Alabama?

Mr. FRANK of Massachusetts. Reserving the right to object, how many minutes?

Mr. BACHUS. Extend the time by 1 minute on each side.

Mr. FRANK of Massachusetts. One is the outer limit of everybody's patience, but I won't object.

The CHAIR. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. BACHUS. I yield myself 1 minute.

We don't know how long all this is going to last. But what I will say is you are giving—for every employee of these companies, you're giving the Secretary of the Treasury the right to control their pension benefits, their retirement benefits, their health benefits, whether intended or not.

I don't think that you can assure me that the power will not be abused in the future because, as the gentlelady said, her amendment includes any compensation for the rest of their life. It also includes any compensation before they arrived at the company.

That, to me, is a very broad brush. I would definitely oppose this amendment.

Mr. FRANK of Massachusetts. Will the gentlelady yield?

Mrs. DAHLKEMPER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I thank the gentlewoman.

I will take the 1 minute that was yielded to say, once again, this only applies while they have got TARP money. The notion that TARP is going to live forever is a fantasy—or, that people won't pay it back. This only applies during the duration of TARP.

Secondly, there is a scare tactic here that I think is belied by the facts. I do not think any Secretary of the Treasury I have seen, served with, or read about, would decide that the health benefits of a thousand workers could be excessive or unreasonable.

I will tell the gentleman this. I wish we lived in a society in which we had to worry about excessive and unreasonable pension benefit for retirees who are simply rank and file workers. That's not a problem that has ever arisen.

So I think this is, frankly, an objection in search of a reason. Yes, you want to avoid what we know has been used—putting it into the back end or the front end or trying to do it in tricky ways. And that's what the gentlewoman correctly wants to stop.

The CHAIR. The time of the gentlewoman has expired. The gentleman from Alabama has 1 minute remaining.

Mr. BACHUS. I yield that minute to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I'm reminded of the statement that the nearest thing to immortality on this Earth

is a Federal agency or Federal program. So some things do apparently live forever—and that's Federal Government programs.

And on to this point, if the gentlelady is still on the floor, the history of the underlying problem here is AIG. And it did in fact start not as a TARP program, but as the Fed Reserve, and that was 9/16, when the Fed gave an $85 billion loan to AIG. That did change, as the gentlelady knows, on November 10, and it basically became a Federal TARP program when the loan was restructured and reduced. And it eventually changed again on March 2. I assume the gentlelady who's the sponsor of the bill is familiar with that history.

I will yield to the gentlelady to make sure that she is understanding of the history of how we got here.

Mr. FRANK of Massachusetts. Would the gentlewoman yield?

Mrs. DAHLKEMPER. I will yield.

Mr. FRANK of Massachusetts. The gentlewoman was not a Member of the Congress when those events transpired.

Mr. GARRETT of New Jersey. Just to the gentlelady. I appreciate that. To the gentlelady—I just ran through the history of saying that it initially began as a Fed program and then became a TARP program, without any restrictions on it.

The CHAIR. The question is on the amendment offered by the gentlewoman from Pennsylvania (Mrs. DAHLKEMPER).

The question was taken; and the Chair announced that the noes appeared to have it.

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Pennsylvania will be postponed.

ANNOUNCEMENT BY THE CHAIR

The CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111–71 on which further proceedings were postponed, in the following order:

Amendment No. 4 by Ms. BEAN of Illinois.

Amendment No. 7 by Mrs. DAHLKEMPER of Pennsylvania.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MS. BEAN

The CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from Illinois (Ms. BEAN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 228, noes 198, answered ''present'' 1, not voting 10, as follows:

[Roll No. 180]

AYES—228

Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Bean
Biggert
Bilbray
Bilirakis
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boucher
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cao
Capito
Cassidy
Castle
Chaffetz
Childers
Clarke
Coble
Cohen
Cole
Conaway
Cooper
Crenshaw
Crowley
Cuellar
Culberson
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Engel
Etheridge
Fallin
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harman
Harper
Hastings (WA)
Heller
Hensarling
Herger
Himes
Hoekstra
Hunter
Inglis
Israel
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kanjorski
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Kratovil
Lamborn
Lance
Larsen (WA)
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
LoBiondo
Lowey
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
McCarthy (CA)
McCaul
McClintock
McCollum
McCotter
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
Meeks (NY)
Mica
Miller (FL)
Miller (MI)
Minnick
Moran (KS)
Murphy, Patrick
Murphy, Tim
Myrick
Nadler (NY)
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Olson
Paul
Paulsen
Pence
Perlmutter
Peterson
Petri
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Putnam
Radanovich
Rangel
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rooney
Roskam
Ross
Royce
Ruppersberger
Rush
Ryan (WI)
Salazar
Scalise
Schock
Schwartz
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuler
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Tanner
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Weiner
Whitfield
Wilson (SC)
Wittman
Wolf
Wu
Yarmuth
Young (AK)
Young (FL)

NOES—198

Abercrombie
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Becerra
Berkley
Berman
Berry
Bishop (GA)
Blumenauer
Bordallo
Boren
Boswell
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Buchanan
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Castor (FL)
Chandler
Christensen
Clay
Cleaver
Clyburn
Coffman (CO)
Connolly (VA)
Conyers
Costa
Costello
Courtney
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Eshoo
Faleomavaega
Farr
Fattah
Filner
Frank (MA)
Fudge
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kaptur
Kildee
Kilpatrick (MI)
Kilroy
Kissell
Klein (FL)
Kosmas
Kucinich
Langevin
Larson (CT)
Lee (CA)
Lewis (GA)
Linder
Lipinski
Loebsack
Lofgren, Zoe
Luján
Lynch
Matsui
McCarthy (NY)
McDermott
McGovern
McNerney
Meek (FL)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murtha
Napolitano
Norton
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perriello
Peters
Pierluisi
Pingree (ME)
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Rohrabacher
Ros-Lehtinen
Rothman (NJ)
Roybal-Allard
Ryan (OH)
Sablan
Sánchez, Linda T.
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Scott (GA)
Scott (VA)
Serrano
Shea-Porter
Sherman
Shuster
Sires
Skelton
Slaughter
Space
Speier
Spratt
Stark
Stupak
Sullivan
Sutton
Tauscher
Taylor
Teague
Thompson (CA)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Welch
Wexler
Wilson (OH)
Woolsey

ANSWERED ''PRESENT''—1

Cantor

NOT VOTING—10

Barton (TX)
Kennedy
Levin
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schmidt
Thompson (MS)
Westmoreland

□ 1758

Messrs. VAN HOLLEN, VISCLOSKY, KILDEE, Ms. KILPATRICK of Michigan, Messrs. WATT, HONDA, TIERNEY, BUTTERFIELD, BECERRA, BERMAN, GEORGE MILLER of California, BERRY, ORTIZ, DOYLE, LUJÁN, ARCURI, LYNCH, BISHOP of Georgia, RYAN of Ohio, KLEIN of Florida, CLEAVER, GORDON of Tennessee, Ms. ESHOO, Ms. KAPTUR, Ms. ROS-LEHTINEN, Ms. LINDA T. SÁNCHEZ of California, Mrs. HALVORSON, Ms. KOSMAS, Ms. WASSERMAN SCHULTZ, Ms. PINGREE of Maine and Ms. SLAUGHTER changed their vote from ''aye'' to ''no.''

Messrs. FRANKS of Arizona, RYAN of Wisconsin, NEAL of Massachusetts, GALLEGLY, McHENRY, FLAKE, HENSARLING, TIM MURPHY of Pennsylvania, MASSA and Ms. CLARKE changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. MARKEY of Massachusetts. Madam Speaker, on rollcall No. 180, I inadvertently voted "aye", but intended to vote "no."

AMENDMENT NO. 7 OFFERED BY MRS. DAHLKEMPER

The CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from Pennsylvania (Mrs. DAHLKEMPER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 246, noes 180, answered ''present'' 1, not voting 10, as follows:

[Roll No. 181]

AYES—246

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boren
Boswell
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Christensen
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Lewis (GA)
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNerney
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Norton
Nye
Oberstar
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Polis (CO)
Pomeroy
Posey
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rooney
Ros-Lehtinen
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Space
Speier
Spratt
Stark
Stupak
Sutton
Tauscher
Taylor
Teague
Thompson (CA)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—180

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boucher
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Costello
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
McMahon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Moran (VA)
Murphy, Tim
Myrick
Neal (MA)
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Roskam
Royce
Ryan (WI)
Scalise
Schock
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Sullivan
Tanner
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—1

Cantor

NOT VOTING—10

Barton (TX)
Kennedy
Levin
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schmidt
Thompson (MS)
Westmoreland

ANNOUNCEMENT BY THE CHAIR

The CHAIR (during the vote). Two minutes remain in this vote.

□ 1805

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIR. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIR. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. WEINER) having assumed the chair, Mr. JACKSON of Illinois, Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1664) to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards, pursuant to House Resolution 306, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 171, answered ''present'' 1, not voting 12, as follows:

[Roll No. 182]

AYES—247

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Bright
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Cao
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks

Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rohrabacher
Ros-Lehtinen
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Thompson (CA)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—171

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Biggert
Bilbray
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Braley (IA)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Dreier
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Minnick
Mitchell
Moran (KS)
Moran (VA)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schock
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—1

Cantor

NOT VOTING—12

Barton (TX)
Kennedy
Levin
Loebsack
Miller, Gary
Pallone
Pascrell
Sanchez, Loretta
Schmidt
Thompson (MS)
Watt
Westmoreland

□ 1823

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HOUR OF MEETING ON TOMORROW

Mr. POLIS. Mr. Speaker, I ask unanimous consent that, when the House adjourns today, it adjourn to meet at 9 a.m. tomorrow.

The SPEAKER pro tempore (Mr. ALTMIRE). Is there objection to the request of the gentleman from Colorado?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 1256, FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. POLIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 307 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 307

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The amendment printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce; (2) the amendment in the nature of a substitute printed in part B of the report on the Committee on Rules, if offered by Representative Buyer of Indiana, or his designee, which shall be in order without intervention of any point of order except those arising under clause 9 or 10 of rule XXI, shall be considered as read, and shall be separately debatable for thirty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

SEC. 2. (a) In the engrossment of H.R. 1256, the Clerk shall—

(1) add the text of H.R. 1804, as passed by the House, as new matter at the end of H.R. 1256;

(2) conform the title of H.R. 1256 to reflect the addition to the engrossment of H.R. 1804;

(3) assign appropriate designations to provisions within the engrossment; and

(4) conform provisions for short titles within the engrossment.

(b) Upon the addition of the text of H.R. 1804 to the engrossment of H.R. 1256, H.R. 1804 shall be laid on the table.

The SPEAKER pro tempore. The gentleman from Colorado is recognized for 1 hour.

Mr. POLIS. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentlewoman from North Carolina, Dr. FOXX.

GENERAL LEAVE

Mr. POLIS. I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and to insert extraneous material into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. POLIS. I yield myself such time as I may consume.

Mr. Speaker, House Resolution 307 provides a structured rule for the consideration of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The rule makes in order a substitute amendment, if offered, by Representative BUYER of Indiana or his designee.

I rise in support of House Resolution 307, the Family Smoking Prevention and Tobacco Control Act. I thank Chairman WAXMAN and my colleagues who serve on the Energy and Commerce Committee for their leadership in this bipartisan effort.

This legislation, which passed this House by a margin of more than 3–1 last July, would at long last give the U.S. Food and Drug Administration, the FDA, the authority to regulate tobacco products and to take additional critical steps to protect the public health. The bill prevents the tobacco industry from designing products that entice young people. It develops programs that help adult smokers quit, and it funds the efforts through fees to tobacco manufacturers.

America's youth face intense pressure every day from friends, fancy advertisements and irresponsible adults to make bad decisions that will affect their long-term health. A 2006 study conducted by the Substance Abuse and Mental Health Services Administration found that 90 percent of all adult smokers began while they were in their teens or earlier and that two-thirds became regular daily smokers before

they reached the age of 19. A shocking number of American children are at least casual smokers before they can even drive a car.

As a cosponsor of the Family Smoking Prevention and Tobacco Control Act, I am strongly committed to seeing this figure drastically reduced. Congress must work to help make our children's lives safer and their choices easier.

This bill bans flavored cigarettes with names like Mocha Taboo, Midnight Berry and Warm Winter Toffee that clearly attract children as consumers. The history of low-tar cigarettes illustrates the grave danger to public health that's caused by fooling consumers into believing unsubstantiated claims that one kind of cigarette is safer than another. Millions of Americans switched to low-tar cigarettes, believing they were reducing their risk of lung cancer substantially. Many were convinced to switch instead of to quit. It wasn't until decades later that we learned through many deaths that those low-tar cigarettes were just as dangerous as full-tar cigarettes.

Under this legislation, which simply empowers the FDA to regulate tobacco products, we will not have to wait until the deaths of millions of more Americans to learn whether a so-called ''safer'' cigarette is what it claims to be.

□ 1830

The bottom line is we have an interest in making sure our constituents know the facts, all of them, before making potentially deadly choices.

Americans must also be aware of the dramatic health risks associated with smokeless tobacco. Many believe that chewing tobacco and snuff are safe alternatives to smoking cigarettes. That's wrong. This bill would require warning labels that indicate that smokeless tobacco causes mouth and gum cancer, serious oral diseases, and tooth loss. A study by Brown University reveals that just a few weeks of chewing tobacco can develop leukoplakia of the cheek and gums, which is the formation of leather patches of diseased tissue on the mouth.

The American Dental Association strongly supports this legislation, and calls tobacco use the number one cause of preventable disease in the United States. It should be a no-brainer to responsibly regulate such a dangerous product. And the FDA, the only agency charged with food and drug safety, is a logical Federal agency to place with this great and important responsibility.

I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I thank the gentleman from Colorado for yielding time.

This is a terrible bill. And we should vote down this rule. The bill is a de facto prohibition of tobacco. It's going to legislate a Big Tobacco monopoly. This bill is going to increase taxes, expand government bureaucracy at the expense of public health. This bill will decimate the family farm. This bill fails to focus on protecting our kids and instead, targets adult tobacco users and retailers.

This bill will increase black market activity, potentially funding criminal enterprises and terrorists' activity. This bill precludes the development of reduced-risk products. The advertising and communication provisions of this bill are duplicative and unconstitutional. This bill eliminates Federal preemption of marketing and advertising, allowing each State to set its own standards.

This bill is bad for the U.S. economy. It is another power grab on the part of the majority here. This is not something that we need, and it is not something that we should do.

I am going to urge my colleagues to vote ''no'' on the rule and to vote ''no'' on the underlying bill.

On that, Mr. Speaker, I reserve the balance of my time.

Mr. POLIS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. I thank the gentleman for yielding.

Mr. Speaker, this is a personal issue for me. I have experienced the tragedy that afflicts many tobacco users and their loved ones.

Both of my parents were chain-smokers in their early years. My mother and her friends started smoking in their teen years because they thought it was cool. My father, a physician, quit smoking when I was young, but our house reeked of secondhand smoke, and my mother continued to smoke until she could no longer hold a cigarette. Both parents died of lung cancer.

It was a nightmare, one I would spare other families. Now as a grandmother of three, I hope my grandkids will never smoke.

Mr. Speaker, approximately 4,000 kids try a cigarette for the first time each day. By the end of this week, thousands of Americans will have died from tobacco-related diseases and thousands more will become new, more regular users like my parents were.

We can take a big step towards breaking this deadly cycle by giving the FDA the authority to regulate tobacco products. This bill, which passed this House last July by a huge margin, is the product of a long crusade by my California colleague, HENRY WAXMAN, and is a big down payment on health care reform.

Mr. Speaker, California alone spends over $9 billion annually treating tobacco-related diseases; $9 billion could be far better spent on a failing health care infrastructure and increased access to health care.

This bill will save lives and scarce resources. Vote ''aye'' on the rule and ''aye'' on the bill.

Ms. FOXX. Mr. Speaker, I now would like to yield 6 minutes to my distinguished colleague from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I applaud my friend from California, Congressman WAXMAN, for his persistence over the past decade and all Members who have supported his legislation in the past. However, Mr. WAXMAN's legislation was drafted over 12 years ago and has not taken into account the positive outcomes from the Master Settlement Agreement and the changing conditions of the tobacco market in our country. Additionally, the legislation has unconstitutional provisions, and according to CBO, will only reduce smoking rates by 2 percent over 10 years.

Over the past 2 years I have participated in three markups of Congressman WAXMAN's bill, and I, along with my colleagues, have offered numerous amendments to improve and update Mr. WAXMAN's bill. Unfortunately, no significant changes have been incorporated, and our concerns have not been addressed in totality.

That is why I introduced a new bipartisan bill this year which I offer today as an amendment in the nature of a substitute to H.R. 1256. This substitute mirrors the legislation that I introduced with Congressman MIKE MCINTYRE of North Carolina which has strong bipartisan support, including the support of Chairman COLLIN PETERSON of the House Ag Committee along with Chairman JOHN SPRATT of the Budget Committee and other ranking members.

This strong bipartisan substitute amendment seeks to regulate tobacco by creating a new science-based, pragmatic harm-reduction strategy to improve public health. The amendment combines education, prevention, and cessation goals while using public policy to migrate over 45 million smokers to nonsmoking tobacco products and nicotine therapies which are scientifically proven to be significantly less harmful to human health and greatly assist in our efforts to decrease tobacco-related deaths and disease rates in our country.

I strongly believe that no tobacco products are safe. However, Americans today are left in the dark about the relative risks of all tobacco products, and it is false to assume that all tobacco products have equal health risks. Adult smokers deserve to understand the relative health risks of all tobacco products so that they can make informed health decisions.

According to the Royal College of Physicians, ''The application of harm reduction principles, to nicotine and tobacco use, could deliver substantial reductions in the morbidity and mortality currently caused by tobacco consumption.'' Making such information available to adult tobacco users is one of the purposes behind this substitute amendment.

Tobacco harm reduction adds to current tobacco-control policies in order to drastically improve our Nation's health outcomes. It is important to note that harm reduction strategies do

not replace tobacco cessation programs but work along with them. That is why when I first put this bill together, I was very, very hopeful that Mr. WAXMAN and I could combine our efforts, but unfortunately, that did not prevail.

If we can move our smoking population away from smoking products, the most dangerous tobacco products on our market, and move them to less risky tobacco and nicotine products as we move in this effort to wean them off nicotine and tobacco, we have a chance to decrease the adverse effects of tobacco by up to 90 percent over 20 years, according to the American Council on Science and Health. For smokers who are unwilling or unable to quit smoking, we must provide them with the information they can use to decrease their health risks.

Additionally, this substitute protects the core missions of FDA by creating a new harm-reduction agency within Health and Human Services to ensure we have a safe, secure food supply, pharmaceuticals, biologicals and medical device supply. Given the numerous news reports over the years of counterfeit and adulterated drugs and our tainted food supply, the last thing we should be doing is forcing the FDA to regulate an inherently dangerous product in carrying out a mission that is counter to its culture.

This substitute also goes further than the Waxman bill in protecting children because we require States to spend a larger percentage of their master settlement agreement for tobacco education, prevention and cessation efforts. In the last 10 years, States have spent just 3.2 percent of their total tobacco-generated revenue on prevention and cessation programs, and in the current fiscal year, no State is funding tobacco prevention programs at the level recommended by CDC.

Additionally, we require States to make it illegal for minors to purchase and possess tobacco products, aligning our Nation's tobacco policies with our Nation's alcohol policies. Not only will it be illegal for retailers to sell tobacco to minors, but now minors will be strongly discouraged from purchasing or possessing tobacco.

We also ensure that the Feds stay off our Nation's farms. We ensure that our farmers are not hit with additional Federal regulations that affect their traditional farming practices, and we make sure that these regulations stay within the purview of the agriculture department.

Mr. WAXMAN's legislation will directly and indirectly affect farming practices, and I was quite surprised that the Parliamentarian ruled that the Agriculture Committee did not have jurisdiction on this bill. My amendment expressly prohibits the tobacco legislation from finding its way into today's farming practices.

Finally, this substitute calls for a blue ribbon study of tobacco advertising in our Nation. I am very concerned about the first amendment potential violations in the Waxman bill. It was discussed during the last two markups we have had before the Energy and Commerce Committee. You see, in 1996, 46 States, plus the District of Columbia, reached an agreement with the tobacco companies known as the Master Settlement Agreement. This agreement has proved extremely effective in regulating tobacco advertisements in our Nation.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. FOXX. Mr. Speaker, I yield the gentleman 1 more minute.

Mr. BUYER. It is important to note that the advertising restrictions reached in this agreement were voluntary. When we legislate such advertising restrictions, we violate the first amendment. So I'm very concerned, even if we take the rule that was done, the rule-making effort to place restrictions on advertising back in 1996 as then incorporated in this bill, in fact the Supreme Court has already ruled that unconstitutional. So to put that back in this legislation just throws this right back to the Supreme Court. To me as a lawyer, that's unconscionable. We shouldn't be doing that here on the House floor.

So when we legislate these advertising restrictions, we should never, never violate the first amendment. This is one of these really awkward positions where I find myself as a conservative Republican aligned with the ACLU. I also believe we must study ways in which we can better address tobacco advertising without violating the Constitution.

To conclude, we offer this substitute as a bipartisan effort, as an innovative and pragmatic health approach in addressing the harms of tobacco in this country. This substitute protects our children, jobs, farmers, retailers, and wholesalers while protecting our Constitution and protecting the health of our Nation.

Mr. POLIS. Mr. Speaker, the Buyer version is opposed by many credible health organizations, including the American Lung Association, the American Heart Association, the American Academy of Pediatrics, among many others who support the Waxman administration because it would protect children from tobacco marketing.

The Buyer bill falls short of banning brands that are potentially targeted to children like Mocha Taboo and Midnight Berry. It does not protect consumers from misleading health claims about so-called reduced-risk tobacco products, and it embraces smokeless tobacco as a means to reduce the harm caused by cigarettes. While certainly there should be sound, scientific investigation, and there is a process under the Waxman bill for doing that, we must not rush to prejudgment of what works and what doesn't.

Mr. Speaker, I yield 2 minutes to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN).

Mrs. CHRISTENSEN. Mr. Speaker, I rise today in strong support of the rule and in strong support of the Family Smoking Prevention and Tobacco Control Act.

Today, this body has the opportunity to take a long, overdue and significant step toward not only the regulation of tobacco—a product that is currently totally unregulated—but also on efforts to reduce the number of new smokers, especially children and adolescents who have been targeted by the tobacco industry for far too long.

I want to take this opportunity to thank Chairman WAXMAN for his unwavering commitment and leadership on this issue.

Because 7 in 10 African Americans who smoke choose to smoke menthol cigarettes, I am pleased that this bill provides provisions that accelerate the formation of the new FDA Tobacco Product Scientific Advisory Committee and directs it to issue recommendations on the use of menthol in cigarettes within 1 year of its establishment. It empowers States and communities to prevent the aggressive marketing that has the greatest negative impact in the hardest-hit communities and on our most vulnerable. It bans the additives used to manufacture flavored cigarettes that are marketed to children and creates a faster track for the development of smoking cessation and nicotine-replacement therapies.

As a physician who has seen firsthand the devastating impact that cigarette and tobacco products have on individuals and their families, I strongly urge my colleagues to reject the substitute, to vote ''yes'' on the rule and then ''yes'' to pass this legislation so that we as a Nation can finally regulate the leading cause of preventable cause of death in this country.

Ms. FOXX. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. To respond to the gentlelady's concern and her efforts promoting nicotine replacement therapies, there are over 45 million adult smokers in the United States. Each year approximately 2 million smokers use these nicotine replacement therapies in an attempt at quitting. The public success rate of nicotine replacement therapies is only 7 percent, meaning that only 7 percent of smokers who try to quit using nicotine replacement therapies are successful. To me, a 7 percent success rate is failure. It's failure. So we need to try something different, and that's why we have this substitute.

□ 1845

Mr. POLIS. Mr. Speaker, the Waxman bill does allow something different to be tried. It sets up a scientific process for review to make sure that all technologies that might help wean smokers away are allowed into the marketplace in a manner that makes sure that they don't publish misleading claims regarding their health.

Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Mr. Speaker, I rise in strong support of the Family Smoking Prevention Act; and, Mr. Speaker, I want to take the time to thank Mr. WAXMAN for all of his great work in making it possible for us to have a vote on this bill.

We all know that tobacco is a killer. We all know that it causes cancer and respiratory problems. We all know that smoking is addictive and that most people who are hooked began smoking as children. We cannot and we must not wait a moment longer to protect our children from this killer. We must break the cycle. This bill is the right approach.

Children should not see cigarette advertisements from their school playground and at sporting events. Children should not be able to buy cigarettes in a vending machine. And children should not be the target of advertisements designed to get them hooked on smoking.

We should know what it is in the cigarettes that people smoke. People try to fool us and say that certain things are not in the cigarette. With the passage of this bill, for the first time, the FDA will know the ingredients in a cigarette, and they will be able to reduce or eliminate harmful ingredients.

Mr. Speaker, we cannot and must not allow another child to get hooked on cigarettes or on tobacco. We must pass this rule, and I support the rule and I strongly support the bill.

Ms. FOXX. Mr. Speaker, I now yield 3 minutes to the gentleman from North Carolina (Mr. COBLE), the dean of the North Carolina delegation.

Mr. COBLE. Mr. Speaker, I thank the gentlelady from North Carolina.

Mr. Speaker, I rise in opposition to the Family Smoking Prevention and Tobacco Control Act.

During my tenure in the Congress, I have consistently opposed granting the Food and Drug Administration the authority to regulate tobacco. I do so based upon my philosophical beliefs and the ramifications that this legislation would impose upon my congressional district and my State.

It is my belief that allowing the FDA to regulate tobacco in any capacity would inevitably lead to FDA regulating the family farm. This creates uncertainty and adds another burden to the already overwhelmed FDA.

I, furthermore, have concerns with the negative impact H.R. 1256 would have upon tobacco manufacturers, their employees, retailers, and wholesalers.

It is ironic, Mr. Speaker, that the very day a 62 cent tobacco tax goes into effect to fund the Children's Health Insurance Program that we would debate legislation to create further hardship for the tobacco industry.

H.R. 1256 is misguided, in my opinion. It does not achieve the goals identified by proponents. Instead, it will further exacerbate an already stretched FDA, negatively impact manufacturers and farmers, and create a strain on Federal revenues to the Treasury.

I do not come to the House floor tonight without solutions, Mr. Speaker. The bipartisan Youth Prevention and Tobacco Harm Reduction Act provides a different alternative, offering harm reduction strategies through the Department of Health and Human Services. I encourage its consideration and oppose H.R. 1256.

Finally, Mr. Speaker, tobacco is a product that is lawfully grown, lawfully marketed, lawfully manufactured, and lawfully consumed. We do not need the FDA inserting its oars into these waters.

I thank the gentlelady from North Carolina.

Mr. POLIS. I would remind the gentleman that the FDA is the primary agency charged with food and drug safety and, as such, to ensure the safety of our Nation's food supply and safety of our Nation's drug supply is the logical place at which to reside the regulation of tobacco products.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. I thank the gentleman for yielding to me, and I rise in support of the rule, and I rise in strong support of the bill. I'm an original cosponsor of the Family Smoking Prevention and Tobacco Control Act, and I am absolutely delighted to support its passage today.

There are at least 438,000 reasons to vote for this bill, and each one represents a life lost to tobacco use each year. It's staggering to realize that smoking kills more people than alcohol, AIDS, car crashes, illegal drugs, murder, and suicides combined.

My own State of New York mourns the loss of over 25,000 adults each year due to smoking, not to mention 2,000 New Yorkers who die each year from exposure to secondhand smoke. As if this isn't tragic enough, there are thousands of children at risk for the same fate, with over 3,600 youth taking up smoking every single day.

And our States, desperately trying to control soaring budget deficits and stretch scarce dollars during this economic downturn, simply cannot afford the billions of dollars in health care costs, $8 billion lost annually to New York alone, caused by tobacco use.

Today is a new day, Mr. Speaker. It's time that we close the gaps in our laws which have allowed tobacco use to be unregulated with devastating consequences. Granting the FDA the authority to effectively regulate the manufacturing, marketing, labeling, distribution, and sale of tobacco products will ultimately have a profound effect on reversing the public health crisis we face today.

So, in conclusion, today we vote for our Nation's children and families. I urge all of my colleagues to join me in strong support of the Family Smoking Prevention and Tobacco Control Act.

Ms. FOXX. Mr. Speaker, I now yield 5 minutes to the distinguished gentleman from Texas (Mr. POE).

Mr. POE of Texas. Mr. Speaker, I thank the gentlelady from North Carolina for yielding.

Mr. Speaker, the so-called Family Smoking Prevention and Tobacco Control Act really doesn't help anyone. It's just feel-good legislation that makes Big Government bigger and costlier.

It certainly doesn't help stop smokers from smoking. Our own Congressional Budget Office estimates that smoking by adults would decline by only .2 percent a year, or by just 2 percent over the next 10 years.

This bill certainly won't help farmers, many thousands of whom will struggle to comply with the bill's regulations and who will be forced to entertain the Federal tobacco police coming on their properties to inspect their crops.

It certainly won't help anyone who eats, drinks, or uses medication. An already dysfunctional and overburdened FDA will become even more distracted by this new Big Government program.

And the bill certainly won't help Federal law enforcement officials. They should spend their resources policing real crime rather than arresting people for violating the tobacco laws. Regulations that drive up the cost of cigarettes and reduce their appeal will only benefit the smuggling industry.

One advocate of the Big Government approach in this bill told a Senate committee that, We want to create Marlboros so they are like lard, but we want to regulate the contents, we want to regulate the toxicity, we want to regulate everything so it sits on the shelf and no one uses it, even though it's legal. That, Mr. Speaker, is a prescription for more prohibition that will lead to smuggling, lost revenue, and lawlessness.

On top of everything else, H.R. 1256 places additional Federal restrictions on tobacco advertising. In other words, it's more speech control by the Feds. Some of the Federal regulations on advertising in H.R. 1256 include the following specifications for the size of warning labels on tobacco products, and let me quote.

''The text of such label statements shall be in a typeface pro rata to the following requirements:

45-point type for a whole-page broadsheet newspaper advertisement;

39-point type for a half-page broadsheet newspaper advertisement;

39-point type for a whole-page tabloid newspaper advertisement;

27-point type for a half-page tabloid newspaper advertisement;

31.5-point type for a double-page spread magazine or whole-page magazine advertisement;

22.5-point type for a 28 centimeter by 3 column advertisement; and

15-point type for a 20 centimeter by 2 column advertisement.''

Doesn't the government have better things to do than regulate the type of font used in tobacco advertising? Mr. Speaker, we have gone a little too far.

The CBO estimates that the new fees on tobacco companies would be about

$235 million in fiscal year 2009. The country's in a recession, people are out of jobs. Is this really the best time to tax companies for a program that really, on its face, will not work even though it sounds good?

This is not reform. It's mindless Big Government that will only create more problems than the one it claims to address. I urge my colleagues to vote against more government bureaucracy, vote against this bill that won't stop smoking, vote against the rule and final passage.

And that's just the way it is.

Mr. POLIS. Mr. Speaker, the gentleman from Texas mentioned 2 percent decrease in smoking over 10 years. I will say that every cigarette not smoked, every person who never starts is a life saved.

One of my late constituents, Ms. Susan DeWitt of Lafayette, passed away of lung cancer this last year. Posthumously published on her Web site is a very powerful statement which I will submit in its entirety to the RECORD but would like to quote from as follows, in part.

''Just prior to being told I suffered from stage IV lung cancer, Dr. Karen Kelly, an oncologist at the University of Colorado Cancer Center, lifted her arms and emphatically exclaimed, 'We have to raise the awareness of lung cancer.'

''With those words resonating in my head, I thought back to those high school moments and the few drags I took from my cigarettes. I thought of the precious few years that followed. Years that would include a marriage, a son, my youth and cigarettes. I remembered the day I said, 'No more.' That was the day I was given another diagnosis by my doctor, I would again be a mother. That day was 14 years ago . . .

''The day I quit, I was 27 years old. Lung cancer was something I understood the elderly suffered from. It was nothing a young mother of two need bother herself with. I was 28 when my daughter was born. I was young, in love, and beginning to walk my path of life . . . At 37, I was given the gift of another daughter.

''Then, standing there listening to this oncologist tell me I have stage IV lung cancer. I was only 39.''

Ms. DeWitt dedicated the remainder of her life to educating people about the danger of cigarettes. I had the opportunity to speak to her husband just yesterday who shared with me the message that she shared with so many Americans. There is no free ride. There is no break. Don't start smoking.

This bill will help prevent children from ever starting to smoke and help prevent many, many cases of lung cancer and many, many deaths that disrupt families and cause a great risk to our public health as well.

[From the Dailycamera, Oct. 4, 2007]

LUNG CANCER EDUCATOR DIES AFTER LONG BATTLE

(By Cindy Sutter)

Susan DeWitt, a Superior mom who made a widely distributed DVD about her family's struggle with her lung cancer, died Wednesday. She was 43.

''She died at home with her family members holding on to her,'' said DeWitt's husband, Randy.

DeWitt, a Boulder County court reporter for eight years and founder of the Susan L. DeWitt Foundation for Extended Breath, was diagnosed with Stage IV lung cancer in 2004 at the age of 39. Although DeWitt was a light smoker in her teens and 20s, she quit in 1992. After her diagnosis, she made it her mission to warn young people that even casual smoking can cause cancer. The DVD—''Lung Cancer, Through My Children's Eyes''—begins with this line from her son, Cody, then 19: ''There are some things in life that people shouldn't have to go through.''

Then this from his sister, Gabrielle, then 13: ''I was afraid to go to sleep at night.''

The film, now on You Tube as well as available on DVD through the foundation, has been distributed to school districts in Colorado and around the country. The family has subsequently made music videos about the subject.

Those who knew DeWitt say she touched people, not only with her DVD, but with the grace and courage with which she faced her illness and treatment—which included multiple rounds of chemotherapy and brain surgeries.

Dan Hale, who retired as a Boulder County District judge last fall, called DeWitt's spirit even as she became gravely ill ''truly incredible.''

''Why this happened is one of those great mysteries of life, but despite that, she wanted to see how she could benefit others,'' Hale said.

Rob Harter—lead pastor at Larkridge Church in Erie, where the DeWitts attend—remembers being at the hospital with the DeWitts when Susan was being prepped for a second brain surgery. She was giving Randy last-minute instructions on gifts she had bought for them to open during her surgery.

''Right before they were to wheel her away for three- to four-hour surgery, what she was thinking about was, 'Make sure you get the gifts for the kids in the car,' '' Harter said. ''Her idea was to not have them focused on her pain. It's a powerful example of how she was very other-centered in her approach to life.''

Randy DeWitt said she touched many people.

''Her group of friends is very vast,'' he said. ''She had a way of speaking to and treating people with respect. . . . If you had a troubled look on your face, Susie would attend to you.''

The DeWitts' story and clips of the DVD were featured on ''Good Morning America'' and ABC's ''World News Tonight'' in 2006. The DeWitts estimate that at that time about 15 million people had heard of her documentary through those national news sources, articles in local newspapers, features on local TV news, speaking engagements and distribution of the DVD.

Susan, who was born in Wheat Ridge and graduated from Arvada High School, got the idea for the film after seeing a group of teenagers smoking outside the Westminster Promenade shortly after her diagnosis.

With their suburban bedrooms as the simple backdrop, the documentary shows Cody and Gabrielle talking about how their mother's cancer has upended life as they once knew it.

''Now comes the hard part,'' Cody says in the film. ''What if my mom dies?'' The DVD shows footage of him graduating from high school with the sound of his family yelling, ''Woo-hoo!''

''I want her to be there when I graduate from college,'' he says.

The foundation will continue its work, distributing the DVD and music videos. The family plans to expand its focus to help people deal with a diagnosis of terminal cancer.

Randy DeWitt said the children are doing well. He and Susan were frank about her illness from the beginning, even with their youngest child, Gianina, now 6.

Cody is attending the University of Northern Colorado part-time. He's in his fourth year. Gabrielle is a sophomore at Monarch High School. Gianina is a first-grader at Superior Elementary.

''The kids are pretty resilient,'' Randy said. ''My 6-year-old is giving us a lesson on how to deal. She's talked to me about this. She gets it. She knows what death is. She knows that Mommy's not coming back, and she's OK.''

RAISING THE AWARENESS AND PREVENTION OF LUNG CANCER

Just prior to being told I suffered from stage IV Lung Cancer , Dr. Karen Kelly, an Oncologist at the University of Colorado Cancer Center, lifted her arms and emphatically exclaimed, ''We have to raise the awareness of Lung Cancer''.

With those words resonating in my head, I thought back to those high school moments and the few drags I took from my cigarettes. I thought of the precious few years that followed. Years that would include a marriage, a son, my youth and cigarettes. I remembered the day I said, ''No more''. That was the day I was given another diagnosis by my doctor, I would again be a mother. That day was fourteen years ago. That day came after a few precious years clouded by smoke.

The day I quit, I was 27 years old. Lung cancer was something I understood the elderly suffered from. It was nothing a young mother of two children need bother herself with. I was 28 when my daughter was born. I was young, in love and beginning to walk my path of life. At 37, I was living a life some would call a fairy tale. At 37 I was given the gift of another daughter.

Then, standing there listening to this oncologist tell me I have stage IV lung cancer. I was only 39.

I knew at that very moment what God had designed for me. My purpose was to open a Foundation that would focus on raising the Awareness and Prevention of Lung Cancer and save other families of its horrific effects.

The metastasis to my brain would raise its' ugly head at 41. Lung cancer had moved into my brain in September of 2004, which just fueled my passion. The picture attached was taken with my youngest daughter after my first of three brain surgeries. The ''head band'' is actually the incision made by the brain surgeon and sutured shut by 32 staples.

What you need to know is this; nearly a half a million Americans will die from illnesses due to cigarette smoke this year.

A third of those will be lung cancer. As a woman, I need to tell you that women with a smoking history are ten times (10X) more likely to die from lung cancer than they are from breast cancer.

With that, know that the Susan DeWitt Foundation for Extended Breath (SLD Foundation) has a mission to raise the awareness and prevention of lung cancer and related illnesses. Illnesses that endanger tobacco users and non-users. Our focus is to: isolate our children from ETS (Environmental Tobacco Smoke), educate our youth as to the consequences of smoking and to assist ''at risk'' people by resolving addiction, creating a method of early diagnosis and increasing survival rate.

I reserve the balance of my time.

□ 1900

Ms. FOXX. I would like to enter testimony from Commissioner Steve

Troxler into the RECORD, and I would like to recognize Mr. BUYER from Indiana again for 5 minutes.

TESTIMONY OF NORTH CAROLINA AGRICULTURE COMMISSIONER STEVE TROXLER, SUBCOMMITTEE ON RURAL DEVELOPMENT, BIOTECHNOLOGY, SPECIALTY CROPS AND FOREIGN AGRICULTURE—MARCH 26, 2009

Good morning, Mr. Chairman and members of the committee. Thank you for inviting me here today to talk about a topic I know very well.

I grew tobacco in Guilford County, North Carolina, for more than 30 years. I dealt with dry weather, wet weather, the steady decline of quotas, and the end of the federal price-support system.

As North Carolina's Commissioner of Agriculture, I have seen tobacco production bottom out following the end of federal price supports. And I have seen it rebound.

North Carolina produced nearly 385 million pounds of flue-cured tobacco on 171,000 acres last year. We are still the nation's leading producer of flue-cured tobacco, despite the fact that we now have less than 3,000 tobacco farmers. That might seem like a lot, but in 2002, we had 8,000 tobacco farmers.

When it comes to tobacco, I have seen a lot. But I have never seen the situation facing North Carolina's tobacco farmers today.

Tobacco farmers are under siege. First, Congress raised the excise tax on cigarettes by 62 cents a pack. Now many states are lining up to do the same. In North Carolina, Governor Perdue has recommended raising the tax on cigarettes by $1 per pack.

The consequences for our farmers will be severe. The increase in the federal excise tax hasn't even taken effect yet, but it has already impacted North Carolina farmers. Cigarette companies have reduced 2009 contracts with our farmers by as much as 50 percent.

If the state excise tax goes up, too, our growers will be hurt even more. And, this increase could also lead to job losses in the manufacturing sector.

Tobacco manufacturing employs more than 10,000 North Carolinians and pays average wages of more than $86,000 a year. That's more than twice the state's private industry average of $39,000. The last thing North Carolina—or any state—needs right now is more lost jobs.

In addition to higher taxes, Congress is considering regulating tobacco. Congressman WAXMAN's bill would put tobacco under FDA oversight. This is ill-advised. FDA's focus right now should be, and needs to be, on food safety. Expanding FDA's mission would dilute its effectiveness in protecting our nation's food supply.

Chairman MCINTYRE and Indiana Congressman BUYER have introduced a bill that would create a new agency within the Department of Health and Human Services to oversee tobacco products. One of the things I like about this bill is that it would not subject farmers to additional regulations on the way they grow tobacco. That's good.

North Carolina growers increasingly rely on export markets. In fact, tobacco is our most valuable agricultural export, valued at more than $1 billion. Additional regulation would put our growers at a competitive disadvantage in international markets.

Agriculture is by far North Carolina's largest industry, with a $70.8 billion economic impact. Tobacco manufacturing represents almost $24 billion in added value for North Carolina's economy.

On average, a single tobacco plant is worth 71 cents in revenue for a U.S. farmer. That same plant will yield an average of $15.74 in state and federal taxes on tobacco products. This money supports a variety of economic and health programs. A decrease in tobacco revenues will ultimately hurt states' ability to carry out programs that benefit many citizens.

In closing, I want to say that farmers must endure many hardships. They have to deal with the weather and manage their input costs amid fluctuating commodity prices. As I've said many times though, the single greatest factor in a farmer's ability to make a living isn't the weather, but government policy.

I urge you to make wise policy decisions concerning the future of our nation's tobacco farmers. Your decisions will ripple throughout the states, in communities both large and small. If you regulate and tax U.S. tobacco farmers out of business, America will become reliant on foreign tobacco that is not subject to the same high standards. The situation will be no different from the many problems with imported foods that our nation has experienced in recent years.

Please choose wisely. Thank you.

Mr. BUYER. I wanted to touch on just a few things. I don't believe that the gentleman from Colorado meant to do this, so I wanted to make sure to correct any potential false misperception.

The Buyer amendment does not allow for false and misleading advertising. So when you look at the existing State and Federal law adequately today, it protects against false and misleading advertising in a range of consumer products, which also includes tobacco.

Mr. POLIS. Will the gentleman yield?

Mr. BUYER. I yield to the gentleman from Colorado.

Mr. POLIS. What I stated—I believe in the affirmative—is the Waxman bill prevents false and misleading advertising.

Mr. BUYER. Reclaiming my time, the point is that there are existing State and Federal laws, including the Master Settlement Agreement, which protects against false and misleading advertising in a range of these tobacco products. With regard to the MSA—the Master Settlement Agreement—it's administered by the attorneys general of the 46 States, including the District of Columbia.

So I don't want the gentleman's affirmative statement to somehow mean that we don't. That was my point of clarifying the RECORD.

In addition, the consumer fraud statutes in each State are also applicable to tobacco products and, at the Federal level, the Federal Trade Commission has—and enforces—section 5 regarding false and misleading jurisdiction over tobacco products. The FDA currently has authority over tobacco advertising and makes therapeutic and health claims.

I would ask the gentleman from Colorado a question because he was talking about the FDA. My question to the gentleman from Colorado would be: Has the FDA ever regulated an inherently dangerous product, is the gentleman aware?

Mr. POLIS. The program is fully funded with user fees to set up within the FDA the ability to regulate tobacco products.

Mr. BUYER. Today. My question is: Has the FDA today ever regulated an inherently dangerous product?

Mr. WAXMAN. Will the gentleman yield?

Mr. BUYER. I yield to the gentleman from California.

Mr. WAXMAN. I would point out that even though cigarettes kill 400,000 people a year in this country, it is not regulated by any agency of the government. While it is an inherently dangerous product because it's the only product that, when used as intended, kills and makes people sick. It is not regulated.

The FDA is the ideal place to have it regulated because they have the scientific expertise. They know how to regulate. They have been acting as a regulator. This is where our bill would place the responsibility.

Mr. BUYER. Reclaiming my time, since two speakers chose not to answer my questions, I then therefore must assume that by silence they're not aware of the FDA ever in its past regulating an inherently dangerous product.

Therein lies the challenge that we have. The FDA is the gold standard with regard to the protection of our food supply, our medical devices, our biologics, and our pharmaceuticals. So right now the FDA—we all know the FDA is overworked and under-resourced.

So when we look at that agency, the last thing we should be doing is taking the FDA and overburdening them with a new mission that is counter to their culture. That's the issue here.

You see, the difference between the Waxman and the Buyer and the McIntyre approach is this: Both of us seek to regulate tobacco. Mr. WAXMAN chooses the FDA to do it. We say that the world even recognizes that the FDA is stressed in doing its job.

You see, 80 percent of our domestic drug supply is comprised of ingredients produced in foreign countries—increasingly produced in less developed nations. So the FDA has the capability to inspect only a small percentage of foreign drug manufacturing facilities.

So when you think about it, we have 3,000, there could be approaching 4,000, of these foreign manufacturing facilities, and we are only inspecting 200 to 300. If we do that at that rate, by the time we get through all of them, it will be 13 years.

So when you think about all the stress that we're presently placing on the FDA, the last thing we should be doing is giving it another mission counter to its core mission.

Also, when I think about trying to protect our drug supply, not only with regard to how they're manufactured, but let's talk about the products that are coming into the country.

When you look at the 11 international ports of entry run by the United States, coupled with the two by FedEx and UPS, that's 13 international ports of entry. On any given day, each of those ports of entry have between

30,000 and 35,000 drug packages that are coming in.

Now let's just do the math—and let's be conservative. Of the 13 international mail facilities, take 13 times 30,000 drug packages. That's 390,000.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. FOXX. I yield the gentleman another 2 minutes.

Mr. BUYER. So we continue to do this math. Thirteen international mail facilities times 30,000 drug packages. That's 390,000 times 365 days a year. That's 142,350,000 drug packages.

Now why am I taking time to do this? It's because if 80 percent of these drug packages—every time the FDA does a spot check, they find that these drug packages are counterfeited, adulterated. They're knockoffs. A very small percentage are actually even sent to labs. So the FDA is not being able to do its job to protect our Nation's drug supply.

With regard to food, Americans eat food imported from 150 countries and processed in 189,000 plants scattered all over the world. Here in the United States, FDA inspectors visit every food processor about once every 10 years. FDA examined less than 1 percent of the 7.6 million fresh produce lines imported into the United States from fiscal years 2002 to 2007.

So what we have here is we recognize that Congress, over the last 20 years, has continued to lump more and more jobs and missions on FDA. So when the gentleman from Colorado said it only makes sense that we give it to FDA, well, I disagree.

That's why we want to create a separate agency called the Harm Reduction Agency Under under FDA to—with a laser beam—recruit some of those great scientists and build that science base to regulate tobacco products along a harm-reduction strategy.

I don't support tobacco. I don't use tobacco products. But I don't want to leave 45 million smokers out there to an abstinence approach, whereby it's either smoke or die or go to a harm-reduction therapy, which only has a 7 percent success rate. That's what we're kind of faced with. I don't want to do that.

So I think if we combine our efforts here, at some point in time we're going to have to get together on this if we really want to promote public health for the country.

Mr. POLIS. The gentleman, Mr. BUYER's proposal, rather than using an agency that exists, would create a new agency and then go on not to fund that new agency. It's fiscally irresponsible to create a new regulatory agency but fail to provide it with any new funding to do the job. The FDA is up to the task, given the funding which this bill provides with user fees.

Mr. Speaker, tobacco is the deadliest product on the market today. It kills over 400,000 Americans each year. Despite this grim statistic, tobacco companies have enjoyed a great deal of influence over public policy, avoiding the appropriate oversight of their dangerous business.

By giving the FDA the authority to exercise their proper oversight duties, we strip Big Tobacco of their special privileges and power. We owe consumers the same level of protection with regard to tobacco use as food and drink consumption, prescription and over-the-counter drugs, and even makeup and cosmetics. Why should tobacco, such an obviously harmful product, not be subject to the same scrutiny?

The FDA is more than capable of handling this new responsibility. We entrust the most sensitive regulation oversight to the Food and Drug Administration. We must give this agency the opportunity to succeed, providing the necessary resources, which the Waxman bill does, to get the job done. It's the most appropriate agency to regulate these deadly products.

Tobacco companies have long taken advantage of this vulnerability by promoting their products through cartoon advertisements, tobacco theme merchandise products, and flavored products that appeal to kids.

By barring the sale of fruit, chocolate, and clove-flavored tobacco products, this bill would protect the health of children who are lured to smoking by these candy-like flavors, with little if any impact on adults' enjoyment of tobacco.

Mr. BUYER. Will the gentleman yield?

Mr. POLIS. I yield to the gentleman from Indiana.

Mr. BUYER. You have been talking about tobacco companies. I don't have tobacco companies supporting my bill. Are there any supporting the Waxman bill?

Mr. POLIS. Reclaiming my time, we can find that out from the gentleman.

I would read a number of groups that are backing the Waxman bill, including the American Lung Association, the American Association of Respiratory Care, the American College of Preventative Medicine, the Association of Schools of Public Health, the Lung Cancer Alliance, the Oncology Nursing Society, and Oral Health America, among many others.

Mr. BUYER. Will the gentleman yield?

Mr. POLIS. No. Let me finish my statement. Opponents ask kids to make grave health-related choices with incomplete information and hold these kids responsible for childhood mistakes as they would a fully aware adult.

When 80 percent of kids smoke the most heavily advertised brands, we can't help but infer that the ads influence the children.

Big Tobacco claims they don't market to kids. Yet, they continue to do a pretty good job of getting kids to use their product. This has got to change.

This legislation will require that tobacco products marketed as safer than other tobacco products are in fact demonstrated to be safer with scientific proof. By providing the Health and Human Services Secretary with authority to regulate tobacco product standards and product testing based on scientific evidence, this legislation will promote and protect the Nation's public health.

Far too long we have not followed doctor's orders, so to speak, with regard to tobacco use. Science tells us a great deal about the causes of disease and the risk of certain behavior. This legislation puts those scientific findings at the forefront of policymaking by the Department of Health and Human Service.

The bill also promotes public health by requiring the Health and Human Services Secretary to consider placing tobacco replacement products on a fast track FDA approval process. If we want Americans to stop smoking, we must provide them the help they need to kick the habit.

By creating the special category of small tobacco manufacturers, the bill ensures that small businesses have the assistance they need for the FDA to comply with the new regulations.

Supported by over 1,000 health and faith groups from across the country, this bill preserves States rights by not preempting State tobacco laws. It's extremely important to respect that many States, including my home State of Colorado, already recognizes the danger of smoking and the role regulation can play in keeping cigarettes out of the hands of kids.

My home State of Colorado is recognized as a national leader in tobacco control, demonstrated by our leadership in enacting a comprehensive smoke-free law that includes casinos and increasing our State tobacco tax to fund health programs.

Even with this legislation in place, health care costs in Colorado caused by smoking every year is over $1.3 billion. Nearly 15 percent of Colorado high school students still smoke. Nearly 6,000 kids in Colorado start smoking every day.

I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I now would like to yield 3 minutes to our distinguished colleague from Michigan (Mr. ROGERS).

Mr. ROGERS of Michigan. I would like to thank the gentlelady.

I rise with a little bit of disappointment this evening about the state of this bill because we were told when this bill passed last year—which I supported this bill—that there would be no money taken from the general fund to implement this new program. No money.

I heard it often repeated, heard it repeated in committee this year. No money from the general fund would go to support this new program. And let me tell you why that's a good idea not to take any money from the general fund to do what we all would agree needs to happen.

We need to have some form of oversight and regulation of tobacco products. Last year, the FDA inspected

roughly 6,000 of the 189,000 food facilities under its jurisdiction. That's about 3 percent. Americans eat food imported from 150 countries and processed in 189,000 plants scattered from China to Fiji. But in 2007, the FDA inspected just 96 of those plants—96 out of 189,000 plants.

And what does this bill do? It takes money from those kinds of operations from the FDA's general fund to implement this new government program.

The FDA examined less than 1 percent of the 7.6 million fresh produce lines imported to the United States from 2002 to 2007.

□ 1915

We had just the salmonella outbreak. Just the salmonella outbreak, 550 illnesses and eight deaths in 43 States.

So what you are saying is, you know what, it is okay to stop those programs, take money out of those programs. FDA, this is more important to start this new program.

Well, imagine if you are a pediatric cancer patient and you are waiting today for the dozens of approvals that are going through the process today. But you know what? This is more important. This new government program is more important than pediatric cancer. It is more important than chronic pain. There are drugs that would treat chronic pain and cancer and other conditions, including new technology to prevent pain killer abuse that are going through the process now, and you stop it and you slow it down because you take money from the general fund. And it is time that you cannot get back.

They say, well, it only happens for 6 months, Congressman ROGERS. We only take that money for 6 months, $1, 1 minute away from the scientist who is going to develop the cause or the treatment for something like cancer or pediatric cancer or chronic pain care. We should not interrupt that process. Those dollars, that time is too precious.

Mr. Speaker, this is really a dangerous precedent.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. FOXX. I yield the gentleman another 30 seconds.

Mr. ROGERS of Michigan. A vaccine can now protect women from a strain of HPV that causes most cervical cancers. Think of this, the FDA is now reviewing applications to approve HPV vaccinations for women in their mid 40s. And when you do this program the way you are doing it, you take money away from those programs. So maybe they don't get it in 3 months or 6 months, maybe it is 1 year. Maybe you give them a delay in this operation that costs the lives of real Americans.

Mr. Speaker, I urge the rejection of this bill. We ought to go back and say nothing ought to impede food safety and the safety of the medicines and the cures that are getting ready to come to the United States of America.

Mr. POLIS. Mr. Speaker, I would inquire of the gentlelady if she has any remaining speakers.

Ms. FOXX. Yes, we do.

Mr. POLIS. I am the last speaker for my side, so I will reserve my time until the gentlelady has closed for her side and yielded back her time.

Ms. FOXX. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, as you know, we have had some really tough decisions lately. We have had to act boldly on many fronts to address the current financial crisis. People today are suffering, and they are unsure of their future. But I have faith in the American people.

Throughout history we have shown courage in the face of adversity, and today I am asking Members of this Congress to show courage by supporting the Youth Prevention and Tobacco Harm Reduction Act.

It is the only bill before this body that directly addresses the issue of youth smoking in this country. It is the only piece of legislation that builds on the success that we have seen in youth smoking rates, which are down more than 50 percent in the last 10 years.

How did this happen? It happened because the American people, parents, teachers, and the retail community, came together and said that we are going to do something about kids smoking, and they have.

More than 10 years ago, Congress passed legislation that included the Synar amendment. This amendment requires the States to enforce laws prohibiting the sale of tobacco products to individuals under 18 years of age. Synar seeks to develop a strategy to help States achieve a retailer violation rate of 20 percent or less.

In 2006, for the first time, the Secretary of HHS found that no State was out of compliance, and the average rate of tobacco sales to minors was at its lowest in history. This is a great achievement, but we cannot be complacent. We must look to the future and build on the success of the last 10 years.

Our esteemed colleagues, in particular Mr. MCINTYRE, the chairman of the Ag Committee, the chairman of the Budget Committee, the ranking members, have given us an opportunity to do just that and vote on this substitute.

The Youth Prevention and Tobacco Harm Reduction Act is a tough measure that allows us to really address youth tobacco use in the 21st century. The substitute requires that the States spend a minimum of 20 percent of their tobacco settlement money on prevention, cessation, education, and harm-reduction programs.

Mr. POLIS. I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, the Family Smoking Prevention and Tobacco Control Act will not serve to advance the cause of improving public health, and instead will serve only to act as an unnecessary and expensive regulatory scheme at the expense of our rural farming communities, our small businesses, and the American economy.

This bill includes more than $5 billion in new tax increases on tobacco companies and gives sweeping control of the tobacco market to the FDA. This bill imposes undue bureaucratic and logistic hardships on tobacco manufacturers by burying them under multiple layers of regulation.

FDA regulation will have a devastating economic impact on rural tobacco companies, their employees, associated businesses, and the largely rural communities which they support. As Department of Health and Human Services Secretary Leavitt noted, this legislation could also be viewed by foreign governments as a hostile trade action. Many of the clove and other flavored cigarettes that are banned under this bill are manufactured in foreign countries.

This also grants de facto power to ban existing conventional tobacco products. It will dramatically increase black market activity. It favors larger companies over smaller companies. It favors existing products over new products. It creates insurmountable barriers to development of reduced-risk products. It limits the ability to communicate with adult consumers. It eliminates existing Federal preemption of State limits on labeling, marketing, and advertising. And, it grants FDA indirect authority to mandate changes in farming practices.

In effect, this is a very, very bad bill. I urge my colleagues to vote against the rule and to vote against the bill. We do not need more examples of Big Brother as we are seeing in this Congress and in this administration.

I yield back the balance of my time.

Mr. POLIS. Mr. Speaker, protecting the health of our Nation's children is of paramount importance to me, personally, to all of us, and to the strength and security of our Nation. We need to work to ensure that children have access to adequate health care, including vaccinations and attention from medical professionals.

Tobacco use is the single most preventable cause of death in the United States, and yet it continues to receive less regulation than a head of lettuce. Indeed, even pet food is regulated by the Food and Drug Administration.

When we pledge to safeguard our children's health, we are investing in where the return is, a generation of healthy, productive Americans. Congress not only has an obligation to provide adequate funding for programs that offer health care access and a healthy start for all children, but also a responsibility to step in and provide meaningful oversight and restore accountability. This bill embodies both of these commitments.

This is a personal issue for many of us. I had the opportunity to talk to another widow of a victim of tobacco

from Colorado last night. I spoke to Ms. Kathy Hughes of Loveland, who lost her husband. David succumbed to lung cancer. Again, the latter years of his life were dedicated to combating the dangers of secondhand smoke.

Just as my colleague from California, Ms. HARMAN, shared her own family experience with this, we too in my family have direct experience. My partner Marlin's late mother, Wendy Klein Reiss, passed away from lung cancer 2 years ago. It was a very painful thing to go through; and, of course, her wish and her dying breaths were that she never started smoking.

Americans across all political, demographic, and geographic lines have expressed overwhelming support for this legislation. The strong endorsement of hundreds of public health organizations for this bipartisan bill sends a powerful message.

The bill simply gives the FDA the long overdue authority to regulate tobacco products and reduce their devastating harm, just as they enjoy today for pet food and lettuce and cosmetics.

Today, we have an opportunity to protect millions of children across this Nation and to safeguard their future and prevent them from starting smoking. We have an opportunity to do the right thing, to save lives and to strengthen American families.

I urge a ''yes'' vote on the previous question and the rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H. CON. RES. 85, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010

Mr. POLIS (during consideration of H. Res. 307), from the Committee on Rules, submitted a privileged report (Rept. No. 111–73) on the resolution (H. Res. 316) providing for further consideration of the concurrent resolution (H. Con. Res. 85) setting forth the congressional budget for the United States Government for fiscal year 2010 and including the appropriate budgetary levels for fiscal years 2009 and 2011 through 2014, which was referred to the House Calendar and ordered to be printed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. WAXMAN. Mr. Speaker, pursuant to House Resolution 307, I call up the bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 307, the amendment printed in part A of House Report 111–72 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 1256

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Scope and effect.
Sec. 5. Severability.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act.
Sec. 102. Final rule.
Sec. 103. Conforming and other amendments to general provisions.
Sec. 104. Study on raising the minimum age to purchase tobacco products.
Sec. 105. Enforcement action plan for advertising and promotion restrictions.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

Sec. 201. Cigarette label and advertising warnings.
Sec. 202. Authority to revise cigarette warning label statements.
Sec. 203. State regulation of cigarette advertising and promotion.
Sec. 204. Smokeless tobacco labels and advertising warnings.
Sec. 205. Authority to revise smokeless tobacco product warning label statements.
Sec. 206. Tar, nicotine, and other smoke constituent disclosure to the public.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

Sec. 301. Labeling, recordkeeping, records inspection.
Sec. 302. Study and report.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2005, the cigarette manufacturers spent more than $13,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco marketing than adults: more than 80 percent of youth smoke three heavily marketed brands, while only 54 percent of adults, 26 and older, smoke these same brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the first amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration, and the restriction on the sale and distribution of, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes, and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in ensuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be reviewed in advance of marketing, and to require that the evidence relied on to support claims be fully verified.

(44) The Food and Drug Administration is a regulatory agency with the scientific expertise to identify harmful substances in products to which consumers are exposed, to design standards to limit exposure to those substances, to evaluate scientific studies supporting claims about the safety of products, and to evaluate the impact of labels, labeling, and advertising on consumer behavior in order to reduce the risk of harm and promote understanding of the impact of the product on health. In connection with its mandate to promote health and reduce the risk of harm, the Food and Drug Administration routinely makes decisions about whether and how products may be marketed in the United States.

(45) The Federal Trade Commission was created to protect consumers from unfair or deceptive acts or practices, and to regulate unfair methods of competition. Its focus is on those marketplace practices that deceive or mislead consumers, and those that give some competitors an unfair advantage. Its mission is to regulate activities in the marketplace. Neither the Federal Trade Commission nor any other Federal agency except the Food and Drug Administration possesses the scientific expertise needed to implement effectively all provisions of the Family Smoking Prevention and Tobacco Control Act.

(46) If manufacturers state or imply in communications directed to consumers through the media or through a label, labeling, or advertising, that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Depending upon the particular language used and its context, such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the product because of such regulation, inspection, approval, or compliance.

(47) In August 2006 a United States district court judge found that the major United States cigarette companies continue to target and market to youth. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(48) In August 2006 a United States district court judge found that the major United States cigarette companies dramatically increased their advertising and promotional spending in ways that encourage youth to start smoking subsequent to the signing of the Master Settlement Agreement in 1998. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(49) In August 2006 a United States district court judge found that the major United States cigarette companies have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction while also concealing much of their nicotine-related research. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products as provided for in this Act;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco-related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 503(g).

''(3) The products described in paragraph (2) shall be subject to chapter V of this Act.

''(4) A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 910 as sections 1001 through 1010; and

(3) by inserting after chapter VIII the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, packaging, logo, registered trademark, brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette'—

''(A) means a product that—

''(i) is a tobacco product; and

''(ii) meets the definition of the term 'cigarette' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

''(B) includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act.

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN COUNTRY.—The term 'Indian country' has the meaning given such term in section 1151 of title 18, United States Code.

''(10) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

''(11) LITTLE CIGAR.—The term 'little cigar' means a product that—

''(A) is a tobacco product; and

''(B) meets the definition of the term 'little cigar' in section 3(7) of the Federal Cigarette Labeling and Advertising Act.

''(12) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(13) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(14) RETAILER.—The term 'retailer' means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(15) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(16) SMALL TOBACCO PRODUCT MANUFACTURER.—The term 'small tobacco product manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the employees of each entity that controls, is controlled by, or is under common control with such manufacturer.

''(17) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(18) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(19) STATE; TERRITORY.—The terms 'State' and 'Territory' shall have the meanings given to such terms in section 201.

''(20) TOBACCO PRODUCT MANUFACTURER.—The term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished tobacco product for sale or distribution in the United States.

''(21) TOBACCO WAREHOUSE.—

''(A) Subject to subparagraphs (B) and (C), the term 'tobacco warehouse' includes any person—

''(i) who—

''(I) removes foreign material from tobacco leaf through nothing other than a mechanical process;

''(II) humidifies tobacco leaf with nothing other than potable water in the form of steam or mist; or

''(III) de-stems, dries, and packs tobacco leaf for storage and shipment;

''(ii) who performs no other actions with respect to tobacco leaf; and

''(iii) who provides to any manufacturer to whom the person sells tobacco all information related to the person's actions described in clause (i) that is necessary for compliance with this Act.

''(B) The term 'tobacco warehouse' excludes any person who—

''(i) reconstitutes tobacco leaf;

''(ii) is a manufacturer, distributor, or retailer of a tobacco product; or

''(iii) applies any chemical, additive, or substance to the tobacco leaf other than potable water in the form of steam or mist.

''(C) The definition of the term 'tobacco warehouse' in subparagraph (A) shall not apply to the extent to which the Secretary determines, through rulemaking, that regulation under this chapter of the actions described in such subparagraph is appropriate for the protection of the public health.

''(22) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 911, shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V.

''(b) APPLICABILITY.—This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or in sections 101(a), 102, or 103 of title I, title II, or title III of the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect, expand, or limit the Secretary's authority over (including the authority to determine whether products may be regulated), or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''(d) RULEMAKING PROCEDURES.—Each rulemaking under this chapter shall be in accordance with chapter 5 of title 5, United States Code. This subsection shall not be construed to affect the rulemaking provisions of section 102(a) of the Family Smoking Prevention and Tobacco Control Act.

''(e) CENTER FOR TOBACCO PRODUCTS.—Not later than 90 days after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish within the Food and Drug Administration the Center for Tobacco Products, which shall report to the Commissioner of Food and Drugs in the same manner as the other agency centers within the Food and Drug Administration. The Center shall be responsible for the implementation of this chapter and related matters assigned by the Commissioner.

''(f) OFFICE TO ASSIST SMALL TOBACCO PRODUCT MANUFACTURERS.—The Secretary shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small tobacco product manufacturers to assist them in complying with the requirements of this Act.

''(g) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this chapter, the Secretary shall endeavor to consult with other Federal agencies as appropriate.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) the manufacturer or importer of the tobacco product fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919 by the date specified in section 919 or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee;

''(5) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(6)(A) it is required by section 910(a) to have premarket review and does not have an order in effect under section 910(c)(1)(A)(i); or

''(B) it is in violation of an order under section 910(c)(1)(A);

''(7) the methods used in, or the facilities or controls used for, its manufacture, packing, or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(8) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 920(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be

issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act.

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

''(3) Beginning 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 3 years after such date of enactment, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after such date of enactment that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish, and periodically revise as appropriate, a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If enactment of the Family Smoking Prevention and Tobacco Control Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration pursuant to this subsection shall occur.

''(c) REGISTRATION BY NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment registered with the Secretary under this section shall be subject to inspection under section 704 or subsection (h), and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) REGISTRATION BY FOREIGN ESTABLISHMENTS.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) and shall include provisions for registration of any such establishment upon condition that adequate and effective means

are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) CONSULTATION WITH RESPECT TO FORMS.—The Secretary shall consult with the Secretary of the Treasury in developing the forms to be used for registration under this section to minimize the burden on those persons required to register with both the Secretary and the Tax and Trade Bureau of the Department of the Treasury.

''(3) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of February 15, 2007, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that—

''(i) the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary has previously determined, pursuant to subsection (a)(3) of section 910, is substantially equivalent and that is in compliance with the requirements of this Act; or

''(ii) the tobacco product is modified within the meaning of paragraph (3), the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions granted by the Secretary pursuant to paragraph (3); and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 21 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may exempt from the requirements of this subsection relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product that can be sold under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a

regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products, shall be considered as adult-written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult-written publications.

''(4) REMOTE SALES.—

''(A) IN GENERAL.—The Secretary shall—

''(i) within 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, promulgate regulations regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification; and

''(ii) within 2 years after such date of enactment, issue regulations to address the promotion and marketing of tobacco products that are sold or distributed through means other than a direct, face-to-face exchange between a retailer and a consumer in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products.

''(B) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to take additional actions under the other paragraphs of this subsection.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Secretary shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A);

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices; and

''(v) not require any small tobacco product manufacturer to comply with a regulation under subparagraph (A) for at least 4 years following the effective date established by the Secretary for such regulation.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

"SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULES.—

''(A) SPECIAL RULE FOR CIGARETTES.—Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

''(B) ADDITIONAL SPECIAL RULE.—Beginning 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a tobacco product manufacturer shall not use tobacco, including foreign grown tobacco, that contains a pesticide chemical residue that is at a level greater than is specified by any tolerance applicable under Federal law to domestically grown tobacco.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (c).

''(3) TOBACCO PRODUCT STANDARDS.—

''(A) IN GENERAL.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health.

''(B) DETERMINATIONS.—

''(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Secretary shall consider scientific evidence concerning—

''(I) the risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard;

''(II) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(III) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Secretary makes a determination, set forth in a proposed tobacco product

standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a tobacco product because the Secretary has found that the additive, constituent, or other component is or may be harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Secretary's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under subparagraph (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product; and

''(D) shall require tobacco products containing foreign-grown tobacco to meet the same standards applicable to tobacco products containing domestically grown tobacco.

''(5) PERIODIC REEVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) CONSIDERATIONS BY SECRETARY.—

''(1) TECHNICAL ACHIEVABILITY.—The Secretary shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

''(2) OTHER CONSIDERATIONS.—The Secretary shall consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or nontobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand.

''(c) PROPOSED STANDARDS.—

''(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(A) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(B) invite interested persons to submit a draft or proposed tobacco product standard for consideration by the Secretary;

''(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

''(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed tobacco product standard.

''(3) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(4) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(d) PROMULGATION.—

''(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a tobacco product standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(A) if the Secretary determines that the standard would be appropriate for the protection of the public health, promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

''(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(2) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Secretary shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard. If the Secretary determines, based on the Secretary's evaluation of submitted comments, that a product standard can be met only by manufacturers requiring substantial changes to the methods of farming the domestically grown tobacco used by the manufacturer, the effective date of that product standard shall be not less than 2 years after the date of publication of the final regulation establishing the standard.

''(3) LIMITATION ON POWER GRANTED TO THE FOOD AND DRUG ADMINISTRATION.—Because of the importance of a decision of the Secretary to issue a regulation—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

the Secretary is prohibited from taking such actions under this Act.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERRAL TO ADVISORY COMMITTEE.—

''(A) IN GENERAL.—The Secretary may refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

''(B) INITIATION OF REFERRAL.—The Secretary may make a referral under this paragraph—

''(i) on the Secretary's own initiative; or

''(ii) upon the request of an interested person that—

''(I) demonstrates good cause for the referral; and

''(II) is made before the expiration of the period for submission of comments on the proposed regulation.

''(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

''(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

''(E) PUBLIC AVAILABILITY.—The Secretary shall make a copy of each report and recommendation under subparagraph (D) publicly available.

''(e) MENTHOL CIGARETTES.—

''(1) REFERRAL; CONSIDERATIONS.—Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African Americans, Hispanics, and other racial and ethnic minorities. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).

''(2) REPORT AND RECOMMENDATION.—Not later than 1 year after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

''(2) PREMARKET REVIEW REQUIRED.—

''(A) NEW PRODUCTS.—An order under subsection (c)(1)(A)(i) for a new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007; and

''(II) is in compliance with the requirements of this Act; or

''(ii) the tobacco product is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 21-month period,

except that subparagraph (A) shall apply to the tobacco product if the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' means, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application under this section shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under subsection (b)(2), shall—

''(i) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Secretary finds that none of the grounds specified in paragraph (2) of this subsection applies; or

''(ii) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order under subparagraph (A)(i) may require that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPLICATION.—The Secretary shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product, the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a tobacco product for which an order was issued under subsection (c)(1)(A)(i), issue an order withdrawing the order if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was reviewed, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when such order was issued, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to

subsection (c)(1)(A)(i) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 912.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the authority of the manufacturer to market the product. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an order issued pursuant to subsection (c)(1)(A)(i) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' solely because its label, labeling, or advertising uses the following phrases to describe such product and its use: 'smokeless tobacco', 'smokeless tobacco product', 'not consumed by smoking', 'does not produce smoke', 'smokefree', 'smoke-free', 'without smoke', 'no smoke', or 'not smoke'.

''(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Food and Drug Administration and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Secretary.

''(g) MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) such order would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the

similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) issuance of an order with respect to the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF MARKETING.—

''(i) IN GENERAL.—Applications subject to an order under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—An order under this paragraph shall be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the order on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the order was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such postmarket surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is made available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the marketing of a product under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—An order issued under subsection (g)(1) shall be effective for a specified period of time.

''(5) ADVERTISING.—The Secretary may require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the product comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the order was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF AUTHORIZATION.—The Secretary, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product for which the Secretary has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception;

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product; and

''(F) establish a reasonable timetable for the Secretary to review an application under this section.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue

a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and which the applicant seeks to commercially market under this section.

''(m) DISTRIBUTORS.—Except as provided in this section, no distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act and shall be considered a violation of a rule promulgated under section 18 of that Act.

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

''(1) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand that the Secretary determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand; and

''(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco-related disease.

''(c) AUTHORITY.—The Secretary shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''(d) SMALL TOBACCO PRODUCT MANUFACTURERS.—

''(1) FIRST COMPLIANCE DATE.—The initial regulations promulgated under subsection (a) shall not impose requirements on small tobacco product manufacturers before the later of—

''(A) the end of the 2-year period following the final promulgation of such regulations; and

''(B) the initial date set by the Secretary for compliance with such regulations by manufacturers that are not small tobacco product manufacturers.

''(2) TESTING AND REPORTING INITIAL COMPLIANCE PERIOD.—

''(A) 4-YEAR PERIOD.—The initial regulations promulgated under subsection (a) shall give each small tobacco product manufacturer a 4-year period over which to conduct testing and reporting for all of its tobacco products. Subject to paragraph (1), the end of the first year of such 4-year period shall coincide with the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers or the end of the 2-year period following the final promulgation of such regulations, as described in paragraph (1)(A). A small tobacco product manufacturer shall be required—

''(i) to conduct such testing and reporting for 25 percent of its tobacco products during each year of such 4-year period; and

''(ii) to conduct such testing and reporting for its largest-selling tobacco products (as determined by the Secretary) before its other tobacco products, or in such other order of priority as determined by the Secretary.

''(B) CASE-BY-CASE DELAY.—Notwithstanding subparagraph (A), the Secretary may, on a case-by-case basis, delay the date by which an individual small tobacco product manufacturer must conduct testing and reporting for its tobacco products under this section based upon a showing of undue hardship to such manufacturer. Notwithstanding the preceding sentence, the Secretary shall not extend the deadline for a small tobacco product manufacturer to conduct testing and reporting for all of its tobacco products beyond a total of 5 years after the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers.

''(3) SUBSEQUENT AND ADDITIONAL TESTING AND REPORTING.—The regulations promulgated under subsection (a) shall provide that, with respect to any subsequent or additional testing and reporting of tobacco products required under this section, such testing and reporting by a small tobacco product manufacturer shall be conducted in accordance with the timeframes described in paragraph (2)(A), except that, in the case of a new product, or if there has been a modification described in section 910(a)(1)(B) of any product of a small tobacco product manufacturer since the last testing and reporting required under this section, the Secretary shall require that any subsequent or additional testing and reporting be conducted in accordance with the same timeframe applicable to manufacturers that are not small tobacco product manufacturers.

''(4) JOINT LABORATORY TESTING SERVICES.—The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers

receive access to, and fair pricing of, such testing services.

''(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

''(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

''(A) the tobacco products of such manufacturer are in compliance with all other requirements of this chapter; and

''(B) the conditions described in paragraph (2) are met.

''(2) CONDITIONS.—Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

''(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

''(B) the products currently are awaiting testing by the laboratory; and

''(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

''(3) EXTENSION.—The Secretary, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

''(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Secretary may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

''(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act or the Family Smoking Prevention and Tobacco Control Act other than this section.

''SEC. 916. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 917. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the 'Advisory Committee').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

''(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

''(vi) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(C) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 918. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''(a) IN GENERAL.—The Secretary shall—

''(1) at the request of the applicant, consider designating products for smoking cessation, including nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

''(b) REPORT ON INNOVATIVE PRODUCTS.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

''(A) total abstinence from tobacco use;

''(B) reductions in consumption of tobacco; and

''(C) reductions in the harm associated with continued tobacco use.

''(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

''SEC. 919. USER FEES.

''(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this chapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

''(b) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

''(A) For fiscal year 2009, $85,000,000 (subject to subsection (e)).

''(B) For fiscal year 2010, $235,000,000.

''(C) For fiscal year 2011, $450,000,000.

''(D) For fiscal year 2012, $477,000,000.

''(E) For fiscal year 2013, $505,000,000.

''(F) For fiscal year 2014, $534,000,000.

''(G) For fiscal year 2015, $566,000,000.

''(H) For fiscal year 2016, $599,000,000.

''(I) For fiscal year 2017, $635,000,000.

''(J) For fiscal year 2018, $672,000,000.

''(K) For fiscal year 2019 and each subsequent fiscal year, $712,000,000.

''(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

''(B) APPLICABLE PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

''(I) Cigarettes.

''(II) Cigars, including small cigars and cigars other than small cigars.

''(III) Snuff.

''(IV) Chewing tobacco.

''(V) Pipe tobacco.

''(VI) Roll-your-own tobacco.

''(ii) ALLOCATIONS.—The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108–357 for each such class of product for such fiscal year.

''(iii) REQUIREMENT OF REGULATIONS.—Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 901(b) or is deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter.

''(iv) REALLOCATIONS.—In the case of a class of tobacco products that is not listed in section 901(b) or deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this chapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

''(3) DETERMINATION OF USER FEE BY COMPANY.—

''(A) IN GENERAL.—The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

''(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

''(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

''(B) NO FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

''(4) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108–357.

''(5) ALLOCATION FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

''(6) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

''(7) MEMORANDUM OF UNDERSTANDING.—

''(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

''(B) ASSURANCES.—Beginning not later than fiscal year 2015, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) AVAILABILITY.—

''(A) IN GENERAL.—Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter and the Family Smoking Prevention and Tobacco Control Act. No fees collected under subsection (a) may be used for any other costs.

''(B) PROHIBITION AGAINST USE OF OTHER FUNDS.—

''(i) IN GENERAL.—Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for the purpose described in subparagraph (A).

''(ii) STARTUP COSTS.—Clause (i) does not apply until the date on which the Secretary has collected fees under subsection (a) for 2 fiscal year quarters. Until such date, other amounts available to the Food and Drug Administration (excluding fees collected under subsection (a)) are authorized to be made available to pay the costs described in subparagraph (A), provided that such amounts are reimbursed through fees collected under subsection (a).

''(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

''(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(e) APPLICABILITY TO FISCAL YEAR 2009.—If the date of enactment of the Family Smoking Prevention and Tobacco Control

Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

''(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the 'quarterly fee amounts').

''(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

''(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).''.

SEC. 102. FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a final rule regarding cigarettes and smokeless tobacco, which—

(A) is deemed to be issued under chapter 9 of the Federal Food, Drug, and Cosmetic Act, as added by section 101 of this Act; and

(B) shall be deemed to be in compliance with all applicable provisions of chapter 5 of title 5, United States Code, and all other provisions of law relating to rulemaking procedures.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection in accordance with this Act and the amendments made by this Act;

(B) strike Subpart C—Labels and section 897.32(c);

(C) strike paragraphs (a), (b), and (i) of section 897.3 and insert definitions of the terms ''cigarette'', ''cigarette tobacco,'', and ''smokeless tobacco'' as defined in section 900 of the Federal Food, Drug, and Cosmetic Act;

(D) insert ''or roll-your-own paper'' in section 897.34(a) after ''other than cigarettes or smokeless tobacco'';

(E) become effective on the date that is 1 year after the date of enactment of this Act; and

(F) amend paragraph (d) of section 897.16 to read as follows:

''(d)(1) Except as provided in subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

''(2)(A) Subparagraph (1) does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

''(B) This subparagraph does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

''(C) For purposes of this paragraph, the term 'qualified adult-only facility' means a facility or restricted area that—

''(i) requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

''(ii) does not sell, serve, or distribute alcohol;

''(iii) is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

''(iv) is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this subparagraph; and

''(v) is enclosed by a barrier that—

''(I) is constructed of, or covered with, an opaque material (except for entrances and exits);

''(II) extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

''(III) prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

''(vi) does not display on its exterior—

''(I) any tobacco product advertising;

''(II) a brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

''(III) any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate section 897.34(c).

''(D) Distribution of samples of smokeless tobacco under this subparagraph permitted to be taken out of the qualified adult-only facility shall be limited to 1 package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the individual portions of smokeless tobacco shall not exceed 8 individual portions and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free samples also shall take reasonable steps to ensure that the above amounts are limited to one such package per adult consumer per day.

''(3) Notwithstanding subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco—

''(A) to a sports team or entertainment group; or

''(B) at any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by this subparagraph.

''(4) The Secretary shall implement a program to ensure compliance with this paragraph and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(5) Nothing in this paragraph shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.''.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with chapter 5 of title 5, United States Code, the regulation promulgated pursuant to this section, including the provisions of such regulation relating to distribution of free samples.

(5) ENFORCEMENT OF RETAIL SALE PROVISIONS.—The Secretary of Health and Human Services shall ensure that the provisions of this Act, the amendments made by this Act, and the implementing regulations (including such provisions, amendments, and regulations relating to the retail sale of tobacco products) are enforced with respect to the United States and Indian tribes.

(6) QUALIFIED ADULT-ONLY FACILITY.—A qualified adult-only facility (as such term is defined in section 897.16(d) of the final rule published under paragraph (1)) that is also a retailer and that commits a violation as a retailer shall not be subject to the limitations in section 103(q) and shall be subject to penalties applicable to a qualified adult-only facility.

(7) CONGRESSIONAL REVIEW PROVISIONS.—Section 801 of title 5, United States Code, shall not apply to the final rule published under paragraph (1).

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e)—

(A) by striking the period after ''572(i)''; and

(B) by striking ''or 761 or the refusal to permit access to'' and inserting ''761, 909, or 920 or the refusal to permit access to'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j)—

(A) by striking the period after ''573''; and

(B) by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or 920(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(3).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b), 907, 908, or 916;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or 920; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after the term ''device'' each time that such term appears; and

(13) by adding at the end the following:

''(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(rr) The charitable distribution of tobacco products.

''(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

''(tt) With respect to a tobacco product, any statement directed to consumers through the media or through the label, labeling, or advertising that would reasonably be expected to result in consumers believing that the product is regulated, inspected or approved by the Food and Drug Administration, or that the product complies with the requirements of the Food and Drug Administration, including a statement or implication in the label, labeling, or advertising of such product, and that could result in consumers believing that the product is endorsed for use by the Food and Drug Administration or in consumers being misled about the harmfulness of the product because of such regulation, inspection, or compliance.''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) in paragraph (1)(A), by inserting ''or tobacco products'' after the term ''devices'' each place such term appears;

(2) in paragraph (5)—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' the second time it appears and inserting ''penalty, or upon whom a no-tobacco-sale order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(3) in paragraph (6)—

(A) by inserting ''or the imposition of a no-tobacco-sale order'' after the term ''penalty'' each place such term appears; and

(B) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(4) by adding at the end the following:

''(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: ''device, and (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after the term ''device'' each place such term appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device''.

(e) SECTION 505.—Section 505(n)(2) (21 U.S.C. 355(n)(2)) is amended by striking ''section 904'' and inserting ''section 1004''.

(f) SECTION 523.—Section 523(b)(2)(D) (21 U.S.C. 360m(b)(2)(D)) is amended by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(g) SECTION 702.—Section 702(a)(1) (U.S.C. 372(a)(1)) is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)(1)(A)''; and

(2) by adding at the end the following:

''(B)(i) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

''(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.''.

(h) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after the term ''device,'' each place such term appears; and

(2) by inserting ''tobacco products,'' after the term ''devices,'' each place such term appears.

(i) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)—

(A) by striking ''devices, or cosmetics'' each place it appears and inserting ''devices, tobacco products, or cosmetics'';

(B) by striking ''or restricted devices'' each place it appears and inserting ''restricted devices, or tobacco products'';

(C) by striking ''and devices and subject to'' and all that follows through ''other drugs or devices'' and inserting ''devices, and tobacco products and subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or (k), section 519, section 520(g), or chapter IX and data relating to other drugs, devices, or tobacco products'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,''; and

(3) in subsection (g)(13), by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(j) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(k) SECTION 709.—Section 709 (21 U.S.C. 379a) is amended by inserting ''tobacco product,'' after ''device,''.

(l) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after the term ''devices,'' ;

(B) by inserting ''or section 905(h)'' after ''section 510''; and

(C) by striking the term ''drugs or devices'' each time such term appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1)—

(A) by inserting ''tobacco product'' after ''drug, device,''; and

(B) by inserting '', and a tobacco product intended for export shall not be deemed to be in violation of section 906(e), 907, 911, or 920(a),'' before ''if it—'';

(3) by adding at the end the following:

''(p)(1) Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the executive branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(m) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(b)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting '', and tobacco products'' after ''devices''.

(n) SECTION 1009.—Section 1009(b) (as redesignated by section 101(b)) is amended by striking ''section 908'' and inserting ''section 1008''.

(o) SECTION 409 OF THE FEDERAL MEAT INSPECTION ACT.—Section 409(a) of the Federal Meat Inspection Act (21 U.S.C. 679(a)) is amended by striking ''section 902(b)'' and inserting ''section 1002(b)''.

(p) RULE OF CONSTRUCTION.—Nothing in this section is intended or shall be construed to expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.

(q) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term ''repeated violation'', as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provider such agent information to the Food and Drug Administration prior to the violation;

(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

(2) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $0.00 together with the issuance of a warning letter to the retailer;

(II) in the case of a second violation within a 12-month period, $250;

(III) in the case of a third violation within a 24-month period, $500;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $250;

(II) in the case of a second violation within a 12-month period, $500;

(III) in the case of a third violation within a 24-month period, $1,000;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term ''approved training program'' means a training program that complies with standards developed by the Food and Drug Administration for such programs.

(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d), shall consider the amount of any penalties paid by the retailer to a State for the same violation.

(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), and (4) of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection.

(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) shall take effect on the date of enactment of this Act.

(5) PACKAGE LABEL REQUIREMENTS.—The package label requirements of paragraphs (2), (3), and (4) of section 903(a) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 903(a)(2), (3), and (4) and section 920(a) of the Federal Food, Drug, and Cosmetic Act.

(6) ADVERTISING REQUIREMENTS.—The advertising requirements of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act.

SEC. 104. STUDY ON RAISING THE MINIMUM AGE TO PURCHASE TOBACCO PRODUCTS.

The Secretary of Health and Human Services shall—

(1) convene an expert panel to conduct a study on the public health implications of raising the minimum age to purchase tobacco products; and

(2) not later than 5 years after the date of enactment of this Act, submit a report to the Congress on the results of such study.

SEC. 105. ENFORCEMENT ACTION PLAN FOR ADVERTISING AND PROMOTION RESTRICTIONS.

(a) ACTION PLAN.—

(1) DEVELOPMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop and publish an action plan to enforce restrictions adopted pursuant to section 906 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act, or pursuant to section 102(a) of this Act, on promotion and advertising of menthol and other cigarettes to youth.

(2) CONSULTATION.—The action plan required by paragraph (1) shall be developed in consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities.

(3) PRIORITY.—The action plan required by paragraph (1) shall include provisions designed to ensure enforcement of the restrictions described in paragraph (1) in minority communities.

(b) STATE AND LOCAL ACTIVITIES.—

(1) INFORMATION ON AUTHORITY.—Not later than 3 months after the date of enactment of this Act, the Secretary shall inform State, local, and tribal governments of the authority provided to such entities under section 5(c) of the Federal Cigarette Labeling and Advertising Act, as added by section 203 of this Act, or preserved by such entities under section 916 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act.

(2) COMMUNITY ASSISTANCE.—At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

(a) PREEMPTION.—Section 5(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(a)) is amended by striking ''No'' and inserting ''Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no''.

(b) CHANGE IN REQUIRED STATEMENTS.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product is not a safe alternative to cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(4) The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a)

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

(a) IN GENERAL.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 204, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

(b) PREEMPTION.—Section 7(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(a)) is amended by striking ''No'' and inserting ''Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by sections 201 and 202, is further amended by adding at the end the following:

''(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

''(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(2) RESOLUTION OF DIFFERENCES.—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(3) CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

''(4) RETAILERS.—This subsection applies to a retailer only if that retailer is responsible

for or directs the label statements required under this section.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 920. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—

''(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States'.

''(2) EFFECTIVE DATE.—The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian country without the express written consent of the Indian tribe involved.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—

''(1) NOTIFICATION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed, or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

''(e) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Attorney General of the United States and the Secretary of the Treasury, as appropriate.''.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising; and

(3) collect data on the health effects (particularly with respect to individuals under 18 years of age) resulting from cross-border trade in tobacco products, including the health effects resulting from—

(A) the illicit trade of tobacco products and the trade of counterfeit tobacco products; and

(B) the differing tax rates applicable to tobacco products.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

(c) DEFINITION.—In this section:

(1) The term ''cross-border trade'' means trade across a border of the United States, a State or Territory, or Indian country.

(2) The term ''Indian country'' has the meaning given to such term in section 1151 of title 18, United States Code.

(3) The terms ''State'' and ''Territory'' have the meanings given to those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

The SPEAKER pro tempore. After 1 hour of debate on the bill, as amended, it shall be in order to consider the amendment in the nature of a substitute printed in part B of the report, if ordered by the gentleman from Indiana (Mr. BUYER) or his designee, which shall be in order without intervention of any point of order, shall be considered read, and shall be debatable for 30 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from California (Mr. WAXMAN) and the gentleman from Indiana (Mr. BUYER) each will control 30 minutes.

The Chair recognizes the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume in debating this legislation.

Mr. Speaker, and my colleagues, we have come to what I hope will be an historic occasion, and that is finally doing something about the harm that tobacco does to thousands and thousands of Americans who die each year, and to stop the attempt to get our children to smoke. But it has taken us far too long to get to this point.

In 1994, the tobacco executives stood up before my subcommittee, they raised their hand, and they said they were going to tell the truth. They swore under oath, though, that nicotine was not addictive. They also said cigarettes were not harmful. They also said they didn't manipulate nicotine. They also said that they would never target kids. And, it turned out, they were not telling us the truth.

In 1996, the Food and Drug Administration tried to regulate tobacco products, but the Supreme Court told them that they needed Congress to give them specific legal authority. Now, 13 years later, here we are finally giving FDA that authority to regulate the leading preventable cause of death in America.

Every one of us has seen the devastating effects of tobacco through losing someone we love, watching others grow sick, or even feeling the grip of addiction firsthand. Worst of all is watching our children and grandchildren be targeted as the next wave of casualties.

Regulating tobacco is the single most important thing we can do right now to curb this deadly toll, and FDA is the only agency with the right combination of scientific expertise, regulatory experience, and public health mission to oversee these products effectively.

This legislation will direct the Food and Drug Administration to end the marketing and sales of tobacco to kids; to prevent manufacturers from calling cigarettes ''light'' or ''less dangerous'' when in fact they are not; and to require changes to what is in cigarettes, like toxic ingredients such as formaldehyde, benzene, radioactive elements, and other deadly chemicals.

□ 1930

Some have objected that this bill is too big a challenge for an already overburdened FDA. But it is clear to me that FDA's recent struggles are primarily a result of years of chronic underfunding. This does not mean that FDA, with strong and committed leadership, cannot take on the critical role of protecting the country against the harms of tobacco. It simply means that when we give the agency this new responsibility, we also must give it the

resources necessary to do the job and to do it well.

We have ensured that this will happen. The tobacco program will be fully funded through a new user fee paid for by the industry. That money will go exclusively to the new tobacco center and will be enough for FDA to handle this task well. Furthermore, by doing so, we will ensure that the new tobacco program will have no impact on other missions at the Food And Drug Administration.

In short, we have everything we need to take this historic step: A comprehensive and flexible set of new authorities and full, certain funding. All we need now is the political will to do the right thing.

The breadth of support for this bill, from the AARP to the American Academy of Pediatrics, from the Southern Baptist Convention to the Islamic Society of North America, shows just how critical this issue is to all Americans. It is also supported by the American Lung Association, the American Heart Association and the American Cancer Society, the groups that are best situated to understand the damage caused by tobacco.

I also want to note that we have worked hard to accommodate specific concerns that we have heard about this bill. In committee consideration of the bill last year, we made changes to ensure fairness and flexibility for convenience stores, tobacco growers and small manufacturers, and we worked with the minority to incorporate their suggestions. We also worked with members of the Congressional Black Caucus to ensure that menthol cigarettes will be an early focus of the agency's attention and the agency has the authority to deal with these and other products.

I want to thank my colleague, TODD PLATTS, for his strong leadership and dedication to working on this legislation, as well as JOHN DINGELL and FRANK PALLONE for their diligent work in moving this bill forward over the years. I also want to thank ED TOWNS, STEPHEN LYNCH and IKE SKELTON, all of whom were critical in getting us to this point. Each of these individuals has made this possible and produced a great victory for all Americans, especially our children.

I urge the passage of this legislation.

I reserve the balance of my time.

Mr. BUYER. I yield myself such time as I may consume.

I would note that the gentleman read a list of individuals that supports his bill. But what he left off the list and the prior speaker under the rule, the gentleman from Colorado, was very critical of the tobacco companies. But Altria supports the Waxman bill. Now what is interesting about this is I would ask the gentleman from Colorado, he was so critical of tobacco, but obviously he didn't know that a tobacco company was supporting the Waxman bill.

I truly believe in my heart, since I had written Altria, and they have sent me a letter here in response to the substitute, H.R. 1261, I truly believe that had they not endorsed the Waxman bill 8 years ago that they would be endorsing this bill. And the reason I say that, I just find it in my heart, they let me know in their bill dated to me by the chairman and chief executive of Altria, he says, ''We specifically support H.R. 1266 and supported its predecessor bills for more than 8 years.'' That is the Waxman bill. But he goes on further in his letter, and he says, ''Your letter seeks our input on several aspects of tobacco regulation. You recently introduced H.R. 1261, including harm reduction, product design standards and the appropriate public health standard for tobacco regulation. Before addressing these topics more specifically,'' and they do that in the letter, he said, ''I want to commend your thoughtful leadership on the topic of comprehensive tobacco regulation. Your focus on H.R. 1261 on harm reduction strategies will, we believe, encourage further meaningful conversation about how Federal regulators should exercise authority over tobacco products. We especially appreciate the focus you are bringing in the public policy debate in an important principle that regulation should ensure and certainly not discourage adult consumers access to accurate, objective and non-misleading information about the relative risks of all tobacco products. We have consistently expressed our view that it would be wrong for the Federal regulatory framework to deny adult tobacco consumers access to information about potential benefits to products that could ultimately reduce the harm caused by smoking.''

Now that is the harm-reduction strategy that we have incorporated in this bipartisan bill. And so I wanted to bring that to everyone's attention that this harm-reduction strategy is extremely important. We should not have this abstinence approach that is in the Waxman bill. Now this was an approach that was drafted many, many years ago, and a lot of things have taken place since Mr. WAXMAN drafted this bill. And he is not taking these things into account. I respect the gentleman. I respect his efforts. I respect his tenacity and his persistence. And hopefully we will have a meeting of the minds one day, and we can incorporate both of our dual-tracked efforts here to move people to stop smoking.

The supporters of the Waxman bill, as I noted from some of the speakers, they claim that it is designed to protect children from the dangers of smoking. But H.R. 1256 does not include any provision that actually protects minors from tobacco use. The American Association of Public Health Physicians wrote on March 3, 2009, ''The current bill, the bill which is before us and being debated, referred to as the Waxman bill, H.R. 1256, in its current form would ensure current levels of tobacco-related deaths while doing nothing of significance to reduce the number of teens who would initiate tobacco use with no bill at all.''

You see, those of whom are supporting the substitute, we support steps to require the States to use more of their Master Settlement Agreement funds to combat underage smoking and promote smoking cessation while also strengthening the Synar amendment which prevents the underage purchasing of cigarettes. Unfortunately, H.R. 1256 does not contain these important public health provisions.

With that, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield to the gentleman from North Carolina (Mr. ETHERIDGE).

Mr. ETHERIDGE. I thank the gentleman. I would like to engage the chairman in a colloquy to address the issue of FDA and tobacco farmers.

I represent one of the largest tobacco-producing districts in the Nation, so naturally I have a lot of farmers who are very concerned about how they might be affected by this legislation.

Mr. Chairman, my question to you is, does this bill in any way authorize the FDA to regulate tobacco farms?

Mr. WAXMAN. I thank you for the question, Mr. ETHERIDGE. This is an important question, especially for those who represent tobacco-growing districts. There has been some confusion about this point, so let me be clear. It is not the intent of this bill to allow FDA on the farm. The bill gives FDA the authority to regulate tobacco products but not tobacco leaf.

Mr. ETHERIDGE. I thank you for that.

And does the bill specifically state that FDA's regulatory authority would only apply to manufactured tobacco products and not the traditional production and harvest methods on the farm?

Mr. WAXMAN. The gentleman is correct.

Mr. ETHERIDGE. I thank the chairman.

Mr. WAXMAN, I thank you for that, and I thank you for the clarification that this is a bill intended to protect our children and not to regulate tobacco farmers. Tobacco is a critical crop in North Carolina's economy and has been for a long time. I look forward to continuing to working with you to help North Carolina farmers preserve their jobs and their livelihood.

Mr. WAXMAN. I reserve the balance of my time.

Mr. BUYER. I yield myself such time as I may consume.

The gentleman just spoke about his concern with regard to product standards. It is one of the chief concerns in the Waxman bill. The provisions on product standards allow the FDA to impose any requirements or prohibitions it sees fit, except that it may not ban the product or reduce nicotine delivery to zero. FDA need not consider the cost or feasibility of imposing a standard. FDA does have to consider

the possibility of a black market, but can impose a standard even if it will lead to the creation or expansion of a black market. That should concern everyone with regard to illicit trade.

The Waxman bill also prevents communication about significant differences among levels of risk presented by different types of tobacco products, and it clamps down on any effects to develop and market modified-risk tobacco products. Modified-risk tobacco products are defined as any existing or new product that bears a claim or where the manufacturer conveys to consumers through media or otherwise that: It presents a lower risk or is less harmful than other tobacco products; has a reduced level of substance or reduced exposure to a substance; is free of or does not contain a substance; or uses the descriptor ''light,'' ''mild'' or ''low'' or a similar descriptor.

Approval of a modified-risk product requires under the Waxman bill that the product will significantly reduce harm and the risk of disease to the individual users and that approval benefits the health of the population as a whole. You see, this is a two-tier standard and is almost impossible or nearly impossible to satisfy. So I completely understand why the gentleman came to the floor concerned about product standards. So if you want to embrace a harm-reduction strategy to migrate people from smoking down the continuum of risk to eventually quitting, the Waxman bill does not permit that. We don't permit the innovation of science to drive people to lower-risk products. And that is what the substitute tries to do.

With that, I will yield to the gentleman, the ranking Republican, LAMAR SMITH of Texas, such time as he may consume.

Mr. SMITH of Texas. Mr. Speaker, I thank my colleague from Indiana for yielding me time.

Mr. Speaker, H.R. 1256 directs the Secretary of HHS to promulgate an interim final rule that is identical to the FDA's 1996 rule, which legal experts from across the political spectrum have stated would violate the first amendment.

While these experts' views should carry great weight, even more persuasive is the fact that the U.S. Supreme Court also has weighed in on various provisions of the rule, finding them unconstitutional. In Lorillard Tobacco v. Reilly, the U.S. Supreme Court struck down a Massachusetts statute that was similar in many ways to the FDA's proposed rule. The statute banned outdoor ads within 1,000 feet of schools, parks and playgrounds and also restricted point-of-sale advertising for tobacco products.

The Court held that this regulation ran afoul of the test established in the Central Hudson case, which defines the protection afforded commercial speech under the first amendment, as it was not sufficiently narrowly tailored and would have disparate impacts from community to community.

The Court then noted that since the Massachusetts statute was based on the FDA's rule, the FDA rule would have similar constitutional problems. As Justice Sandra Day O'Connor wrote for the court, ''The uniformly broad sweep of the geographical limitation demonstrates a lack of tailoring.''

Additionally, the proposed rule in H.R. 1256 would require ads to use only black text on a white background. The U.S. Supreme Court found a similar provision unconstitutional in Zauderer v. Office of Disciplinary Counsel. In that case, dealing with advertising for legal services, the Court held that the use of colors and illustrations in ads is entitled to the same first amendment protections given verbal commercial speech.

Justice Byron White, in his opinion for the Court, wrote that pictures and illustrations in ads cannot be banned ''simply on the strength of the general argument that the visual content of advertisements may, under some circumstances, be deceptive or manipulative.''

So there are numerous speech restrictions in this legislation that raise serious first amendment concerns. This will create a swarm of lawsuits that will only divert us from trying to develop more effective approaches to tobacco use in the United States.

To include speech restrictions that a broad range of legal experts have stated are almost certain to be unconstitutional fatally taints this bill.

□ 1945

I know the bill is well-intentioned, but I hope my colleagues will support the alternative offered by the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. I reserve the balance of my time.

Mr. WAXMAN. I am including in the RECORD an exchange of letters on H.R. 1256 between the chairman of the Committee on the Judiciary and myself.

COMMITTEE ON THE JUDICIARY,
Washington, DC, March 24, 2009.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN WAXMAN: This is to advise you that, as a result of your having worked with us to appropriately craft provisions in H.R. 1256, the ''Family Smoking Prevention and Tobacco Control Act,'' that fall within the rule X jurisdiction of the Committee on the Judiciary, we are able to agree to discharging our committee from further consideration of the bill in order that it may proceed without delay to the House floor for consideration.

The Judiciary Committee takes this action with the understanding that by foregoing further consideration of H.R. 1256 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation. We also reserve the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this important legislation, and request your support if such a request is made.

I would appreciate your including this letter in the Congressional Record during consideration of the bill on the House floor. Thank you for your attention to this request, and for the cooperative relationship between our two committees.

Sincerely,

JOHN CONYERS, JR.,
Chairman.

CONGRESS OF THE UNITED STATES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, March 25, 2009.

Hon. JOHN CONYERS,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN CONYERS: Thank you for your letter regarding H.R. 1256, the ''Family Smoking Prevention and Tobacco Control Act.'' The letter noted that certain provisions of the bill are within the jurisdiction of the Committee on the Judiciary under rule X of the Rules of the House.

The Committee on Energy and Commerce recognizes the jurisdictional interest of the Committee on the Judiciary in these provisions. We further appreciate your agreement to forgo action on the bill, and I concur that the agreement does not in any way prejudice the Committee on the Judiciary with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation in the future.

I will include our letters in the Congressional Record during consideration of the bill on the House floor. Again I appreciate your cooperation regarding this important legislation.

Sincerely,

HENRY A. WAXMAN

I reserve the balance of my time.

Mr. BUYER. I would yield now 3 minutes to Dr. Gingrey, the gentleman from Georgia.

Mr. GINGREY of Georgia. Mr. Speaker, I thank the gentleman for yielding. And I certainly want to pay tribute to Chairman WAXMAN in regard to the work that he has done over these many years, 10, at least, in regard to trying to help our society rid themselves of, really, the scourge of smoking cigarettes and many health care problems that that leads to. I don't think that there's any question in anybody's mind about that. And certainly the Surgeon General's warning, very profound, clear warning on a package of cigarettes, should bring their attention to that every time they light up, whether we're talking about young adults or at any age group. And leading to lung cancer and chronic obstructive pulmonary disease, maybe better known as emphysema. So I commend Chairman WAXMAN very much. I think his heart is in the right place, and what he's trying to do is very credible.

But I do feel that Representative BUYER, from Indiana, and his substitute amendment, will be presented shortly. I really feel, Mr. Speaker, that this is very likely a better way. And so I do rise in strong support of the Buyer amendment in the nature of a substitute.

Despite decades of intense efforts to eradicate the practice, still more than 40 million American adults continue to smoke cigarettes, and that is likely to remain the case, unfortunately, for decades to come.

All tobacco products are harmful, but the health risks associated with cigarettes are significantly greater than those associated with the use of smoke-

free tobacco and nicotine-only products.

So, given these facts, an increasing number of public health experts advocate adopting a tobacco ''harm-reduction'' approach like that proposed in the Buyer amendment that will lower the health risks associated with using tobacco or nicotine.

A growing body of science shows that smokers who switch to smokeless tobacco products can significantly decrease their risk of tobacco-related illness and death.

A World Health Organization Study Group wrote last year that: ''Smokeless tobacco products do not cause the lung diseases causally associated with the use of combusted tobacco products such as cigarettes, pipes and cigars.''

Scientific studies show that even the risk for cancers of the mouth and the throat are higher for smokers than for those who use tobacco products that do not burn. Year after year, this body has considered tobacco regulation that fails to recognize the significant progress that can be achieved by adding this harm-reduction component to tobacco-control efforts.

An article last year, Mr. Speaker, in the Journal of Health Care Law and Policy correctly concluded that, and this is a quote, ''Ignoring harm reduction is simply not a viable option as there is no question that it is possible to provide massively less toxic alternative products.''

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BUYER. I yield to the gentleman of Georgia an additional minute.

Mr. GINGREY of Georgia. Mr. Speaker, a 2007 article in the International Journal of Drug Policy noted that ''A pragmatic, public health approach to tobacco control would recognize a continuum of risk and encourage nicotine users to move themselves down the risk spectrum by choosing safer alternatives to smoking, without demanding abstinence.''

The Buyer amendment presents us with the opportunity to institute that type of pragmatic approach. It offers a stringent regime under which harm-reduction strategies can augment and leverage continued efforts to prevent tobacco use, and to encourage current smokers to quit.

So, as a physician who deeply cares about the health and the welfare of our citizens, I urge you, my colleagues on both sides of the aisle, to adopt the amendment as our Nation's best option for fighting the disease and the death caused by tobacco in the 21st century.

Mr. BUYER. I reserve my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time. Although some Members may join us shortly, I ask the gentleman how many other speakers he wishes to call on before we close the debate.

Mr. BUYER. We have two speakers that I'm aware of that are on their way.

Mr. WAXMAN. I'll reserve my time and let you go forward. I see there are some of your Members there if they're going to speak on the bill.

Mr. BUYER. To the gentleman's question, you wanted to know how many more speakers do I have. I was not prepared that you would not have speakers in support of your bill, so I thought that we'd be going back and forth, so I have Members coming from their offices to the floor. But I would be more than happy to take some of my time.

May I ask, Mr. Speaker—actually, we're on your time, I guess, at the moment. I guess, on your time. May I ask how much time both of us may have remaining?

The SPEAKER pro tempore. The gentleman from Indiana has 16 minutes remaining. The gentleman from California has 23½ minutes remaining.

Mr. WAXMAN. We're going to reserve the balance of our time.

Mr. BUYER. I yield myself such time as I may consume.

We've had a discussion here on the floor, Mr. Speaker, with regard to other concerns over the Food and Drug Administration and its ability to regulate tobacco products, products that will never qualify as safe and effective, and could have significant negative impacts on all Americans.

Congress has spent a great deal of time investigating the ways in which the FDA has been unable to fulfill its core mission. Burdening the FDA with additional responsibilities outside the agency's expertise and core missions at this time will have dire consequences for the American people and the FDA's ability to ensure the safety and efficacy of our Nation's food, drugs and medical devices.

H.R. 1256 allows the FDA to divert resources from its core mission, including funds from food safety inspections and drugs and devices approvals to fund the startup costs of a newer tobacco center. At a time when FDA is struggling to perform many of its core functions, diversion of its limited resources will negatively impact the safety of the American public.

Now, in a bipartisan manner, we share the concerns of many in the public health community that effectively giving FDA's stamp of approval on cigarettes will improperly lead people to believe that these products are safe, and they really aren't. So there actually could be this perception, when people see that the FDA has approved it, there could be this public perception that there's an FDA approval of a particular nicotine delivery device.

Now, what we seek to do is to turn this over to a different agency, whereby we can learn about the different relative risks among that continuum of risk, so that people can make, then, informed decisions and choices relative to the use of tobacco products.

Now, I agree with the American Association of Public Health Physicians, which wrote on March 3, 2009, in regard to H.R. 1256, ''The current bill, in its current form, would assure current levels of tobacco-related deaths, while doing nothing of significance to reduce the number of teens who would initiate tobacco use with no bill at all.''

Now, I read that earlier, but it's so important I had to read it again. Now, Congressman MCINTYRE and I have authored this bipartisan alternative to establish the Tobacco Harm Reduction Center under the Department of Health and Human Services. The alternative is based on public health policies that acknowledge a continuum of risk among all tobacco products, and referenced scientific literature which shows that smokeless tobacco products are 90 to even 99 percent less hazardous than cigarettes in their risks of causing tobacco-related illnesses and death.

Now, why wouldn't we embrace that as a form of public policy?

Unlike H.R. 1256, the alternative substitute would have insured adult tobacco users are given complete, accurate and truthful information about the risks and relative risks of all tobacco products so that they can make informed health decisions, while providing incentives to develop reduced-risk tobacco products.

See, that's really one of the chief concerns I have about Mr. WAXMAN's legislation is that when he creates a two-tier product standard with the implementation of new products, how can we ever migrate people to a lesser-harm nicotine delivery device in our efforts to get them to quit? That's why we have this position by Mr. WAXMAN, either you smoke or you die. And that's not what we should be embracing.

The alternative substitute, which Members will have a chance to vote on, strengthens prevention against minors' tobacco use, ensures that States properly fund anti-tobacco education and smoking-cessation programs, and protects American jobs.

Now, this alternative legislation will significantly improve the public health, while also protecting the already overburdened FDA from new responsibilities that take away from its ability to protect, once again, our Nation's food and drug supply.

In 2001 the Institute of Medicine noted, ''The potential for reduction in morbidity and mortality that could result from the use of less toxic products by those who do not stop using tobacco, justifies the inclusion of harm reduction as a component in a broad program of tobacco control.'' That was my appeal to Chairman WAXMAN as to why the harm reduction strategy should be endorsed.

You see, if enacted, H.R. 1256, Mr. WAXMAN's bill, significantly curtails, if not entirely eliminates, incentives for manufacturers to develop and market products that reduce exposure to tobacco toxic substances. In order to obtain approval of a modified risk product, an applicant must demonstrate that the marketing and the labeling of the product will not mislead consumers into believing that the product is or

has been demonstrated to be less harmful than current products.

Further, it has to be demonstrated that the product reduces risk for both the individual and for the population as a whole. This is the two-tiered standard I keep referring to. It is unlikely that such a standard could ever be proven. You see, that is what is so clever about Mr. WAXMAN's legislation. He puts in a standard that can never be achieved. And if you want to move people down a continuum of risk and improve public health, it cannot be done under Mr. WAXMAN's approach.

Now, those of us that support the substitute are concerned that such disincentives will effectively freeze the current tobacco market and prevent innovation that could lead to significantly less harmful tobacco products and improve the Nation's health. That is the exact position that Altria took in their letter to me.

Mr. Speaker, H.R. 1256 directs the Secretary of HHS to promulgate an interim final rule that is identical to the FDA's 1996 rule, which legal experts from across the political spectrum have stated would violate the First Amendment. While these experts' views should carry great weight, even more dispositive is the fact that the U.S. Supreme Court has also weighed in on various provisions of the rule, finding them unconstitutional.

In Lorillard Tobacco Co. v. Reilly, the U.S. Supreme Court struck down a Massachusetts statute that was similar in many ways to the FDA's proposed rule. The statute banned outdoor ads within 1,000 feet of schools, parks and playgrounds and also restricted point-of-sale advertising for tobacco products. The Court held that this regulation ran afoul of the test established in the Central Hudson case, which defines the protection afforded commercial speech under the First Amendment, as it was not sufficiently narrowly tailored, and would have disparate impacts from community to community.

The Court then noted that since the Massachusetts statute was based on the FDA's rule, the FDA rule would have similar unconstitutional effects on a nationwide basis. As Justice Sandra Day O'Connor wrote for the Court, "the uniformly broad sweep of the geographical limitation demonstrates a lack of tailoring."

Additionally, the proposed rule in H.R. 1256 would require ads to use only black text on a white background. Again, the U.S. Supreme Court found a similar provision unconstitutional in Zauderer v. Office of Disciplinary Counsel. In that case, dealing with advertising for legal services, the Court held that the use of colors and illustrations in ads are entitled to the same First Amendment protections given verbal commercial speech. Justice Byron White, in his opinion for the Court, wrote that pictures and illustrations in ads cannot be banned "simply on the strength of the general argument that the visual content of advertisements may, under some circumstances, be deceptive or manipulative."

There are numerous other speech restrictions in this legislation that raise serious First Amendment issues and will create a swarm of lawsuits that will only divert us from trying to develop more effective approaches to tobacco use in the United States. To put forward speech restrictions that a broad range of experts have stated are almost certain to be struck down would be highly counterproductive, and the only winners in this effort will be the litigants' constitutional lawyers rather than the American public.

I reserve the balance of my time.

□ 2000

Mr. WAXMAN. Mr. Speaker, I am ready to move on to the Buyer substitute, and if the gentleman from Indiana is ready to yield back his time, I will yield back my time, and we can go to the substitute, itself.

Mr. BUYER. You would not rob me of the opportunity to put my chart on display, would you, Mr. Chairman?

Mr. WAXMAN. I wouldn't deny you any opportunity to make any points or to show any charts.

Mr. BUYER. Thank you.

Mr. WAXMAN. Is the gentleman ready to offer his amendment?

Mr. BUYER. I am prepared to show a chart on my debate time.

Mr. WAXMAN. Oh. Well then, I'll reserve the balance of my time.

Mr. BUYER. I thank the gentleman.

How much time do I have, Mr. Speaker?

The SPEAKER pro tempore. The gentleman has 9½ minutes remaining.

Mr. BUYER. I yield 3 minutes to the gentleman from Texas, Dr. BURGESS.

Mr. BURGESS. I thank the gentleman for yielding.

This bill is certainly a misplaced priority. Mr. Speaker, I lost both parents to tobacco-related illness. I know of the seriousness of this illness. I saw it virtually every day in the 25 years I practiced medicine. Tobacco is a scourge upon our society.

It is for Congress to meet then. In the bill in front of us this evening, the Food and Drug Administration, a Federal agency that right now is essentially a beleaguered agency that cannot do what we require it to do with regulating food and drugs, is now going to be given a completely new mission.

The mission of the Food and Drug Administration is to ensure that we have drugs that are safe and effective. Tobacco, when used as directed, kills 400,000 people a year. Tobacco certainly could be regarded as effective when used as directed, but it could never be regarded as safe.

Last night, in the Rules Committee, I attempted to offer an amendment which would have allowed the Food and Drug Administration to at least require that a cigarette be manufactured that contains zero milligrams of nicotine. In fact, there is explicit language in the bill that prohibits the Food and Drug Administration from requiring a zero-milligram nicotine cigarette. Why is this important?

Well, I told the Rules Committee last night that this was essentially the anti-hypocrisy amendment. If we were serious about what we were trying to do for public health, we would allow the Food and Drug Administration to eliminate nicotine in the cigarette because, after all, a tobacco cigarette is a drug-delivery device. Its sole purpose is to deliver nicotine to the user. In fact, if you do not have nicotine with its addictive powers, cigarette smoking is, itself, so unpleasant that no one would willingly smoke a cigarette. They do so to satisfy the addiction to nicotine.

In some of Chairman WAXMAN's hearings that he did in the last decade, he had tobacco executives admit that they manipulated levels of nicotine. Why? Because the nicotine is required to addict a smoker so he will continue to smoke. Eliminate the nicotine, and you have eliminated the smoking as a habit. As a consequence, the enormous public health debt that we're piling up in treating smoking-related illnesses suddenly becomes a much more realistic figure.

I, frankly, do not understand why we would have a bill on the floor to allow the Food and Drug Administration to regulate tobacco usage when we will not allow them to have the one tool that would actually do some good in this legislation, which is to allow the Food and Drug Administration to require a zero-milligram nicotine cigarette.

In other words, we're going to allow nicotine to continue to be in cigarettes, allow the level to continue to be manipulated and continue to allow the youth of this country to be addicted to this pernicious habit. If we were really serious, if it weren't just the fact that we're addicted to tobacco money, we would allow the FDA the ability to exclude nicotine from cigarette products.

Mr. WAXMAN. Mr. Speaker, we have put in this bill that the FDA has the power to lower the levels of nicotine to a level that would be appropriate for the protection of the public health. We did not allow the FDA, under the legislation, to eliminate nicotine from cigarettes because we're all aware that, if cigarettes were not permitted to contain nicotine at all, that would be tantamount to an outright ban on cigarettes. I would not like to see people smoking cigarettes at all, but I'm not for prohibition, and therefore, we did not give the FDA that power to ban cigarettes in effect.

Now, it's odd to find that we're criticized for not doing enough and then are criticized for doing too much. You can't have it both ways. I think the FDA is in the position to regulate. We ought to give them that power, and that's why I would urge support for the legislation.

At this time, I would like to yield 5 minutes to the gentleman from Pennsylvania (Mr. PLATTS), and if he needs more time, I'll yield more to him.

Mr. PLATTS. Mr. Speaker, I rise in support of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. My good friend and former colleague, Congressman Tom Davis, helped to champion this effort with Chairman WAXMAN for many years. With Congressman Davis' retirement last year, I'm honored to have taken

his place as the lead Republican sponsor of this important legislation and to have the privilege of working with Chairman WAXMAN and his staff on this important effort.

Mr. Speaker, tobacco is one of the deadliest consumer products on the market today. It kills over 400,000 Americans every year. Yet it is one of the least regulated of all consumer products. In other words, while the FDA has the authority to regulate seemingly harmless products such as lipstick, hair spray and shaving cream, to name just three, the FDA does not have the authority it needs to regulate one of the deadliest, if not the deadliest, products available for sale to our citizens. It is long past time when tobacco products should be subject to serious regulation to protect the public's health. This bill would finally accomplish this important goal.

First, this legislation would ensure that tobacco products are not advertised to or sold to children. Addiction to tobacco begins almost universally in childhood and in adolescence. Every day, almost 4,000 children try their first cigarette, and over 1,000 become daily smokers. Tobacco companies have long taken advantage of this vulnerability by promoting their products through such tactics as cartoon advertisements, free tobacco-themed merchandise that appeals to kids and through sponsorships of sports and entertainment events.

With health care costs spiraling out of control every year, the cost of treating these smokers later in life is fast becoming prohibitively expensive. Prohibiting advertising to children would go a long way in preventing young people in America from starting to smoke, and it would save billions of dollars and countless lives in the years to come.

Second, this legislation would require that tobacco products marketed as safer than other tobacco products are, in fact, demonstrated to be safer. The history of low-tar cigarettes illustrates the grave danger to public health caused by fooling consumers into believing unsubstantiated claims that one kind of cigarette is safer than another. Millions of Americans switched to low-tar cigarettes, believing they were reducing their risk of lung cancer. Many were convinced to switch instead of to quit. It was not until decades later that we learned through the deaths of those smoking low-tar cigarettes that low-tar cigarettes were just as dangerous as full-tar cigarettes. Under this legislation, we will not have to wait for the deaths of millions of more Americans to learn whether a so-called ''safer'' cigarette is what it claims to be.

This bill does not ban tobacco products. H.R. 1256 would allow the FDA to scientifically evaluate the health benefits and risks posed by ingredients in cigarettes, and it would take steps to reduce the harm caused by tobacco products. This legislation preserves an adult's choice to smoke. Even though I don't believe we want anyone to, it preserves that choice, and we make sure that those tobacco products that are marketed as safe alternatives to cigarettes are, in fact, scientifically proven to be safer.

Finally, I understand that some individuals have concerns with placing such authority under the FDA. I think it's important to note that the FDA already regulates products that people use to help quit smoking, such as nicotine gums and patches. In addition, this legislation does provide an entirely separate funding stream for the FDA's regulation of tobacco products to ensure that other important efforts carried out by this agency are not diminished.

I hope my colleagues will join me in supporting the Family Smoking Prevention and Tobacco Control Act.

For the record, I believe there was reference that the reason we're not completely banning it is because of the influence of tobacco funds in campaigns. If I understand that correctly, I want to be on the record as one who doesn't accept any political action committee funds, including tobacco funds, and I've not received any such funds. Never have. Never will. This is about doing right for American citizens. It's about the health of our citizens. It's especially about the health of our children.

Vote ''yes'' and oppose this substitute. Support the underlying bill.

Mr. BUYER. I want to thank both gentlemen—Mr. PLATTS and the chairman—for his bill. As I've said, I complimented you earlier about your persistence and about your tenacity, about your drive and your sincerity. I don't question it at all. I have a different approach on how we can improve public policy, and this has been a good debate. I want to thank the chairman for allowing this debate to occur. It was a healthy debate at the committee during the markup. I think it's a healthy debate for us to have.

Over 100 countries around the world are struggling with how they answer these public health questions on how to deal with individuals who become addicted to nicotine. When you look at this approach of, ''Well, let's just quit. Stop smoking and just quit,'' I just take a simple look at this. I say there are 45 million smokers, and then there are 2 million who are trying to stop smoking. Yet there's only a 7 percent success rate. Something is not working. To me, that's a rate of failure.

So that's why Mr. MCINTYRE and I came up with a different approach. We came up with a harm-reduction approach, and what we seek to do is to put our arms around everything. Not only are we trying to accomplish some of the similar goals of Mr. WAXMAN and Mr. PLATTS and of others who support Mr. WAXMAN's approach, but we wanted to include everything. We could include abstinence. We could include cessation programs and prevention and education. We seek to do that because we have a harm-reduction strategy to do that, and we want to move people down a continuum of risk.

When you look at the 45 million smokers, 85 percent of them are smoking light or ultralight cigarettes. Now, the reason they do that is they make a subconscious decision that somehow it's a healthier or a safer cigarette. The reality is it's not. It's not.

So Mr. PLATTS is absolutely correct, but what we seek to do in the substitute is we want to regulate tobacco. That's what Mr. MCINTYRE and I seek to do. We want to regulate tobacco. We don't want to do it under the FDA. We want to do it in a harm-reduction center, and we want the tobacco companies to come forward. We'll regulate that tobacco, but we want to migrate smokers into other forms of products. I'm going to talk about that in greater detail on the substitute.

At this point, Mr. WAXMAN, I don't have any other speakers, so we can proceed to the substitute.

Mr. DINGELL. Mr. Speaker, I rise in strong support of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. This historic legislation will grant the Food and Drug Administration the authority to regulate tobacco products. Aside from a few technical changes, H.R. 1256 is identical to the legislation Chairman WAXMAN and I worked hard together to pass in the House last year.

This legislation is long overdue:

In 1957, Surgeon General Leroy Burney declared the causal link between smoking and lung cancer.

In 1964, Surgeon General Luther Terry's Report proclaimed that cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action.

Today, fifty-two years after the cancer link was established, forty-five years after the call for remedial action, we are finally poised to regulate this lethal product.

H.R. 1256 creates a fully-funded separate tobacco center at FDA to regulate tobacco products. The FDA is the appropriate scientific and regulatory agency to provide this oversight. Through a user fee on tobacco products, FDA will have the resources to implement this legislation and the legislation segregates the tobacco center and its funding from other FDA programs.

The FDA needs more resources and greater authority to meet its other obligations with respect to food, drugs, devices and cosmetics. My colleagues, Mr. PALLONE and Mr. STUPAK, and I have introduced legislation to address this need. To my colleagues who are concerned with FDA's lack of resources, I invite you to join us in this effort.

Each year, tobacco use kills more than 400,000 people. The American people need assurance that their food and medical products are safe. But they also need meaningful oversight of tobacco products. This Congress can deliver both.

I urge my colleagues to vote in favor of H.R. 1256.

Mr. VAN HOLLEN. Madam Speaker, as an original cosponsor, I rise in strong support of the bipartisan Family Smoking Prevention and Tobacco Control Act. I want to thank Chairman WAXMAN and so many others for their

leadership in bringing this legislation to the floor after so many years and so many battles. This is an important day for the American people.

Granting the Food and Drug Administration authority to regulate tobacco products is long overdue and is a critical step in the protection of the public's health. As we know, the FDA has the power to regulate and oversee all sorts of products that are sold today. Many products that they regulate are not addictive. Yet we do not have the FDA's regulatory authority when it came to the very addictive products of tobacco and nicotine.

Because of the lack of regulatory authority on tobacco products, the FDA has been sidelined and the result is that the big tobacco companies have taken advantage of that opportunity and exploited it by marketing their deadly products to young people. For far too long, the tobacco companies have been targeting our kids, deceiving all of us about the harmful effects of their products and manipulating the ingredients in their products—all to ensure that their profit levels remained high. In order for them to continue to make their profits, they had to continue getting one generation after another hooked on tobacco products.

Let's make sure that future generations of young people do not get addicted. Addiction to tobacco products has had a huge cost to our society in terms of lives and money with over 400,000 American deaths every year. We have a chance today to put an end to that cycle.

In my home State of Maryland, I am very proud of the steps we have taken to curb the effects of tobacco use. We increased the tobacco tax and youth smoking has declined. We also passed a comprehensive smokefree indoor air law in 2007. But we can't have every State fighting alone to have a successful national program to curb tobacco use. We need one entity that has this power to help protect the American people, especially the young people of our country, from the deadly effects of tobacco products.

Mr. Speaker, this bill is a crucial step in protecting the health and well-being of our constituents from the deadly effects of tobacco use. It will save lives and money. I urge my colleagues to join me in a yes vote on this much-needed legislation.

Mr. LUCAS. Mr. Speaker, I am appalled at the blatant disregard for the public policy process. What kind of trick is being played out on the American people when half of H.R. 1256—the half that pays for FDA legislation—comes on suspension of the rules and the other half, the part that burdens American companies with more taxes and regulation, comes under a closed rule?

This bill gives FDA broad statutory authority to regulate the manufacturing, distribution, advertising, promotion, sale, and use of cigarettes and smokeless tobacco. And, it will ultimately result in FDA being on the farm micromanaging our farmers.

FDA has clearly proven it is severely overburdened with its current authority. Just look to the recent examples of salmonella found in peanut and pistachio products. Why would we give a huge new expansion of authority to an agency that has proven it can't handle the load it has? Can you honestly tell the American people to have confidence in the FDA to protect them?

How will this new authority be paid for? New taxes, of course. The bill taxes companies and importers to pay for the cost of regulation. The bill sets the amount of the assessments each year, which will increase to $712 million per year.

Also, this bill calls for using funds from the Thrift Savings Plan. Do we really want to use the savings portion of the bill to pay for more Washington bureaucracy?

Tobacco producers, small convenience stores, and tobacco warehouseman, which are the backbones of commerce across poor and rural districts, will be put out of business under this bill.

And, farmers—beware—FDA will come directly on your farm and tell you how to operate. Producers will bear the brunt of this legislation. FDA will tell producers what type of seeds they can plant, the methods in which they cultivate those seeds, the records they must keep and on and on and on.

I ask for a "no" vote on this classic tax and regulate bill.

Mr. BUYER. I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I also yield back my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

AMENDMENT OFFERED BY MR. BUYER

Mr. BUYER. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute printed in part B of House Report 111–72 offered by Mr. BUYER:

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 "Youth Prevention and Tobacco Harm Reduction Act".

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Scope and effect.
Sec. 5. Severability.
Sec. 6. Effective date.

TITLE I—AUTHORITY OF THE TOBACCO HARM REDUCTION CENTER

Sec. 100. Definitions.
Sec. 101. Center authority over tobacco products.
Sec. 102. Exclusion of other regulatory programs.
Sec. 103. Existing Federal statutes maintained.
Sec. 104. Proceedings in the name of the United States; subpoenas; preemption of State and local law; no private right of action.
Sec. 105. Illicit trade.
Sec. 106. Adulterated tobacco products.
Sec. 107. Misbranded tobacco products.
Sec. 108. Submission of health information to the Administrator.
Sec. 109. Registration and listing.
Sec. 110. General provisions respecting control of tobacco products.
Sec. 111. Smoking article standards.
Sec. 112. Notification and other remedies.
Sec. 113. Records and reports on tobacco products.
Sec. 114. Application for review of certain smoking articles.
Sec. 115. Modified risk tobacco products.
Sec. 116. Judicial review.
Sec. 117. Jurisdiction of and coordination with the Federal Trade Commission.
Sec. 118. Regulation requirement.
Sec. 119. Preservation of State and local authority.
Sec. 120. Tobacco Products Scientific Advisory Committee.
Sec. 121. Drug products used to treat tobacco dependence.
Sec. 122. Advertising and marketing of tobacco products.

TITLE II—TOBACCO PRODUCTS WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

Sec. 201. Cigarette label and advertising warnings.
Sec. 202. Smokeless tobacco labels and advertising warnings.

TITLE III—PUBIC DISCLOSURES BY TOBACCO PRODUCTS MANUFACTURERS

Sec. 301. Disclosures on packages of tobacco products.
Sec. 302. Disclosures on packages of smokeless tobacco.
Sec. 303. Public disclosure of ingredients.

TITLE IV—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

Sec. 401. Study and report on illicit trade.
Sec. 402. Amendment to section 1926 of the Public Health Service Act.
Sec. 403. Establishment of rankings.

TITLE V—ENFORCEMENT PROVISIONS

Sec. 501. Prohibited acts.
Sec. 502. Injunction proceedings.
Sec. 503. Penalties.
Sec. 504. Seizure.
Sec. 505. Report of minor violations.
Sec. 506. Inspection.
Sec. 507. Effect of compliance.
Sec. 508. Imports.
Sec. 509. Tobacco products for export.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Use of payments under the master settlement agreement and individual State settlement agreements.
Sec. 602. Preemption of State Laws Implementing Fire Safety Standard for Cigarettes.
Sec. 603. Inspection by the alcohol and tobacco tax trade bureau of records of certain cigarette and smokeless tobacco sellers.
Sec. 604. Severability.

TITLE VII—TOBACCO GROWER PROTECTION

Sec. 701. Tobacco grower protection.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Cigarette smoking is a leading cause of preventable deaths in the United States. Cigarette smoking significantly increases the risk of developing lung cancer, heart disease, chronic bronchitis, emphysema and other serious diseases with adverse health conditions.

(2) The risk for serious diseases is significantly affected by the type of tobacco product and the frequency, duration and manner of use.

(3) No tobacco product has been shown to be safe and without risks. The health risks associated with cigarettes are significantly greater than those associated with the use of smoke-free tobacco and nicotine products.

(4) Nicotine in tobacco products is addictive but is not considered a significant threat to health.

(5) It is the smoke inhaled from burning tobacco which poses the most significant risk of serious diseases.

(6) Quitting cigarette smoking significantly reduces the risk for serious diseases.

(7) Adult tobacco consumers have a right to be fully and accurately informed about the risks of serious diseases, the significant

differences in the comparative risks of different tobacco and nicotine-based products, and the benefits of quitting. This information should be based on sound science.

(8) Governments, public health officials, tobacco manufacturers and others share a responsibility to provide adult tobacco consumers with accurate information about the various health risks and comparative risks associated with the use of different tobacco and nicotine products.

(9) Tobacco products should be regulated in a manner that is designed to achieve significant and measurable reductions in the morbidity and mortality associated with tobacco use. Regulations should enhance the information available to adult consumers to permit them to make informed choices, and encourage the development of tobacco and nicotine products with lower risks than cigarettes currently sold in the United States.

(10) The form of regulation should be based on the risks and comparative risks of tobacco and nicotine products and their respective product categories.

(11) The regulation of marketing of tobacco products should be consistent with constitutional protections and enhance an adult consumer's ability to make an informed choice by providing accurate information on the risks and comparative risks of tobacco products.

(12) Reducing the diseases and deaths associated with the use of cigarettes serves public health goals and is in the best interest of consumers and society. Harm reduction should be the critical element of any comprehensive public policy surrounding the health consequences of tobacco use.

(13) Significant reductions in the harm associated with the use of cigarettes can be achieved by providing accurate information regarding the comparative risks of tobacco products to adult tobacco consumers, thereby encouraging smokers to migrate to the use of smoke-free tobacco and nicotine products, and by developing new smoke-free tobacco and nicotine products and other actions.

(14) Governments, public health officials, manufacturers, tobacco producers and consumers should support the development, production, and commercial introduction of tobacco leaf, and tobacco and nicotine-based products that are scientifically shown to reduce the risks associated with the use of existing tobacco products, particularly cigarettes.

(15) Adult tobacco consumers should have access to a range of commercially viable tobacco and nicotine-based products.

(16) There is substantial scientific evidence that selected smokeless tobacco products can satisfy the nicotine addiction of inveterate smokers while eliminating most, if not all, risk of pulmonary and cardiovascular complications of smoking and while reducing the risk of cancer by more than 95 percent.

(17) Transitioning smokers to selected smokeless tobacco products will eliminate environmental tobacco smoke and fire-related hazards.

(18) Current ''abstain, quit, or die'' tobacco control policies in the United States may have reached their maximum possible public health benefit because of the large number of cigarette smokers either unwilling or unable to discontinue their addiction to nicotine.

(19) There is evidence that harm reduction works and can be accomplished in a way that will not increase initiation or impede smoking cessation.

(20) Health-related agencies and organizations, both within the United States and abroad have already gone on record endorsing Harm Reduction as an approach to further reducing tobacco related illness and death.

(21) Current Federal policy requires tobacco product labeling that leaves the incorrect impression that all tobacco product present equal risk.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Tobacco Harm Reduction Center by recognizing it as the primary Federal regulatory authority with respect to tobacco products as provided for in this Act;

(2) to ensure that the Center has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Center to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Center with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) to ensure that consumers are better informed regarding the relative risks for death and disease between categories of tobacco products;

(7) to continue to allow the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote prevention, cessation, and harm reduction policies and regulations to reduce disease risk and the social costs associated with tobacco-related diseases;

(10) to provide authority to the Department of Health and Human Services to regulate tobacco products;

(11) to establish national policies that effectively reduce disease and death associated with cigarette smoking and other tobacco use;

(12) to establish national policies that encourage prevention, cessation, and harm reduction measures regarding the use of tobacco products;

(13) to encourage current cigarette smokers who will not quit to use noncombustible tobacco or nicotine products that have significantly less risk than cigarettes;

(14) to establish national policies that accurately and consistently inform adult tobacco consumers of significant differences in risk between respective tobacco products;

(15) to establish national policies that encourage and assist the development and awareness of noncombustible tobacco and nicotine products;

(16) to coordinate national and State prevention, cessation, and harm reduction programs;

(17) to impose measures to ensure tobacco products are not sold or accessible to underage purchasers; and

(18) to strengthen Federal and State legislation to prevent illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action;

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind; or

(3) be applicable to tobacco products or component parts manufactured in the United States for export.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

SEC. 6. EFFECTIVE DATE.

Except as otherwise specifically provided, the effective date of this Act shall be the date of its enactment.

TITLE I—AUTHORITY OF THE TOBACCO HARM REDUCTION CENTER

SEC. 100. DEFINITIONS.

In this Act:

(1) The term ''Administrator'' means the chief executive of the Tobacco Harm Reduction Center.

(2) The term ''adult'' means any individual who has attained the minimum age under applicable State law to be an individual to whom tobacco products may lawfully be sold.

(3) The term ''adult-only facility'' means a facility or restricted area, whether open-air or enclosed, where the operator ensures, or has a reasonable basis to believe, that no youth is present. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, if the operator ensures, or has a reasonable basis to believe, that no youth is present during any period of operation as an adult-only facility.

(4) The term ''affiliate'' means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The terms ''owns,'' ''is owned'', and ''ownership'' refer to ownership of an equity interest, or the equivalent thereof, of 50 percent or more.

(5) The term ''annual report'' means a tobacco product manufacturer's annual report to the Center, which provides ingredient information and nicotine yield ratings for each brand style that tobacco product manufacturer manufactures for commercial distribution domestically.

(6) The term ''brand name'' means a brand name of a tobacco product distributed or sold domestically, alone, or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicium of product identification identical or similar to, or identifiable with, those used for any domestic brand of tobacco product. The term shall not include the corporate name of any tobacco product manufacturer that does not, after the effective date of this Act, sell a brand style of tobacco product in the United States that includes such corporate name.

(7) The term ''brand style'' means a tobacco product having a brand name, and distinguished by the selection of the tobacco,

ingredients, structural materials, format, configuration, size, package, product descriptor, amount of tobacco, or yield of ''tar'' or nicotine.

(8) The term ''Center'' means the Tobacco Harm Reduction Center.

(9) The term ''cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(10) The term ''cigarette'' means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of the appearance of the roll of tobacco, the type of tobacco used in the filler, or its package or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(11) The term ''competent and reliable scientific evidence'' means evidence based on tests, analyses, research, or studies, conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the relevant scientific disciplines to yield accurate and reliable results.

(12) The term ''distributor'' means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the tobacco product to individuals for personal consumption. Common carriers, retailers, and those engaged solely in advertising are not considered distributors for purposes of this Act.

(13) The terms ''domestic'' and ''domestically'' mean within the United States, including activities within the United States involving advertising, marketing, distribution, or sale of tobacco products that are intended for consumption within the United States.

(14) The term ''illicit tobacco product'' means any tobacco product intended for use by consumers in the United States—

(A) as to which not all applicable duties or taxes have been paid in full;

(B) that has been stolen, smuggled, or is otherwise contraband;

(C) that is counterfeit; or

(D) that has or had a label, labeling, or packaging stating, or that stated, that the product is or was for export only, or that it is or was at any time restricted by section 5704 of title 26, United States Code.

(15) The term ''illicit trade'' means any transfer, distribution, or sale in interstate commerce of any illicit tobacco product.

(16) The term ''immediate container'' does not include package liners.

(17) The term ''Indian tribe'' has the meaning assigned that term in section 4(e) of the Indian Self Determination and Education Assistance Act.

(18) The term ''ingredient'' means tobacco and any substance added to tobacco to have an effect in the final tobacco product or when the final tobacco product is used by a consumer.

(19) The term ''International Organization for Standardization (ISO) testing regimen'' means the methods for measuring cigarette smoke yields, as set forth in the most recent version of ISO 3308, entitled ''Routine analytical cigarette-smoking machine—Definition of standard conditions''; ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''; ISO 10315, entitled ''Cigarettes—Determination of nicotine in smoke condensates—Gas-chromatographic method''; ISO 10362–1, entitled ''Cigarettes—Determination of water in smoke condensates—Part 1: Gas-chromatographic method''; and ISO 8454, entitled ''Cigarettes—Determination of carbon monoxide in the vapour phase of cigarette smoke—NDIR method''. A cigarette that does not burn down in accordance with the testing regimen standards may be measured under the same puff regimen using the number of puffs that such a cigarette delivers before it extinguishes, plus an additional three puffs, or with such other modifications as the Administrator may approve.

(20) The term ''interstate commerce'' means all trade, traffic, or other commerce—

(A) within the District of Columbia, or any territory or possession of the United States;

(B) between any point in a State and any point outside thereof;

(C) between points within the same State through any place outside such State; or

(D) over which the United States has jurisdiction.

(21) The term ''label'' means a display of written, printed, or graphic matter upon or applied securely to the immediate container of a tobacco product.

(22) The term ''labeling'' means all labels and other written, printed, or graphic matter (1) upon or applied securely to any tobacco product or any of its containers or wrappers, or (2) accompanying a tobacco product.

(23) The term ''little cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(24) The term ''loose tobacco'' means any form of tobacco, alone or in combination with any other ingredient or material, that, because of its appearance, form, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making or assembling cigarettes, incorporation into pipes, or otherwise used by consumers to make any tobacco product.

(25) The term ''manufacture'' means to design, manufacture, fabricate, assemble, process, package, or repackage, label, or relabel, import, or hold or store in a commercial quantity, but does not include—

(A) the growing, curing, de-stemming, or aging of tobacco; or

(B) the holding, storing or transporting of a tobacco product by a common carrier for hire, a public warehouse, a testing laboratory, a distributor, or a retailer.

(26) The term ''nicotine-containing product'' means a product, other than a tobacco product, that contains added nicotine, whether or not in the form of a salt or solvate, that has been—

(A) synthetically produced, or

(B) obtained from tobacco or other source of nicotine.

(27) The term ''package'' means a pack, box, carton, pouch, or container of any kind in which a tobacco product or tobacco products are offered for sale, sold, or otherwise distributed to consumers. The term ''package'' does not include an outer container used solely for shipping one or more packages of a tobacco product or tobacco products.

(28) The term ''person'' means any individual, partnership, corporation, committee, association, organization or group of persons, or other legal or business entity.

(29) The term ''proof of age'' means a driver's license or other form of identification that is issued by a governmental authority and includes a photograph and a date of birth of the individual.

(30) The term ''raw tobacco'' means tobacco in a form that is received by a tobacco product manufacturer as an agricultural commodity, whether in a form that is natural, stem, or leaf, cured or aged, or as parts or pieces, but not in a reconstituted form, extracted pulp form, or extract form.

(31) The term ''reduced-exposure claim'' means a statement in advertising or labeling intended for one or more consumers of tobacco products, that a tobacco product provides a reduced exposure of users of that tobacco product to one or more toxicants, as compared to an appropriate reference tobacco product or category of tobacco products. A statement or representation that a tobacco product or the tobacco in a tobacco product contains ''no additives'' or is ''natural'' or that uses a substantially similar term is not a reduced-exposure claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h) of this Act.

(32) The term ''reduced-risk claim'' means a statement in advertising or labeling intended for one or more consumers of smoking articles, that a smoking article provides to users of that product a reduced risk of morbidity or mortality resulting from one or more chronic diseases or serious adverse health conditions associated with tobacco use, as compared to an appropriate reference smoking article or category of smoking articles, even if it is not stated, represented, or implied that all health risks associated with using that smoking article have been reduced or eliminated. A statement or representation that a smoking article or the tobacco in a smoking article contains ''no additives,'' or is ''natural,'' or that uses a substantially similar term is not a reduced-risk claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h).

(33) The term ''retailer'' means any person that—

(A) sells tobacco products to individuals for personal consumption; or

(B) operates a facility where the sale of tobacco products to individuals for personal consumption is permitted.

(34) The term ''small business'' means a tobacco product manufacturer that—

(A) has 150 or fewer employees; and

(B) during the 3-year period prior to the current calendar year, had an average annual gross revenue from tobacco products that did not exceed $40,000,000.

(35) The term ''smokeless tobacco product'' means any form of finely cut, ground, powdered, reconstituted, processed or shaped tobacco, leaf tobacco, or stem tobacco, whether or not combined with any other ingredient, whether or not in extract or extracted form, and whether or not incorporated within any carrier or construct, that is intended to be placed in the oral or nasal cavity, including dry snuff, moist snuff, and chewing tobacco.

(36) The term ''smoking article'' means any tobacco-containing article that is intended, when used by a consumer, to be burned or otherwise to employ heat to produce a vapor, aerosol or smoke that—

(A) incorporates components of tobacco or derived from tobacco; and

(B) is intended to be inhaled by the user.

(37) The term ''State'' means any State of the United States and, except as otherwise specifically provided, includes any Indian tribe or tribal organization, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Atoll, the Northern Marianas, and any other trust territory or possession of the United States.

(38) The term ''tar'' means nicotine-free dry particulate matter as defined in ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''.

(39) The term ''tobacco'' means a tobacco plant or any part of a harvested tobacco plant intended for use in the production of a tobacco product, including leaf, lamina, stem, or stalk, whether in green, cured, or aged form, whether in raw, treated, or processed form, and whether or not combined with other materials, including any by-product, extract, extracted pulp material, or any other material (other than purified nicotine) derived from a tobacco plant or any component thereof, and including strip, filler, stem, powder, and granulated, blended, or reconstituted forms of tobacco.

(40) The term ''tobacco product'' means—

(A) the singular of ''tobacco products'' as defined in section 5702(c) of the Internal Revenue Code of 1986;

(B) any other product that contains tobacco as a principal ingredient and that, because of its appearance, type, or the tobacco used in the product, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a tobacco product as described in subparagraph (A); and

(C) any form of tobacco or any construct incorporating tobacco, intended for human consumption, whether by—

(i) placement in the oral or nasal cavity;

(ii) inhalation of vapor, aerosol, or smoke; or

(iii) any other means.

(41) The term ''tobacco product category'' means a type of tobacco product characterized by its composition, components, and intended use, and includes tobacco products classified as cigarettes, loose tobacco for roll-your-own tobacco products, little cigars, cigars, pipe tobacco, moist snuff, dry snuff, chewing tobacco, and other forms of tobacco products (which are treated in this Act collectively as a single category).

(42) The term ''tobacco product communication'' means any means, medium, or manner for providing information relating to any tobacco product, including face-to-face interaction, mailings by postal service or courier to an individual who is an addressee, and electronic mail to an individual who is an addressee.

(43) The term ''tobacco product manufacturer'' means an entity that directly—

(A) manufactures anywhere a tobacco product that is intended to be distributed commercially in the United States, including a tobacco product intended to be distributed commercially in the United States through an importer;

(B) is the first purchaser for resale in the United States of tobacco products manufactured outside the United States for distribution commercially in the United States; or

(C) is a successor or assign of any of the foregoing.

(44) The term ''toxicant'' means a chemical or physical agent that produces an adverse biological effect.

(45) The term ''tribal organization'' has the meaning assigned that term in section 4(1) of the Indian Self Determination and Education Assistance Act.

(46) The term ''United States'' means the several States, as defined in this Act.

(47) The term ''youth'' means any individual who in not an adult.

SEC. 101. CENTER AUTHORITY OVER TOBACCO PRODUCTS.

(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 117, shall be regulated by the Administrator under this Act.

(b) APPLICABILITY.—This Act shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Administrator by regulation deems to be subject to this Act.

(c) CENTER.—The Secretary of Health and Human Services shall establish within the Department of Health and Human Services the Tobacco Harm Reduction Center. The head of the Center shall be an Administrator, who shall assume the statutory authority conferred by this Act, perform the functions that relate to the subject matter of this Act, and have the authority to promulgate regulations for the efficient enforcement of this Act. In promulgating any regulations under such authority, in whole or in part or any regulation that is likely to have an annual effect on the economy of $50,000,000 or more or have a material adverse effect on adult users of tobacco products, tobacco product manufacturers, distributors, or retailers, the Administrator shall—

(1) determine the technological and economic ability of parties that would be required to comply with the regulation to comply with it;

(2) consider experience gained under any relevantly similar regulations at the Federal or State level;

(3) determine the reasonableness of the relationship between the costs of complying with such regulation and the public health benefits to be achieved by such regulation;

(4) determine the reasonable likelihood of measurable and substantial reductions in morbidity and mortality among individual tobacco users;

(5) determine the impact to United States tobacco producers and farm operations;

(6) determine the impact on the availability and use of tobacco products by minors; and

(7) determine the impact on illicit trade of tobacco products.

(d) LIMITATION OF AUTHORITY.—

(1) IN GENERAL.—The provisions of this Act shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Center have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

(2) EXCEPTION.—Notwithstanding paragraph (1), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this Act in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to grant the Administrator authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof.

(e) RULEMAKING PROCEDURES.—Each rulemaking under this Act shall be in accordance with chapter 5 of title 5, United States Code.

(f) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this Act, the Administrator shall endeavor to consult with other Federal agencies as appropriate.

SEC. 102. EXCLUSION OF OTHER REGULATORY PROGRAMS.

(a) EXCLUSION OF TOBACCO PRODUCTS AND NICOTINE-CONTAINING PRODUCTS FROM THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.—No tobacco product and no nicotine-containing product shall be regulated as a food, drug, or device in accordance with section 201 (f), (g) or (h) or Chapter IV or V of the Federal Food, Drug, and Cosmetic Act, except that any tobacco product commercially distributed domestically and any nicotine-containing product commercially distributed domestically shall be subject to Chapter V of the Federal Food, Drug, and Cosmetic Act if the manufacturer or a distributor of such product markets it with an explicit claim that the product is intended for use in the cure, mitigation, treatment, or prevention of disease in man or other animals, within the meaning of section 201(g)(1)(C) or section 201(h)(2) of that Act.

(b) LIMITATION ON EFFECT OF THIS ACT.—Nothing in this Act shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in any Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(c) EXCLUSIONS FROM AUTHORITY OF ADMINISTRATOR.—The authority granted to the Administrator under this Act shall not apply to—

(1) raw tobacco that is not in the possession or control of a tobacco product manufacturer;

(2) raw tobacco that is grown for a tobacco product manufacturer by a grower, and that is in the possession of that grower or of a person that is not a tobacco product manufacturer and is within the scope of subparagraphs (A) through(F) of paragraph (3); or

(3) the activities, materials, facilities, or practices of persons that are not tobacco product manufacturers and that are—

(A) producers of raw tobacco, including tobacco growers;

(B) tobacco warehouses, and other persons that receive raw tobacco from growers;

(C) tobacco grower cooperatives;

(D) persons that cure raw tobacco;

(E) persons that process raw tobacco; and

(F) persons that store raw tobacco for aging.

If a producer of raw tobacco is also a tobacco product manufacturer, an affiliate of a tobacco product manufacturer, or a person producing raw tobacco for a tobacco product manufacturer, then that producer shall be subject to this Act only to the extent of that producer's capacity as a tobacco product manufacturer.

SEC. 103. EXISTING FEDERAL STATUTES MAINTAINED.

Except as amended or repealed by this Act, all Federal statutes in effect as of the effective date of this Act that regulate tobacco, tobacco products, or tobacco product manufacturers shall remain in full force and effect. Such statutes include, without limitation—

(1) the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, except that section 1335 of title 15, United States Code, is repealed;

(2) the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, except that section 4402(f) of title 15, United States Code, is repealed;

(3) section 300x–26 of title 42, United States Code; and

(4) those statutes authorizing regulation of tobacco, tobacco products, or tobacco product manufacturers by the Federal Trade Commission, the Department of Agriculture, the Environmental Protection Agency, the Internal Revenue Service, and the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

SEC. 104. PROCEEDINGS IN THE NAME OF THE UNITED STATES; SUBPOENAS; PREEMPTION OF STATE AND LOCAL LAW; NO PRIVATE RIGHT OF ACTION.

In furtherance of this Act:

(1) All proceedings for the enforcement, or to restrain violations, of this Act shall be by

and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any proceeding under this section. No State, or political subdivision thereof, may proceed or intervene in any Federal or State court under this Act or under any regulation promulgated under it, or allege any violation thereof except a violation by the Administrator. Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act or of any regulation promulgated under it.

(2) With respect to any subject matter addressed by this Act or by any regulation promulgated under it, no requirement or prohibition shall be imposed under State or local law upon any tobacco product manufacturer or distributor.

(3) Paragraph (2) shall not apply to any requirement or prohibition imposed under State or local law before the date of introduction of the bill that was enacted as this Act.

SEC. 105. ILLICIT TRADE.

The Administrator shall not promulgate any regulation or take any other action that has the effect of—

(1) increasing illicit trade involving tobacco or any tobacco product, or

(2) making affected tobacco products unacceptable to a substantial number of then current users of such products, thereby creating a substantial risk that such users will resort to illicit tobacco products, or tobacco products that are otherwise noncompliant or unlawful.

SEC. 106. ADULTERATED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be adulterated—

(1) if it bears or contains any poisonous or deleterious substance other than—

(A) tobacco;

(B) a substance naturally present in tobacco;

(C) a pesticide or fungicide chemical residue in or on tobacco if such pesticide or fungicide chemical is registered by the Environmental Protection Agency for use on tobacco in the United States; or

(D) in the case of imported tobacco, a residue of a pesticide or fungicide chemical that—

(i) is approved for use in the country of origin of the tobacco; and

(ii) has not been banned, and the registration of which has not been canceled, by the Environmental Protection Agency for use on tobacco in the United States) that may render it injurious to health; but, in case the substance is not an added substance, such tobacco product shall not be considered adulterated under this subsection if the quantity of such substance in such tobacco product does not ordinarily render it injurious to health;

(2) if there is significant scientific agreement that, as a result of the tobacco it contains, the tobacco product presents a risk to human health that is materially higher than the risk presented by—

(A) such product on the effective date of this Act; or

(B) if such product was not distributed commercially domestically on that date, by comparable tobacco products of the same style and within the same category that were commercially distributed domestically on that date;

(3) if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth;

(4) if its package is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or

(5) if its ''tar'' yield is in violation of section 111.

SEC. 107. MISBRANDED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be misbranded—

(1) if its labeling is false or misleading in any particular;

(2) if in package form unless it bears a label containing—

(A) an identification of the type of product it is, by the common or usual name of such type of product;

(B) an accurate statement of the quantity of the contents in the package in terms of weight, measure, or numerical count, except that reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations promulgated by the Administrator;

(C) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

(D) the information required by section 201(c) and (e) or section 202(c) and (e), as applicable;

(3) if any word, statement, or other information required by or under authority of this Act to appear on the label, labeling, or advertising is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs on the label, labeling, or advertising, as applicable) and in such terms as to render it reasonably likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if any word, statement, or other information is required by or under this Act to appear on the label, unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such tobacco product, or is easily legible through the outside container or wrapper;

(5) if it was manufactured, prepared, or processed in an establishment not duly registered under section 109, if it was not included in a list required by section 109, or if a notice or other information respecting it was not provided as required by section 109;

(6) if its packaging, labeling, or advertising is in violation of this Act or of an applicable regulation promulgated in accordance with this Act;

(7) if it contains tobacco or another ingredient as to which a required disclosure under this Act was not made;

(8) if it is labeled or advertised, or the tobacco contained in it is advertised, as—

(A) containing ''no additives,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''No additives in our tobacco does NOT mean safer.''; or

(B) being ''natural,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''Natural does NOT mean safer.'';

(9) if in its labeling or advertising a term descriptive of the tobacco in the tobacco product is used otherwise than in accordance with a sanction or approval granted by a Federal agency;

(10) if with respect to such tobacco product a disclosure required by section 603 was not made;

(11) if with respect to such tobacco product a certification required by section 803 was not submitted or is materially false or misleading; or

(12) if its manufacturer or distributor made with respect to it a claim prohibited by section 115.

SEC. 108. SUBMISSION OF HEALTH INFORMATION TO THE ADMINISTRATOR.

(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Administrator the following information:

(1) Not later than 18 months after the date of enactment of the Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and brand style.

(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Administrator in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

(3) Beginning 4 years after the date of enactment of this Act, a listing of all constituents, including smoke constituents as applicable, identified by the Administrator as harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand.

(b) DATA SUBMISSION.—At the request of the Administrator, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a significant reduction in risk to health from tobacco products can occur upon the employment of technology available to the manufacturer.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

(c) DATA LIST.—

(1) IN GENERAL.—Not later than 4 years after the date of enactment of the Act, and annually thereafter, the Administrator shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Administrator) the list established under subsection (d).

(2) CONSUMER RESEARCH.—The Administrator shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Act, the Administrator shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

(d) DATA COLLECTION.—Not later than 36 months after the date of enactment of this Act, the Administrator shall establish, and periodically revise as appropriate, a list of harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand.

SEC. 109. REGISTRATION AND LISTING.

(a) DEFINITIONS.—As used in this section:

(1) The term ''manufacture, preparation, or processing'' shall include repackaging or

otherwise changing the container, wrapper, or label of any tobacco product package other than the carton in furtherance of the distribution of the tobacco product from the original place of manufacture to the person that makes final delivery or sale to the ultimate consumer or user, but shall not include the addition of a tax marking or other marking required by law to an already packaged tobacco product.

(2) The term ''name'' shall include in the case of a partnership the name of the general partner and, in the case of a privately held corporation, the name of the chief executive officer of the corporation and the State of incorporation.

(b) ANNUAL REGISTRATION.—Commencing one year after enactment, on or before December 31 of each year, every person that owns or operates any establishment in any State engaged in the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically shall register with the Administrator its name, places of business, and all such establishments.

(c) NEW PRODUCERS.—Every person upon first engaging, for commercial distribution domestically, in the manufacture, preparation, or processing of a tobacco product or products in any establishment that it owns or operates in any State shall immediately register with the Administrator its name, places of business, and such establishment.

(d) REGISTRATION OF FOREIGN ESTABLISHMENTS.—

(1) Commencing one year after enactment of this Act, on or before December 31 of each year, the person that, within any foreign country, owns or operates any establishment engaged in the manufacture, preparation, or processing of a tobacco product that is imported or offered for import into the United States shall, through electronic means or other means permitted by the Administrator, register with the Administrator the name and place of business of each such establishment, the name of the United States agent for the establishment, and the name of each importer of such tobacco product in the United States that is known to such person.

(2) Such person also shall provide the information required by subsection (j), including sales made by mail, or through the Internet, or other electronic means.

(3) The Administrator is authorized to enter into cooperative arrangements with officials of foreign countries to ensure that adequate and effective means are available for purposes of determining, from time to time, whether tobacco products manufactured, prepared, or processed by an establishment described in paragraph (1), if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 708.

(e) ADDITIONAL ESTABLISHMENTS.—Every person duly registered in accordance with the foregoing subsections of this section shall immediately register with the Administrator any additional establishment that it owns or operates and in which it begins the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically or for import into the United States.

(f) EXCLUSIONS FROM APPLICATION OF THIS SECTION.—The foregoing subsections of this section shall not apply to—

(1) persons that manufacture, prepare, or process tobacco products solely for use in research, teaching, chemical or biological analysis, or export; or

(2) such other classes of persons as the Administrator may by regulation exempt from the application of this section upon a finding that registration by such classes of persons in accordance with this section is not necessary for the protection of the public health.

(g) INSPECTION OF PREMISES.—Every establishment registered with the Administrator pursuant to this section shall be subject to inspection pursuant to section 706; and every such establishment engaged in the manufacture, preparation, or processing of a tobacco product or products shall be so inspected by one or more officers or employees duly designated by the Administrator at least once in the two-year period beginning with the date of registration of such establishment pursuant to this section and at least once in every successive two-year period thereafter, except that inspection of establishments outside the United States may be conducted by other personnel pursuant to a cooperative arrangement under subsection (d)(3).

(h) FILING OF LISTS OF TOBACCO PRODUCTS MANUFACTURED, PREPARED, OR PROCESSED BY REGISTRANTS; STATEMENTS; ACCOMPANYING DISCLOSURES.—

(1) Every person that registers with the Administrator under subsection (b), (c), (d), or (e) shall, at the time of registration under any such subsection, file with the Administrator a list of all brand styles (with each brand style in each list listed by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) that are being manufactured, prepared, or processed by such person for commercial distribution domestically or for import into the United States, and that such person has not included in any list of tobacco products filed by such person with the Administrator under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Administrator may prescribe, and shall be accompanied by the label for each such brand style and a representative sampling of any other labeling and advertising for each;

(2) Each person that registers with the Administrator under this section shall report to the Administrator each August for the preceding six-month period from January through June, and each February for the preceding six-month period form July through December, following information:

(A) A list of each brand style introduced by the registrant for commercial distribution domestically or for import into the United States that has not been included in any list previously filed by such registrant with the Administrator under this subparagraph or paragraph (1). A list under this subparagraph shall list a brand style by the common or usual name of the tobacco product category to which it belongs and by any proprietary name, and shall be accompanied by the other information required by paragraph (1).

(B) If since the date the registrant last made a report under this paragraph (or if such registrant has not previously made a report under this paragraph, since the effective date of this Act) such registrant has discontinued the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of a brand style included in a list filed by such registrant under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) of such tobacco product.

(C) If, since the date the registrant reported pursuant to subparagraph (B) a notice of discontinuance of a tobacco product, the registrant has resumed the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of that brand style, notice of such resumption, the date of such resumption, the identity of such brand style (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name), and the other information required by paragraph (1), unless the registrant has previously reported such resumption to the Administrator pursuant to this subparagraph.

(D) Any material change in any information previously submitted pursuant to this paragraph (2) or paragraph (1).

(i) ELECTRONIC REGISTRATION.—Registrations under subsections (b), (c), (d), and (e) (including the submission of updated information) shall be submitted to the Administrator by electronic means, unless the Administrator grants a request for waiver of such requirement because use of electronic means is not reasonable for the person requesting such waiver.

SEC. 110. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

(a) IN GENERAL.—Any requirement established by or under section 106, 107, or 113 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 111, section 114, section 115, or subsection (d) of this section, and any requirement established by or under section 106, 107, or 113 which is inconsistent with a requirement imposed on such tobacco product under section 111, section 114, section 115, or subsection (d) of this section shall not apply to such tobacco product.

(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 111, 112, 113, 114, or 115 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Administrator by a notice published in the Federal Register stating good cause therefore.

(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Administrator or the Administrator's representative under section 107, 108, 111, 112, 113, 114, 115, or 504, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(d) RESTRICTIONS.—

(1) IN GENERAL.—The Administrator may issue regulations, consistent with this Act, regarding tobacco products if the Administrator determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the tobacco product, and taking into account that the standard is reasonably likely to result in measurable and substantial reductions in morbidly and mortality among individual tobacco users.

(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Administrator may in such regulation prescribe.

(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Administrator shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this Act. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues after a tolerance for such chemical residues has been established.

(B) REQUIREMENTS.—The Administrator shall—

(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices but no earlier than four years from date of enactment.

(C) ADDITIONAL SPECIAL RULE.—A tobacco product manufactured in or imported into the United States shall not contain foreign-grown flue-cured or burley tobacco that—

(i) was knowingly grown or processed using a pesticide chemical that is not approved under applicable Federal law for use in domestic tobacco farming and processing; or

(ii) in the case of a pesticide chemical that is so approved, was grown or processed using the pesticide chemical in a manner inconsistent with the approved labeling for use of the pesticide chemical in domestic tobacco farming and processing.

(D) EXCLUSION.—Subparagraph (C)(ii) shall not apply to tobacco products manufactured with foreign-grown flue-cured or burley tobacco so long as that foreign grown tobacco was either—

(i) in the inventory of a manufacturer prior to the effective date, or

(ii) planted by the farmer prior to the effective date of this Act and utilized by the manufacturer no later than 3 years after the effective date.

(E) SETTING OF MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt the following pesticide residue standards:

Pesticide residue standards

The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (PPM) are:

CHLORDANE.....3.0

DIBROMOCHLOROPROPANE (DBCP).....1.0

DICAMBA (Temporary).... 5.0

ENDRIN....0.1

ETHYLENE DIBROMIDE (EDB)....0.1

FORMOTHION.....0.5

HEXACHLOROBENZENE (HCB)....0.1

METHOXYCHLOR.....0.1

TOXAPHENE.....0.3

2,4-D (Temporary).....5.0

2,4,5-T.....0.1

Sum of ALDRIN and DIELDRIN.....0.1

Sum of CYPERMETHRIN and PERMETHRIN (Temporary).....3.0

Sum of DDT, TDE (DDD), and DDE 0.4

Sum of HEPTACHLOR and HEPTACHLOR EPOXIDE.....0.1

(F) MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt regulations within one year of the effective date of this Act to establish maximum residue limits for pesticides identified under subparagraph (E) but not included in the table of such subparagraph to account for the fact that weather and agronomic conditions will cause pesticides identified in subparagraph (E) to be detected in foreign-grown tobacco even where the farmer has not knowingly added such pesticide.

(2) EXEMPTIONS; VARIANCES.—

(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Administrator for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Administrator in such form and manner as the Administrator shall prescribe and shall—

(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this Act;

(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

(iii) contain such other information as the Administrator shall prescribe.

(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Administrator may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Administrator with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

(i) the date the petition was submitted to the Administrator under subparagraph (A); or

(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Administrator shall by order either deny the petition or approve it.

(C) APPROVAL.—The Administrator may approve—

(i) a petition for an exemption for a tobacco product from a requirement if the Administrator determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this Act; and

(ii) a petition for a variance for a tobacco product from a requirement if the Administrator determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this Act.

(D) CONDITIONS.—An order of the Administrator approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this Act.

(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of this Act.

(f) RESEARCH AND DEVELOPMENT.—The Administrator may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

SEC. 111. SMOKING ARTICLE STANDARDS.

(a) IN GENERAL.—

(1) RESTRICTIONS ON DESCRIPTORS USED IN MARKETING OF CIGARETTES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall use, with respect to any cigarette brand style commercially distributed domestically, on the portion of the package of such cigarette brand style that customarily is visible to consumers before purchase, or in advertising of such cigarette brand style any of the following as a descriptor of any cigarette brand style—

(i) the name of any candy or fruit;

(ii) the word ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,''; or

(iii) any extension or variation of any of the words ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,'' including but not limited to ''creamy,'' or ''fruity.''

(B) LIMITATION.—Subparagraph (A) shall not apply to the use of the following words or to any extension or variation of any of them: ''coffee,'' ''mint,'' and ''menthol''.

(C) SCENTED MATERIALS.—No person shall use, in the advertising or labeling of any cigarette commercially distributed domestically, any scented materials, except in an adult-only facility.

(D) DEFINITIONS.—In this section:

(i) The term ''candy'' means a confection made from sugar or sugar substitute, including any confection identified generically or by brand, and shall include the words ''cacao,'' ''chocolate,'' ''cinnamon,'' ''cocoa,'' ''honey,'' ''licorice,'' ''maple,'' ''mocha,'' and ''vanilla.''

(ii) The term ''fruit'' means any fruit identified by generic name, type, or variety, including but not limited to ''apple,'' ''banana,'' ''cherry,'' and ''orange.'' The term ''fruit'' does not include words that identify seeds, nuts or peppers, or types or varieties thereof or words that are extensions or variations of such words.

(2) SMOKING ARTICLE STANDARDS.—

(A) IN GENERAL.—The Administrator may adopt smoking article standards in addition to those in paragraph (1) if the Administrator finds that a smoking article standard is appropriate for the protection of the public health.

(B) DETERMINATIONS.—

(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Administrator shall consider scientific evidence concerning—

(I) the risks and benefits to the users of smoking articles of the proposed standard; and

(II) that the standard is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Administrator makes a determination, set forth in a proposed smoking article standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a smoking article because the Administrator has found that the additive, constituent, or other component is harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Administrator's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

(3) CONTENT OF SMOKING ARTICLE STANDARDS.—A smoking article standard established under this section for a smoking article—

(A) may include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

(i) for ''tar'' and nicotine yields of the product;

(ii) for the reduction of other constituents, including smoke constituents, or harmful components of the product; or

(iii) relating to any other requirement under subparagraph (B); and

(B) may, where appropriate for the protection of the public health, include—

(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the smoking article;

(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the smoking article;

(iii) provisions for the measurement of the smoking article characteristics of the smoking article; and

(iv) provisions requiring that the results of each or of certain of the tests of the smoking article required to be made under clause (ii) show that the smoking article is in conformity with the portions of the standard for which the test or tests were required.

(4) PERIODIC REEVALUATION OF SMOKING ARTICLE STANDARDS.—The Administrator may provide for periodic evaluation of smoking article standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data.

(5) CIGARETTE ''TAR'' LIMITS.—

(A) NO INCREASE IN ''TAR'' YIELDS.—No cigarette manufacturer shall distribute for sale domestically a brand style of cigarettes that generates a ''tar'' yield greater than the ''tar'' yield of that brand style of cigarettes on the date of introduction of this Act, as determined by the ISO smoking regimen and its associated tolerances. The ''tar'' tolerances for cigarettes with ISO ''tar'' yields in the range of 1 to 20 milligrams per cigarette, based on variations arising from sampling procedure, test method, and sampled product, itself, are the greater of plus or minus—

(i) 15 percent; or

(ii) 1 milligram per cigarette.

(B) LIMIT ON NEW CIGARETTES.—After the effective date of this Act, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that both—

(i) was not in commercial distribution domestically on the effective date of this Act, and

(ii) generates a ''tar'' yield of greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(C) LIMIT ON ALL CIGARETTES.—After December 31, 2010, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that generates a ''tar'' yield greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(D) REVIEW BY ADMINISTRATOR.—After the effective date of this Act, the Administrator shall evaluate the available scientific evidence addressing the potential relationship between historical ''tar'' yield values and risk of harm to smokers. If upon a review of that evidence, and after consultation with technical experts of the Tobacco Harm Reduction Center and the Centers for Disease Control and Prevention and notice and an opportunity for public comment, the Administrator determines, that a reduction in ''tar'' yield may reasonably be expected to provide a meaningful reduction of the risk or risks of harm to smokers, the Administrator shall issue an order that—

(i) provides that no cigarette manufacturer shall manufacture for commercial distribution domestically a cigarette that generates a ''tar'' yield that exceeds 14 milligrams as determined by the ISO smoking regimen and its associated tolerances; and

(ii) provides a reasonable time for manufacturers to come into compliance with such prohibition.

(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Administrator shall endeavor to—

(A) use personnel, facilities, and other technical support available in other Federal agencies;

(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Administrator's judgment can make a significant contribution.

(b) CONSIDERATIONS BY ADMINISTRATOR.—

(1) TECHNICAL ACHIEVABILITY.—The Administrator shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

(2) OTHER CONSIDERATIONS.—The Administrator shall consider all other information submitted in connection with a proposed standard, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this Act and the significance of such demand.

(c) PROPOSED STANDARDS.—

(1) IN GENERAL.—The Administrator shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any smoking article standard.

(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a smoking article standard shall—

(A) set forth a finding with supporting justification that the smoking article standard is appropriate for the protection of the public health;

(B) invite interested persons to submit a draft or proposed smoking article standard for consideration by the Administrator;

(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed smoking article standard.

(3) FINDING.—A notice of proposed rulemaking for the revocation of a smoking article standard shall set forth a finding with supporting justification that the smoking article standard is no longer appropriate for the protection of the public health.

(4) COMMENT.—The Administrator shall provide for a comment period of not less than 90 days.

(d) PROMULGATION.—

(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, if the Administrator determines that the standard would be appropriate for the protection of the public health, the Administrator shall—

(A) promulgate a regulation establishing a smoking article standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

(2) EFFECTIVE DATE.—A regulation establishing a smoking article standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Administrator determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Administrator shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard.

(3) LIMITATION ON POWER GRANTED.—Because of the importance of a decision of the Administrator to issue a regulation—

(A) banning cigarettes, smokeless smoking articles, little cigars, cigars other than little cigars, pipe tobacco, or roll-your-own smoking articles;

(B) requiring the reduction of ''tar'' or nicotine yields of a smoking article to zero;

(C) prohibiting the sale of any smoking article in face-to-face transactions by a specific category of retail outlets;

(D) establishing a minimum age of sale of smoking articles to any person older than 18 years of age; or

(E) requiring that the sale or distribution of a smoking article be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products, the Administrator is prohibited from taking such actions under this Act.

(4) MATCHBOOKS.—For purposes of any regulations issued by the Administrator under this Act, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of smoking articles, shall be considered as adult-written publications which shall be permitted to contain advertising.

(5) AMENDMENT; REVOCATION.—

(A) AUTHORITY.—The Administrator, upon the Administrator's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a smoking article standard.

(B) EFFECTIVE DATE.—The Administrator may declare a proposed amendment of a smoking article standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Administrator determines that making it so effective is in the public interest.

(6) REFERRAL TO ADVISORY COMMITTEE.—

(A) IN GENERAL.—The Administrator shall refer a proposed regulation for the establishment, amendment, or revocation of a smoking article standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

(B) INITIATION OF REFERRAL.—The Administrator shall make a referral under this paragraph—

(i) on the Administrator's own initiative; or

(ii) upon the request of an interested person that—

(I) demonstrates good cause for the referral; and

(II) is made before the expiration of the period for submission of comments on the proposed regulation.

(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Administrator shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 90 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Administrator and other data and information before it, submit to the Administrator a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

(E) PUBLIC AVAILABILITY.—The Administrator shall make a copy of each report and recommendation under subparagraph (D) publicly available.

SEC. 112. NOTIFICATION AND OTHER REMEDIES.

(a) NOTIFICATION.—If the Administrator determines that—

(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm materially above the risk for death and disease of tobacco products currently in interstate commerce, to the public health; and

(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this Act (other than this section) to eliminate such risk,

the Administrator may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Administrator may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Administrator shall consult with the persons who are to give notice under the order.

(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

(c) RECALL AUTHORITY.—

(1) IN GENERAL.—If the Administrator finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, acute adverse health consequences or death, the Administrator shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Administrator determines that inadequate grounds exist to support the actions required by the order, the Administrator shall vacate the order.

(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Administrator determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Administrator shall, except as provided in subparagraph (B), amend the order to require a recall. The Administrator shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Administrator describing the progress of the recall.

(B) NOTICE.—An amended order under subparagraph (A)—

(i) shall not include recall of a tobacco product from individuals; and

(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Administrator may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Administrator shall notify such persons under section 705(b).

(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

SEC. 113. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Administrator may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded.

SEC. 114. APPLICATION FOR REVIEW OF CERTAIN SMOKING ARTICLES.

(a) IN GENERAL.—

(1) NEW SMOKING ARTICLE DEFINED.—For purposes of this section the term ''new smoking article'' means—

(A) any smoking article that was not commercially marketed in the United States as of the date of enactment of this Act; and

(B) any smoking article that incorporates a significant modification (including changes in design, component, part, or constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or other additive or ingredient) of a smoking article where the modified product was commercially marketed in the United States after the date of enactment of this Act.

(2) PREMARKET REVIEW REQUIRED.—

(A) NEW PRODUCTS.—An order under subsection (c)(1)(A) for a new smoking article is required unless the product—

(i) is substantially equivalent to a smoking article commercially marketed in the United States as of date of enactment of this Act; and

(ii) is in compliance with the requirements of this Act.

(B) CONSUMER TESTING.—This section shall not apply to smoking articles that are provided to adult tobacco consumers for purposes of consumer testing. For purposes of this section, the term ''consumer testing'' means an assessment of smoking articles that is conducted by or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of such smoking articles, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment

(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

(A) IN GENERAL.—In this section, the term ''substantially equivalent'' or ''substantial equivalence'' means, with respect to the smoking article being compared to the predicate smoking article, that the Administrator by order has found that the smoking article—

(i) has the same general characteristics as the predicate smoking article; or

(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Administrator, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health for the consumer of the product.

(B) CHARACTERISTICS.—In subparagraph (A), the term ''characteristics'' means the materials, ingredients, design, composition, heating source, or other features of a smoking article.

(C) LIMITATION.—A smoking article may not be found to be substantially equivalent to a predicate smoking article that has been removed from the market at the initiative of the Administrator or that has been determined by a judicial order to be misbranded or adulterated.

(4) HEALTH INFORMATION.—As part of a submission respecting a smoking article, the person required to file a premarket notification shall provide an adequate summary of any health information related to the smoking article or state that such information will be made available upon request by any person.

(b) APPLICATION.—

(1) CONTENTS.—An application under this section shall contain—

(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such smoking article and whether such smoking article presents less risk than other smoking articles;

(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such smoking article;

(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such smoking article;

(D) an identifying reference to any smoking article standard under section 111 which would be applicable to any aspect of such smoking article, and either adequate information to show that such aspect of such smoking article fully meets such smoking article standard or adequate information to justify any deviation from such standard;

(E) such samples of such smoking article and of components thereof as the Administrator may reasonably require;

(F) specimens of the labeling proposed to be used for such smoking article; and

(G) such other information relevant to the subject matter of the application as the Administrator may require.

(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Administrator—

(A) may, on the Administrator's own initiative; or

(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Administrator may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

(c) ACTION ON APPLICATION.—

(1) DEADLINE.—As promptly as possible, but in no event later than 90 days after the receipt of an application under subsection (b), the Administrator, after considering the report and recommendation submitted under subsection (b)(2), shall—

(A) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Administrator finds that none of the grounds specified in paragraph (2) of this subsection applies; or

(B) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Administrator finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

(2) DENIAL OF APPLICATION.—The Administrator shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Administrator as part of the application and any other information before the Administrator with respect to such smoking article, the Administrator finds that—

(A) there is a lack of a showing that permitting such smoking article to be marketed would be appropriate for the protection of the public health;

(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such smoking article do not conform to the requirements of section 110(e);

(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

(D) such smoking article is not shown to conform to a smoking article standard in effect under section 111, and there is a lack of adequate information to justify the deviation from such standard.

(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Administrator determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Administrator).

(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the commercial introduction of a smoking article for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the smoking article, and taking into account whether such commercial introduction is reasonably likely to increase the morbidly and mortality among individual tobacco users.

(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

(1) IN GENERAL.—The Administrator shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a smoking article for which an order was issued under subsection (c)(1)(A), issue an order withdrawing the order if the Administrator finds—

(A) that the continued marketing of such smoking article no longer is appropriate for the protection of the public health;

(B) that the application contained or was accompanied by an untrue statement of a material fact;

(C) that the applicant—

(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 113; or

(ii) has refused to permit access to, or copying or verification of, such records as required by section 110; or

(D) on the basis of new information before the Administrator with respect to such smoking article, evaluated together with the evidence before the Administrator when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such smoking article do not conform with the requirements of section 110(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Administrator of nonconformity;

(E) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when the application was reviewed, that the labeling of such smoking article, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Administrator of such fact; or

(F) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when such order was issued, that such smoking article is not shown to conform in all respects to a smoking article standard which is in effect under section 111, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 116.

(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Administrator determines there is reasonable probability that the continuation of distribution of a smoking article under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by smoking articles on the market, the Administrator shall by order temporarily suspend the authority of the manufacturer to market the product. If the Administrator issues such an order, the Administrator shall proceed expeditiously under paragraph (1) to withdraw such application.

(e) SERVICE OF ORDER.—An order issued by the Administrator under this section shall be served—

(1) in person by any officer or employee of the department designated by the Administrator; or

(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Administrator.

(f) RECORDS.—

(1) ADDITIONAL INFORMATION.—In the case of any smoking article for which an order issued pursuant to subsection (c)(1)(A) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Administrator, as the Administrator may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Administrator to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Administrator, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(g) INVESTIGATIONAL SMOKING ARTICLE EXEMPTION FOR INVESTIGATIONAL USE.—The Administrator may exempt smoking articles intended for investigational use from the provisions of this Act under such conditions as the Administrator may by regulation prescribe.

SEC. 115. MODIFIED RISK TOBACCO PRODUCTS.

(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

(b) DEFINITIONS.—In this section:

(1) MODIFIED RISK TOBACCO PRODUCT.—The term ''modified risk tobacco product'' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(2) SOLD OR DISTRIBUTED.—

(A) IN GENERAL.—With respect to a tobacco product, the term ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'' means a tobacco product—

(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

(III) the tobacco product or its smoke does not contain or is free of a substance;

(ii) the label, labeling, or advertising of which uses the descriptors ''light'', ''mild'', ''low'', ''medium'', ''ultra light'', ''low tar'' or ''ultra low tar''; or

(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

(B) LIMITATION.—No tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'', except as described in subparagraph (A).

(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products''.

(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Act.

(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Center and is subject to the requirements of chapter V.

(d) FILING.—Any person may file with the Administrator an application for a modified risk tobacco product. Such application shall include—

(1) a description of the proposed product and any proposed advertising and labeling;

(2) the conditions for using the product;

(3) the formulation of the product;

(4) sample product labels and labeling;

(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

(6) data and information on how consumers actually use the tobacco product; and

(7) such other information as the Administrator may require.

(e) PUBLIC AVAILABILITY.—The Administrator shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Administrator shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Administrator.

(g) MARKETING.—

(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Administrator shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Administrator determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

(B) is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

(A) IN GENERAL.—The Administrator may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

(i) such order would be appropriate to promote the public health;

(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Administrator must also find that the applicant has demonstrated that—

(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

(I) is or has been demonstrated to be significantly less harmful; or

(II) presents or has been demonstrated to present significant less of a risk of disease than other commercially marketed tobacco products; and

(iv) issuance of an order with respect to the application is expected to benefit the health of users of tobacco products.

(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

(A) the scientific evidence submitted by the applicant; and

(B) scientific evidence and other information that is made available to the Administrator.

(h) ADDITIONAL CONDITIONS FOR MARKETING.—

(1) MODIFIED RISK PRODUCTS.—The Administrator shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

(2) COMPARATIVE CLAIMS.—

(A) IN GENERAL.—The Administrator may require for the marketing of a product under this subsection that a claim comparing a tobacco product to other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

(B) QUANTITATIVE COMPARISONS.—The Administrator may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

(i) POSTMARKET SURVEILLANCE AND STUDIES.—

(1) IN GENERAL.—The Administrator shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Administrator to review the accuracy of the determinations upon which the order was based, and to provide information that the Administrator determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Administrator on an annual basis.

(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Administrator, a protocol for the required surveillance. The Administrator, within 30 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Administrator as necessary to protect the public health.

(j) WITHDRAWAL OF AUTHORIZATION.—The Administrator, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Administrator determines that—

(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Administrator can no longer make the determinations required under subsection (g);

(2) the application failed to include material information or included any untrue statement of material fact;

(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

(A) a tobacco product standard is established pursuant to section 111;

(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

(5) the applicant failed to meet a condition imposed under subsection (h).

(k) CHAPTER IV OR V.—A product for which the Administrator has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V of the Federal Food, Drug, and Cosmetic Act.

(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show a reasonable likelihood that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

(E) establish a reasonable timetable for the Administrator to review an application under this section.

(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) may be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 114 and which the applicant seeks to commercially market under this section.

SEC. 116. JUDICIAL REVIEW.

(a) RIGHT TO REVIEW.—

(1) IN GENERAL.—Not later than 60 days after—

(A) the promulgation of a regulation under section 111 establishing, amending, or revoking a tobacco product standard; or

(B) a denial of an application under section 114(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

(2) REQUIREMENTS.—

(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Administrator.

(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Administrator shall file in the court in which such petition was filed—

(i) the record of the proceedings on which the regulation or order was based; and

(ii) a statement of the reasons for the issuance of such a regulation or order.

(C) DEFINITION OF RECORD.—In this section, the term ''record'' means—

(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

(ii) all information submitted to the Administrator with respect to such regulation or order;

(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

(iv) any hearing held with respect to such regulation or order; and

(v) any other information identified by the Administrator, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 110, 111, 112, 113, 114, or 119 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

SEC. 117. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

SEC. 118. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Act, the Administrator shall promulgate regulations under this Act that meet the requirements of subsection (b).

(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

(1) shall require annual testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand style that the Administrator determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand style; and

(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising.

(c) AUTHORITY.—The Administrator shall have the authority under this Act to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

(d) JOINT LABORATORY TESTING SERVICES.—The Administrator shall allow any 2 or more tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a tobacco product manufacturer shall not be considered to be in violation of this section before the applicable deadline, if—

(A) the tobacco products of such manufacturer are in compliance with all other requirements of this Act; and

(B) the conditions described in paragraph (2) are met.

(2) CONDITIONS.—Notwithstanding the requirements of this section, the Administrator may delay the date by which a tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a tobacco product manufacturer provides evidence to the Administrator demonstrating that—

(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

(B) the products currently are awaiting testing by the laboratory; and

(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

(3) EXTENSION.—The Administrator, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a tobacco product manufacturer in accordance with paragraph (2). If the Administrator finds that the conditions described in such paragraph are met, the Administrator shall notify the tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however,

the Administrator has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Administrator finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Administrator may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Administrator determines, based on evidence properly and timely submitted by a tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act other than this section.

SEC. 119. PRESERVATION OF STATE AND LOCAL AUTHORITY.

(a) IN GENERAL.—

(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this Act, or rules promulgated under this Act, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to requirements established under this Act, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, or use of tobacco products by individuals of any age, information reporting to the State. No provision of this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this Act relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, use of, tobacco product by individuals of any age. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this Act relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

SEC. 120. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a 16-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Administrator shall appoint as members of the Tobacco Harm Reduction Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

(i) 6 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

(ii) 2 individuals who are an officer or employee of a State or local government or of the Federal Government;

(iii) 2 representatives of the general public;

(iv) 2 representatives of the interests of the tobacco manufacturing industry;

(v) 1 representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee;

(vi) 1 individual as a representative of the interests of the tobacco growers; and

(vii) 1 individual who is an expert in illicit trade of tobacco products.

(B) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products or government agency with any form of jurisdiction over tobacco products.

(2) LIMITATION.—The Administrator may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Tobacco Harm Reduction Center or any agency responsible for the enforcement of this Act. The Administrator may appoint Federal officials as ex officio members.

(3) CHAIRPERSON.—The Administrator shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Administrator—

(1) as provided in this Act;

(2) on the implementation of prevention, cessation, and harm reduction policies;

(3) on implementation of policies and programs to fully inform consumers of the respective risks of tobacco products; and

(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Administrator.

(d) COMPENSATION; SUPPORT; FACA.—

(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Administrator, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) ADMINISTRATIVE SUPPORT.—The Administrator shall furnish the Advisory Committee clerical and other assistance.

(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

SEC. 121. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

(a) REPORT ON INNOVATIVE PRODUCTS.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Administrator, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to promote, and encourage the development and use by current tobacco users of innovative tobacco and nicotine products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

(A) total abstinence from tobacco use;

(B) reductions in consumption of tobacco; and

(C) reductions in the harm associated with continued tobacco use by moving current users to noncombustible tobacco products.

(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Administrator on how the Tobacco Harm and Reduction Center should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Center and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant Federal and State agencies.

SEC. 122. ADVERTISING AND MARKETING OF TOBACCO PRODUCTS.

(a) Within 18 months of enactment of the Act, the Administrator shall report to Congress on the benefits to public health of imposing restrictions or prohibitions on the advertising and marketing, consistent with or in addition to such restrictions or prohibitions contained in the Master Settlement Agreement, on tobacco products.

(b) The Administrator shall specify in the report constitutional free speech implications for each recommended restriction or prohibition.

(c) The Administrator shall also specify the class of tobacco products to which the prohibition or restriction would be applicable and the impact of such actions on harm reduction policies, practices, and accurate information available to tobacco users.

(d) The Administrator shall establish and consult with an advisory committee consisting of experts in constitutional law, harm reduction policies, marketing practices, and consumer behavior in preparing this report.

TITLE II—TOBACCO PRODUCTS WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the lower portion of the front panel of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise at least the bottom 25 percent of the front panel of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding smoking article manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the bottom of each advertisement within the trim area. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of smokeless tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

"SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product has significantly lower risks for diseases associated with cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) The label statements required by paragraph (1) shall be introduced by each smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(3) The provisions of this subsection do not apply to a smokeless tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(4) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding smokeless tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

TITLE III—PUBIC DISCLOSURES BY TOBACCO PRODUCTS MANUFACTURERS

SEC. 301. DISCLOSURES ON PACKAGES OF TOBACCO PRODUCTS.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of a tobacco product is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than 2 principal faces;

(2) the front face shall be the principal face of the package;

(3) if the front and back faces are of different sizes in terms of area, then the larger face shall be the front face;

(4) the back face shall be the principal face of a package that is opposite the front face of the package;

(5) the bottom 50 percent of the back face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if a package of a tobacco product is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK FACE.—Not later than 24 months after the effective date of this Act, the bottom 50 percent of the back face of a package of a tobacco product shall be available solely for disclosures required by or under this Act, the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, and any other Federal statute. Such disclosures shall include—

(1) the printed name and address of the manufacturer, packer, or distributor, and any other identification associated with the manufacturer, packer, or distributor or with the tobacco product that the Administrator may require;

(2) a list of ingredients as required by subsection (e); and

(3) the appropriate tax registration number.

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Not later than 24 months after the effective date of this Act, the package of a tobacco product shall bear a list of the common or usual names of the ingredients present in the tobacco product in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients), that shall comply with the following:

(1) Such listing of ingredients shall appear under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) The package say state ''Not for sale to minors''.

(8) In the case of a package of cigarettes, the package shall state that smokeless tobacco has significantly lower risks for disease and death than cigarettes.

SEC. 302. DISCLOSURES ON PACKAGES OF SMOKELESS TOBACCO.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of smokeless tobacco is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than two principal faces;

(2) the front or top face shall be the principal face of the package;

(3) if the front or top and back or bottom faces are of different sizes in terms of area, then the larger face shall be the front or top face;

(4) the back or bottom face of the package shall be the principal face of a package that is opposite the front or top face of the package;

(5) beginning 24 months after the effective date of this Act, 50 percent of the back or bottom face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if the package is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK OR BOTTOM FACE.—50 percent of the back or bottom face of a package of smokeless tobacco shall be available solely for disclosures required by or under this Act, the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, and any other Federal statute. Such disclosures shall include a list of ingredients as required by subsection (e).

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Commencing 24 months after the effective date of this Act, a package of smokeless tobacco shall bear a list of the common or usual names of the ingredients present in the smokeless tobacco in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(1) Such listing of ingredients shall appears under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) Not for sale to minors.

SEC. 303. PUBLIC DISCLOSURE OF INGREDIENTS.

(a) REGULATIONS.—Not later than 24 months after the effective date of this Act, the Administrator shall, by regulation, establish standards under which each tobacco product manufacturer shall disclose publicly, and update at least annually—

(1) a list of the ingredients it uses in each brand style it manufactures for commercial distribution domestically, as provided in subsection (b); and

(2) a composite list of all the ingredients it uses in any of the brand styles it manufactures for commercial distribution domestically, as provided in subsection (c).

(b) INGREDIENTS TO BE DISCLOSED AS TO EACH BRAND STYLE.—

(1) IN GENERAL.—With respect to the public disclosure required by subsection (a)(1), as to each brand style, the tobacco product manufacture shall disclose the common or usual name of each ingredient present in the brand style in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(2) REQUIREMENTS.—Disclosure under paragraph (1) shall comply with the following:

(A) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(B) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(C) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(D) Preservatives may be listed as ''preservatives'' without naming each.

(E) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(c) AGGREGATE DISCLOSURE OF INGREDIENTS.—

(1) IN GENERAL.—The public disclosure required of a tobacco product manufacturer by subsection (a)(2) shall consist of a single list of all ingredients used in any brand style a tobacco product manufacturer manufactures for commercial distribution domestically, without regard to the quantity used, and including, separately, each spice, each natural or artificial flavoring, and each preservative.

(2) LISTING.—The ingredients shall be listed by their respective common or usual names in descending order of predominance by the total weight used annually by the tobacco product manufacturer in manufacturing tobacco products for commercial distribution domestically.

(d) NO REQUIRED DISCLOSURE OF QUANTITIES.—The Administrator shall not require any public disclosure of quantitative information about any ingredient in a tobacco product.

(e) DISCLOSURE ON WEBSITE.—The public disclosures required by subsection (a) of this section may be by posting on an Internet-accessible website, or other location electronically accessible to the public, which is identified on all packages of a tobacco product manufacturer's tobacco products.

(f) TIMING OF INITIAL REQUIRED DISCLOSURES.—No disclosure pursuant to this section shall be required to commence until the regulations under subsection (a) have been in effect for not less than 1 year.

TITLE IV—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 401. STUDY AND REPORT ON ILLICIT TRADE.

(a) The Administrator shall, after consultation with other relevant agencies including Customs and Tobacco Tax Bureau, conduct a study of trade in tobacco products that involves passage of tobacco products either between the States or from or to any other country across any border of the United States to—

(1) collect data on such trade in tobacco products, including illicit trade involving tobacco products, and make recommendations on the monitoring and enforcement of such trade;

(2) collect data on any advertising intended to be broadcast, transmitted, or distributed from or to the United States from or to another country and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, such advertising; and

(3) collect data on such trade in tobacco products by person that is not—

(A) a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement of November 23, 1998, between certain of the States and certain tobacco product manufacturers); or

(B) an affiliate or subsidiary of a participating manufacturer.

(b) Not later than 18 months after the effective date of this Act, the Administrator shall submit to the Secretary, and committees of relevant jurisdiction in Congress, a report the recommendations of the study conducted under subsection (a).

SEC. 402. AMENDMENT TO SECTION 1926 OF THE PUBLIC HEALTH SERVICE ACT.

Section 1926 of the Public Health Service Act (42 U.S.C. § 300x–26) is amended by adding at the end thereof the following:

''(e)(1) Subject to paragraphs (2) and (3), for the first fiscal year after enactment and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (h), the amount of any grant under section 300x–21 of this title for any State that does not have in effect a statute with substantially the following provisions:

"'SEC. 1. DISTRIBUTION TO MINORS.

''''(a) No person shall distribute a tobacco product to an individual under 18 years of age or a different minimum age established under State law. A person who violates this subsection is liable for a civil money penalty of not less than $25 nor more than $125 for each violation of this subsection;

''''(b) The employer of an employee who has violated subsection (a) twice while in the employ of such employer is liable for a civil money penalty of $125 for each subsequent violation by such employee.

''''(c) It shall be a defense to a charge brought under subsection (a) that—

''''(1) the defendant—

''''(A) relied upon proof of age that appeared on its face to be valid in accordance with the Federal Tobacco Act of 2007;

''''(B) had complied with the requirements of section 5 and, if applicable, section 7; or

''''(C) relied upon a commercially available electronic age verification service to confirm that the person was an age-verified adult; or

''''(2) the individual to whom the tobacco product was distributed was at the time of the distribution used in violation of subsection 8(b).

"'SEC. 2. PURCHASE, RECEIPT, OR POSSESSION BY MINORS PROHIBITED.

''''(a) An individual under 18 years of age or a different minimum age established under State law shall not purchase or attempt to purchase, receive or attempt to receive, possess or attempt to possess, a tobacco product. An individual who violates this subsection is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation, and shall be required to perform not less than four hours nor more than ten hours of community service. Upon the second or each subsequent violation of this subsection, such individual shall be required to perform not less than eight hours nor more than twenty hours of community service.

''''(b) A law enforcement agency, upon determining that an individual under 18 years of age or a different minimum age established under State law allegedly purchased, received, possessed, or attempted to purchase, receive, or possess, a tobacco product in violation of subsection (a) shall notify the individual's parent or parents, custodian, or guardian as to the nature of the alleged violation if the name and address of a parent or parents, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the individual who allegedly violated subsection (a) is cited by such agency for the violation. The notice may be made by any means reasonably calculated to give prompt actual notice, including notice in person, by telephone, or by first-class mail.

''''(c) Subsection (a) does not prohibit an individual under 18 years of age or a different minimum age established under State law from possessing a tobacco product during regular working hours and in the course of such individual's employment if the tobacco product is not possessed for such individual's consumption.

"'SEC. 3. OUT-OF-PACKAGE DISTRIBUTION.

''''It shall be unlawful for any person to distribute cigarettes or a smokeless tobacco product other than in an unopened package that complies in full with section 108 of the Federal Tobacco Act of 2007. A person who distributes a cigarette or a smokeless tobacco product in violation of this section is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

"'SEC. 4. SIGNAGE.

''''It shall be unlawful for any person who sells tobacco products over-the-counter to fail to post conspicuously on the premises where such person sells tobacco products over-the-counter a sign communicating that—

''''(1) the sale of tobacco products to individuals under 18 years of age or a different minimum age established under State law is prohibited by law;

''''(2) the purchase of tobacco products by individuals under 18 years of age or a different minimum age established under State law is prohibited by law; and

''''(3) proof of age may be demanded before tobacco products are sold.

A person who fails to post a sign that complies fully with this section is liable for a civil money penalty of not less than $25 nor more than $125.

"'SEC. 5. NOTIFICATION OF EMPLOYEES.

''''(a) Within 180 days of the effective date of the Youth Prevention and Tobacco Harm Reduction Act, every person engaged in the business of selling tobacco products at retail shall implement a program to notify each employee employed by that person who sells tobacco products at retail that—

''''(1) the sale or other distribution of tobacco products to any individual under 18 years of age or a different minimum age established under State law, and the purchase, receipt, or possession of tobacco products in a place open to the public by any individual under 18 years of age or a different minimum age established under State law, is prohibited; and

''''(2) out-of-package distribution of cigarettes and smokeless tobacco products is prohibited.

Any employer failing to provide the required notice to any employee shall be liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''''(b) It shall be a defense to a charge that an employer violated subsection (a) of this section that the employee acknowledged receipt, either in writing or by electronic means, prior to the alleged violation, of a statement in substantially the following form:

''I understand that State law prohibits the distribution of tobacco products to individuals under 18 years of age or a different minimum age established under State law and out-of-package distribution of cigarettes and smokeless tobacco products, and permits a

defense based on evidence that a prospective purchaser's proof of age was reasonably relied upon and appeared on its face to be valid. I understand that if I sell, give, or voluntarily provide a tobacco product to an individual under 18 years of age or a different minimum age established under State law, I may be found responsible for a civil money penalty of not less than $25 nor more than $125 for each violation. I promise to comply with this law.' ''

''(c) If an employer is charged with a violation of subsection (a) and the employer uses as a defense to such charge the defense provided by subsection (b), the employer shall be deemed to be liable for such violation if such employer pays the penalty imposed on the employee involved in such violation or in any way reimburses the employee for such penalty.

''SEC. 6. SELF-SERVICE DISPLAYS.

''(a) It shall be unlawful for any person who sells tobacco products over-the-counter at retail to maintain packages of such products in any location accessible to customers that is not under the control of a cashier or other employee during regular business hours. This subsection does not apply to any adult-only facility.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation, except that no person shall be responsible for more than one violation per day at any one retail store.

''SEC. 7. DISTRIBUTION BY MAIL OR COURIER.

''(a) It shall be unlawful to distribute or sell tobacco products directly to consumers by mail or courier, unless the person receiving purchase requests for tobacco products takes reasonable action to prevent delivery to individuals who are not adults by—

''(1) requiring that addressees of the tobacco products be age-verified adults;

''(2) making good faith efforts to verify that such addressees have attained the minimum age for purchase of tobacco products established by the respective States wherein the addresses of the addressees are located; and

''(3) addressing the tobacco products delivered by mail or courier to a physical addresses and not to post office boxes.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''SEC. 8. RANDOM UNANNOUNCED INSPECTIONS; REPORTING; AND COMPLIANCE.

''(a) The State Police, or a local law enforcement authority duly designated by the State Police, shall enforce this Act in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age or a different minimum age established under State law and shall conduct random, unannounced inspections in accordance with the procedures set forth in this Act and in regulations issued under section 1926 of the Federal Public Health Service Act (42 U.S.C. § 300x–26).

''(b) The State may engage an individual under 18 years of age or a different minimum age established under State law to test compliance with this Act, except that such an individual may be used to test compliance with this Act only if the testing is conducted under the following conditions:

''(1) Prior to use of any individual under 18 years of age or a different minimum age established under State law in a random, unannounced inspection, written consent shall be obtained from a parent, custodian, or guardian of such individual;

''(2) An individual under 18 years of age or a different minimum age established under State law shall act solely under the supervision and direction of the State Police or a local law enforcement authority duly designated by the State Police during a random, unannounced inspection;

''(3) An individual under 18 years of age or a different minimum age established under State law used in random, unannounced inspections shall not be used in any such inspection at a store in which such individual is a regular customer; and

''(4) If an individual under 18 years of age or a different minimum age established under State law participating in random, unannounced inspections is questioned during such an inspection about such individual's age, such individual shall state his or her actual age and shall present a true and correct proof of age if requested at any time during the inspection to present it.

''(c) Any person who uses any individual under 18 years of age or a different minimum age established under State law, other than as permitted by subsection (b), to test compliance with this Act, is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''(d) Civil money penalties collected for violations of this Act and fees collected under section 9 shall be used only to defray the costs of administration and enforcement of this Act.

''SEC. 9. LICENSURE.

''(a) Each person engaged in the over-the-counter distribution at retail of tobacco products shall hold a license issued under this section. A separate license shall be required for each place of business where tobacco products are distributed at retail. A license issued under this section is not assignable and is valid only for the person in whose name it is issued and for the place of business designated in the license.

''(b) The annual license fee is $25 for each place of business where tobacco products are distributed at retail.

''(c) Every application for a license, including renewal of a license, under this section shall be made upon a form provided by the appropriate State agency or department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as ''notice address''), and any other identifying information that the appropriate State agency or department may require.

''(d) The appropriate State agency or department shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the license fee. The appropriate State agency or department shall provide notice to an applicant of action on an application denying the issuance of a license or refusing to renew a license.

''(e) Every license issued by the appropriate State agency or department pursuant to this section shall be valid for 1 year from the date of issuance and shall be renewed upon application except as otherwise provided in this Act.

''(f) Upon notification of a change of address for a place of business for which a license has been issued, a license shall be reissued for the new address without the filing of a new application.

''(g) The appropriate State agency or department shall notify every person in the State who is engaged in the distribution at retail of tobacco products of the license requirements of this section and of the date by which such person should have obtained a license.

''(h)(1) Except as provided in paragraph (2), any person who engages in the distribution at retail of tobacco products without a license required by this section is liable for a civil money penalty in an amount equal to (i) two times the applicable license fee, and (ii) $50 for each day that such distribution continues without a license.

''(2) Any person who engages in the distribution at retail of tobacco products after a license issued under this section has been suspended or revoked is liable for a civil money penalty of $100 per day for each day on which such distribution continues after the date such person received notice of such suspension or revocation.

''(i) No person shall engage in the distribution at retail of tobacco products on or after 180 days after the date of enactment this Act unless such person is authorized to do so by a license issued pursuant to this section or is an employee or agent of a person that has been issued such a license.

''SEC. 10. SUSPENSION, REVOCATION, DENIAL, AND NONRENEWAL OF LICENSES.

''(a) Upon a finding that a licensee has been determined by a court of competent jurisdiction to have violated this Act during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the notice address, that any subsequent violation of this Act at the same place of business may result in an administrative action to suspend the license for a period determined by the specify the appropriate State agency or department.

''(b) Upon finding that a further violation by this Act has occurred involving the same place of business for which the license was issued and the licensee has been served notice once under subsection (a), the appropriate State agency or department may initiate an administrative action to suspend the license for a period to be determined by the appropriate State agency or department but not to exceed six months. If an administrative action to suspend a license is initiated, the appropriate State agency or department shall immediately notify the licensee in writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.

''(c) The appropriate State agency or department may initiate an administrative action to revoke a license that previously has been suspended under subsection (b) if, after the suspension and during the one-year period for which the license was issued, the licensee committed a further violation of this Act, at the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the appropriate State agency or department shall immediately notify the licensee in writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.

''(d) A person whose license has been suspended or revoked with respect to a place of business pursuant to this section shall pay a fee of $50 for the renewal or reissuance of the license at that same place of business, in addition to any applicable annual license fees.

''(e) Revocation of a license under subsection (c) with respect to a place of business shall not be grounds to deny an application by any person for a new license with respect to such place of business for more than 12 months subsequent to the date of such revocation. Revocation or suspension of a license with respect to a particular place of

business shall not be grounds to deny an application for a new license, to refuse to renew a license, or to revoke or suspend an existing license at any other place of business.

''(f) A licensee may seek judicial review of an action of the appropriate State agency or department suspending, revoking, denying, or refusing to renew a license under this section by filing a complaint in a court of competent jurisdiction. Any such complaint shall be filed within 30 days after the date on which notice of the action is received by the licensee. The court shall review the evidence de novo.

''(g) The State shall not report any action suspending, revoking, denying, or refusing to renew a license under this section to the Federal Secretary of Health and Human Services, unless the opportunity for judicial review of the action pursuant to subsection (f), if any, has been exhausted or the time for seeking such judicial review has expired.

''SEC. 11. NO PRIVATE RIGHT OF ACTION.

''Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act.

''SEC. 12. JURISDICTION AND VENUE.

''Any action alleging a violation of this Act may be brought only in a court of general jurisdiction in the city or county where the violation is alleged to have occurred.

''SEC. 13. REPORT.

''The appropriate State agency or department shall prepare for submission annually to the Federal Secretary of Health and Human Services the report required by section 1926 of the Federal Public Health Service Act (42 U.S.C. 300x–26).'''.

''(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2007, and in the case of a State whose legislature does not convene a regular session in fiscal year 2008, the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 2009 and subsequent fiscal years.

''(3) Subsection (e)(1) shall not affect any State or local law that (A) was in effect on the date of introduction of the Federal Tobacco Act of 2007, and (B) covers the same subject matter as the law described in subsection (e)(1). Any State law that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title, if such State law is at least as stringent as the law described in subsection (e)(1).

''(f)(1) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will enforce the law described in subsection (e)(1) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18 or a different minimum age established under State law for the purchase of tobacco products.

''(2) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will—

''(A) conduct random, unannounced inspections to ensure compliance with the law described in subsection (e)(1); and

''(B) annually submit to the Secretary a report describing—

''(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

''(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under 18 years of age or a different minimum age established under State law, including the results of the inspections conducted under subparagraph (A); and

''(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

''(g) The law specified in subsection (e)(1) may be administered and enforced by a State using—

''(1) any amounts made available to the State through a grant under section 300x–21 of this title;

''(2) any amounts made available to the State under section 300w of this title;

''(3) any fees collected for licenses issued pursuant to the law described in subsection (e)(1);

''(4) any fines or penalties assessed for violations of the law specified in subsection (e)(1); or

''(5) any other funding source that the legislature of the State may prescribe by statute.

''(h) Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (e) and (f) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for the State for the fiscal year involved by an amount equal to—

''(1) In the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(2) In the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(3) In the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 for the State for the fiscal year; and

''(4) In the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (e) or (f).

''(i) For the purposes of subsections (e) through (h) of this section the term 'first applicable fiscal year' means—

''(1) fiscal year 2009, in the case of any State described in subsection (e)(2) of this section; and

''(2) fiscal year 2008, in the case of any other State.

''(j) For purposes of subsections (e) through (h) of this section, references to section 300x–21 shall include any successor grant programs.''

''(k) As required by paragraph (1), and subject to paragraph (4), an Indian tribe shall satisfy the requirements of subsection (e)(1) of this section by enacting a law or ordinance with substantially the same provisions as the law described in subsection (e)(1).

''(1) An Indian tribe shall comply with subsection (e)(1) of this section within 180 days after the Administrator finds, in accordance with this paragraph, that—

''(A) the Indian tribe has a governing body carrying out substantial governmental powers and duties;

''(B) the functions to be exercised by the Indian tribe under this Act pertain to activities on trust land within the jurisdiction of the tribe; and

''(C) the Indian tribe is reasonably expected to be capable of carrying out the functions required under this section.

Within 2 years of the date of enactment of the Federal Tobacco Act of 2007, as to each Indian tribe in the United States, the Administrator shall make the findings contemplated by this paragraph or determine that such findings cannot be made, in accordance with the procedures specified in paragraph (4).

''(2) As to Indian tribes subject to subsection (e)(1) of this section, the Administrator shall promulgate regulations that—

''(A) provide whether and to what extent, if any, the law described in subsection (e)(1) may be modified as adopted by Indian tribes; and

''(B) ensure, to the extent possible, that each Indian tribe's retailer licensing program under subsection (e)(1) is no less stringent than the program of the State or States in which the Indian tribe is located.

''(3) If with respect to any Indian tribe the Administrator determines that compliance with the requirements of subsection (e)(1) is inappropriate or administratively infeasible, the Administrator shall specify other means for the Indian tribe to achieve the purposes of the law described in subsection (e)(1) with respect to persons who engage in the distribution at retail of tobacco products on tribal lands.

''(4) The findings and regulations promulgated under paragraphs (1) and (2) shall be promulgated in conformance with section 553 of title 5, United States Code, and shall comply with the following provisions:

''(A) In making findings as provided in paragraph (1), and in drafting and promulgating regulations as provided in paragraph (2) (including drafting and promulgating any revised regulations), the Administrator shall confer with, and allow for active participation by, representatives and members of Indian tribes, and tribal organizations.

''(B) In carrying out rulemaking processes under this subsection, the Administrator shall follow the guidance of subchapter III of chapter 5 of title 5, United States Code, commonly known as the 'Negotiated Rulemaking Act of 1990.'

''(C) The tribal participants in the negotiation process referred to in subparagraph (B) shall be nominated by and shall represent the groups described in this subsection and shall include tribal representatives from all geographic regions.

''(D) The negotiations conducted under this paragraph (4) shall be conducted in a timely manner.

''(E) If the Administrator determines that an extension of the deadlines under subsection (k)(1) of this section is appropriate, the Secretary may submit proposed legislation to Congress for the extension of such deadlines.

''(5) This subsection shall not affect any law or ordinance that (A) was in effect on tribal lands on the date of introduction of the Youth Prevention and Tobacco Harm Reduction Act, and (B) covers the same subject matter as the law described in subsection (e)(1). Any law or ordinance that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (k)(1), if such law or ordinance is at least as stringent as the law described in subsection (e)(1).

''(6) For purposes of this subsection—

''(A) 'Administrator' means the Administrator of the Tobacco Harm Reduction Center.

''(B) 'Indian tribe' has the meaning assigned that term in section 4(e) of the Indian

Self Determination and Education Assistance Act, section 450b(e) of title 25, United States Code.

''(C) 'Tribal lands' means all lands within the exterior boundaries of any Indian reservation, all lands the title to which is held by the United States in trust for an Indian tribe, or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation, and all dependent Indian communities.

''(D) 'tribal organization' has the meaning assigned that term in section 4(l) of the Indian Self Determination and Education Assistance Act, section 450b(l) of title 25, United States Code.''.

SEC. 403. ESTABLISHMENT OF RANKINGS.

(a) STANDARDS AND PROCEDURES FOR RANKINGS.—Within 24 months after the effective date of this Act, the Administrator shall, by regulation, after consultation with an Advisory Committee established for such purpose, establish the standards and procedures for promulgating rankings, comprehensible to consumers of tobacco products, of the following categories of tobacco products and also nicotine-containing products on the basis of the relative risks of serious or chronic tobacco-related diseases and adverse health conditions those categories of tobacco products and also nicotine-containing products respectively present—

(1) cigarettes;

(2) loose tobacco for roll-your-own tobacco products;

(3) little cigars;

(4) cigars;

(5) pipe tobacco;

(6) moist snuff;

(7) dry snuff;

(8) chewing tobacco;

(9) other forms of tobacco products, including pelletized tobacco and compressed tobacco, treated collectively as a single category; and

(10) other nicotine-containing products, treated collectively as a single category.

The Administrator shall not have authority or discretion to establish a relative-risk ranking of any category or subcategory of tobacco products or any category or subcategory of nicotine-containing products other than the ten categories specified in this subsection.

(b) CONSIDERATIONS IN PROMULGATING REGULATIONS.—In promulgating regulations under this section, the Administrator—

(1) shall take into account relevant epidemiologic studies and other relevant competent and reliable scientific evidence; and

(2) in assessing the risks of serious or chronic tobacco-related diseases and adverse health conditions presented by a particular category, shall consider the range of tobacco products or nicotine-containing products within the category, and shall give appropriate weight to the market shares of the respective products in the category.

(c) PROMULGATION OF RANKINGS OF CATEGORIES.—Once the initial regulations required by subsection (a) are in effect, the Administrator shall promptly, by order, after notice and an opportunity for comment, promulgate to the general public rankings of the categories of tobacco products and nicotine-containing products in accordance with those regulations. The Administrator shall promulgate the initial rankings of those categories of tobacco products and nicotine-containing products to the general public not later than January 1, 2010. Thereafter, on an annual basis, the Administrator shall, by order, promulgate to the general public updated rankings that are (1) in accordance with those regulations, and (2) reflect the scientific evidence available at the time of promulgation. The Administrator shall open and maintain an ongoing public docket for receipt of data and other information submitted by any person with respect to such annual promulgation of rankings.

TITLE V—ENFORCEMENT PROVISIONS

SEC. 501. PROHIBITED ACTS.

The following acts and the causing thereof are hereby prohibited—

(1) the introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded;

(2) the adulteration or misbranding of any tobacco product in interstate commerce;

(3) the receipt in interstate commerce of any tobacco product that is known to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) the failure to establish or maintain any record, or make any report or other submission, or to provide any notice required by or under this Act; or the refusal to permit access to, verification of, or copying of any record as required by this Act;

(5) the refusal to permit entry or inspection as authorized by this Act;

(6) the making to the Administrator of a statement, report, certification or other submission required by this Act, with knowledge that such statement, report, certification, or other submission is false in a material aspect;

(7) the manufacturing, shipping, receiving, storing, selling, distributing, possession, or use of any tobacco product with knowledge that it is an illicit tobacco product;

(8) the forging, simulating without proper permission, falsely representing, or without proper authority using any brand name;

(9) the using by any person to his or her own advantage, or revealing, other than to the Administrator or officers or employees of the Agency, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of this Act concerning any item which as a trade secret is entitled to protection; except that the foregoing does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee;

(10) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a tobacco product, if such act is done while such tobacco product is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in such tobacco product being adulterated or misbranded;

(11) the importation of any tobacco product that is adulterated, misbranded, or otherwise not in compliance with this Act; and

(12) the commission of any act prohibited by section 201 of this Act.

SEC. 502. INJUNCTION PROCEEDINGS.

(a) The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act, except for violations of section 701(k).

(b) In case of an alleged violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or upon demand of the defendant, by a jury.

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—Any person who willfully violates a provision of section 501 of this Act shall be imprisoned for not more than one year or fined not more than $25,000, or both.

(b) CIVIL PENALTIES FOR VIOLATION OF SECTION 803.—

(1) Any person who knowingly distributes or sells, other than through retail sale or retail offer for sale, any cigarette brand style in violation of section 803(a)—

(A) for a first offense shall be liable for a civil penalty not to exceed $10,000 for each distribution or sale, or

(B) for a second offense shall be liable for a civil penalty not to exceed $25,000 for each distribution or sale,

except that the penalty imposed against any person with respect to violations during any 30-day period shall not exceed $100,000.

(2) Any retailer who knowingly distributes, sells or offers for sale any cigarette brand style in violation of section 803(a) shall—

(A) for a first offense for each sale or offer for sale of cigarettes, if the total number of packages of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $500 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $1,000 for each sale or offer for sale;

(B) for each subsequent offense for each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $2,000 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $5,000 for each sale or offer for sale;

except that the penalty imposed against any person during any 30-day period shall not exceed $25,000.

SEC. 504. SEIZURE.

(a) ARTICLES SUBJECT TO SEIZURE.—

(1) Any tobacco product that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of this Act, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States within the jurisdiction of which the tobacco product is found. No libel for condemnation shall be instituted under this Act for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this Act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply—

(A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this Act, or

(B) when the Administrator has probable cause to believe from facts found, without hearing, by the Administrator or any officer or employee of the Agency that the misbranded tobacco product is dangerous to health beyond the inherent danger to health posed by tobacco, or that the labeling of the misbranded tobacco product is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and

such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States within the jurisdiction of which they are found—

(A) any tobacco product that is an illicit tobacco product;

(B) any container of an illicit tobacco product;

(C) any equipment or thing used in making an illicit tobacco product; and

(D) any adulterated or misbranded tobacco product.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any tobacco product which—

(i) is misbranded under this Act because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the tobacco product.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a tobacco product described in subparagraph (A) if the tobacco product's advertising which resulted in the tobacco product being misbranded was disseminated in the establishment in which the tobacco product is being held for sale to the ultimate consumer—

(i) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(ii) all or part of the cost of such advertising was paid by such owner or operator.

(b) PROCEDURES.—The tobacco product, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) SAMPLES AND ANALYSES.—The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, the party's attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) DISPOSITION OF CONDEMNED TOBACCO PRODUCTS.—(1) Any tobacco product condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such tobacco product shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State in which sold, the court may by order direct that such tobacco product be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act, under the supervision of an officer or employee duly designated by the Administrator; and the expenses of such supervision shall be paid by the person obtaining release of the tobacco product under bond. If the tobacco product was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the tobacco product was imported, and (B) that the person seeking the release of the tobacco product had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the tobacco product to be delivered to the owner for exportation under section 709 in lieu of destruction upon a showing by the owner that there is a reasonable certainty that the tobacco product will not be re-imported into the United States.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a).

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a), the condemnation of any equipment or thing (other than a tobacco product) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (A) that such claimant has not caused the equipment or thing to be within one of the categories referred to in such paragraph (2) and has no interest in any tobacco product referred to therein, (B) that such claimant has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by such claimant in good faith, and (C) that such claimant at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to any illicit tobacco product.

(e) COSTS AND FEES.—When a decree of condemnation is entered against the tobacco product or other article, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the tobacco product or other article.

(f) REMOVAL FOR TRIAL.—In the case of removal for trial of any case as provided by subsection (a) or (b)—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) ADMINISTRATIVE DETENTION OF TOBACCO PRODUCTS.—

(1) DETENTION AUTHORITY.—

(A) IN GENERAL.—An officer or qualified employee of the Agency may order the detention, in accordance with this subsection, of any tobacco product that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences beyond those normally inherent in the use of tobacco products.

(B) ADMINISTRATOR'S APPROVAL.—A tobacco product or component thereof may be ordered detained under subparagraph (A) if, but only if, the Administrator or an official designated by the Administrator approves the order. An official may not be so designated unless the official is an officer with supervisory responsibility for the inspection, examination, or investigation that led to the order.

(2) PERIOD OF DETENTION.—A tobacco product may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to institute an action under subsection (a) or section 702.

(3) SECURITY OF DETAINED TOBACCO PRODUCT.—An order under paragraph (1) may require that the tobacco product to be detained be labeled or marked as detained, and shall require that the tobacco product be maintained in or removed to a secure facility, as appropriate. A tobacco product subject to such an order shall not be transferred by any person from the place at which the tobacco product is ordered detained, or from the place to which the tobacco product is so removed, as the case may be, until released by the Administrator or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the tobacco product pursuant to the execution of a bond while the tobacco product is subject to the order, and section 709 does not authorize the delivery of the tobacco product pursuant to the execution of a bond while the article is subject to the order.

(4) APPEAL OF DETENTION ORDER.—

(A) IN GENERAL.—With respect to a tobacco product ordered detained under paragraph (1), any person who would be entitled to be a claimant of such tobacco product if the tobacco product were seized under subsection (a) may appeal the order to the Administrator. Within five days after such an appeal is filed, the Administrator, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Administrator shall be considered a final agency action for purposes of section 702 of title 5, United States Code. If during such five-day period the Administrator fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) EFFECT OF INSTITUTING COURT ACTION.—The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Administrator institutes an action under subsection (a) or section 702 regarding the tobacco product involved.

SEC. 505. REPORT OF MINOR VIOLATIONS.

Nothing in this Act shall be construed as requiring the Administrator to report for prosecution, or for institution of libel or injunction proceedings, minor violations of this Act whenever the Administrator believes that the public interest will be adequately served by a suitable written notice or warning.

SEC. 506. INSPECTION.

(a) AUTHORITY TO INSPECT.—The Administrator shall have the power to inspect the premises of a tobacco product manufacturer for purposes of determining compliance with this Act, or the regulations promulgated under it. Officers of the Agency designated by the Administrator, upon presenting appropriate credentials and a written notice to the person in charge of the premises, are authorized to enter, at reasonable times, without a search warrant, any factory, warehouse, or other establishment in which tobacco products are manufactured, processed, packaged, or held for domestic distribution. Any such inspection shall be conducted within reasonable limits and in a reasonable manner, and shall be limited to examining only those things, including but not limited to records, relevant to determining whether violations of this Act, or regulations under it, have occurred. No inspection authorized by this section shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Act), or research data. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(b) REPORT OF OBSERVATIONS.—Before leaving the premises, the officer of the Agency who has supervised or conducted the inspection shall give to the person in charge of the premises a report in writing setting forth any conditions or practices that appear to manifest a violation of this Act, or the regulations under it.

(c) SAMPLES.—If the officer has obtained any sample in the course of inspection, prior to leaving the premises that officer shall give to the person in charge of the premises a receipt describing the samples obtained. As to each sample obtained, the officer shall furnish promptly to the person in charge of the premises a copy of the sample and of any analysis made upon the sample.

SEC. 507. EFFECT OF COMPLIANCE.

Compliance with the provisions of this Act and the regulations promulgated under it shall constitute a complete defense to any civil action, including but not limited to any products liability action, that seeks to recover damages, whether compensatory or punitive, based upon an alleged defect in the labeling or advertising of any tobacco product distributed for sale domestically.

SEC. 508. IMPORTS.

(a) IMPORTS; LIST OF REGISTERED FOREIGN ESTABLISHMENTS; SAMPLES FROM UNREGISTERED FOREIGN ESTABLISHMENTS; EXAMINATION AND REFUSAL OF ADMISSION.—The Secretary of Homeland Security shall deliver to the Administrator, upon request by the Administrator, samples of tobacco products that are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. The Administrator shall furnish to the Secretary of Homeland Security a list of establishments registered pursuant to subsection (d) of section 109 of this Act, and shall request that, if any tobacco products manufactured, prepared, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such tobacco products be delivered to the Administrator, with notice of such delivery to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such tobacco product is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (2) such tobacco product is adulterated, misbranded, or otherwise in violation of this Act, then such tobacco product shall be refused admission, except as provided in subsection (b) of this section. The Secretary of Homeland Security shall cause the destruction of any such tobacco product refused admission unless such tobacco product is exported, under regulations prescribed by the Secretary of Homeland Security, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) DISPOSITION OF REFUSED TOBACCO PRODUCTS.—Pending decision as to the admission of a tobacco product being imported or offered for import, the Secretary of Homeland Security may authorize delivery of such tobacco product to the owner or consignee upon the execution by such consignee of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of Homeland Security. If it appears to the Administrator that a tobacco product included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with this Act or rendered other than a tobacco product, final determination as to admission of such tobacco product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by such consignee of a bond as provided in the preceding provisions of this subsection, the Administrator may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected tobacco products or portions thereof, as may be specified in the Administrator's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Agency designated by the Administrator, or an officer or employee of the Department of Homeland Security designated by the Secretary of Homeland Security.

(c) CHARGES CONCERNING REFUSED TOBACCO PRODUCTS.—All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any tobacco product refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

SEC. 509. TOBACCO PRODUCTS FOR EXPORT.

(a) EXEMPTION FOR TOBACCO PRODUCTS EXPORTED.—Except as provided in subsection (b), a tobacco product intended for export shall be exempt from this Act if—

(1) it is not in conflict with the laws of the country to which it is intended fore export, as shown by either (A) a document issued by the government of that country or (B) a document provided by a person knowledgeable with respect to the relevant laws of that country and qualified by training and experience to opine on whether the tobacco product is or is not in conflict with such laws;

(2) it is labeled on the outside of the shipping package that it is intended for export; and

(3) the particular units of tobacco product intended for export have not been sold or offered for sale in domestic commerce.

(b) PRODUCTS FOR U.S. ARMED FORCES OVERSEAS.—A tobacco product intended for export shall not be exempt from this Act if it is intended for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(c) This Act shall not apply to a person that manufactures and/or distributes tobacco products solely for export under subsection (a), except to the extent such tobacco products are subject to subsection (b).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. USE OF PAYMENTS UNDER THE MASTER SETTLEMENT AGREEMENT AND INDIVIDUAL STATE SETTLEMENT AGREEMENTS.

(a) REDUCTION OF GRANT AMOUNTS.—(1) For fiscal year 2010 and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (b), the amount of any grant under section 1921 of the Public Health Service Act (42 U.S.C. § 300x–21) for any State that spends on tobacco control programs from the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, less than 20 percent of the amounts received by that State from settlement payments.

(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2009 or 2010, and in the case of a State whose legislature does not convene a regular session in fiscal year 2010, the requirement described in subsection (a)(1) as a condition of receipt of a grant under section 1921 of the Public Health Service Act shall apply only for fiscal year 2009 and subsequent fiscal years.

(b) DETERMINATION OF STATE SPENDING.—Before making a grant under section 1921 of the Public Health Service Act, section 300x–21 of title 42, United States Code, to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether, during the immediately preceding fiscal year, the State has spent on tobacco control programs, from the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, at least the amount referenced in (a)(1). If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State has spent less than such amount, the Secretary shall reduce the amount of the allotment under section 300x–21 of title 42, United States Code, for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent

of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (a).

(c) DEFINITIONS.—For the purposes of this section—

(1) The term ''first applicable fiscal year'' means—

(A) fiscal year 2011, in the case of any State described in subsection (a)(2) of this section; and

(B) fiscal year 2010, in the case of any other State.

(2) The term ''Florida Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on August 25, 1997, between the State of Florida and signatory tobacco product manufacturers, as specified therein.

(3) The term ''Master Settlement Agreement'' means the Master Settlement Agreement, together with the exhibits thereto, entered into on November 23, 1998, between the signatory States and signatory tobacco product manufacturers, as specified therein.

(4) The term ''Minnesota Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on May 8, 1998, between the State of Minnesota and signatory tobacco product manufacturers, as specified therein.

(5) The term ''Mississippi Memorandum of Understanding'' means the Memorandum of Understanding, together with the exhibits thereto and Settlement Agreement contemplated therein, entered into on July 2, 1997, between the State of Mississippi and signatory tobacco product manufacturers, as specified therein.

(6) The term ''Secretary'' means the Secretary of Health and Human Services.

(7) The term ''Texas Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on January 16, 1998, between the State of Texas and signatory tobacco product manufacturers, as specified therein.

SEC. 602. PREEMPTION OF STATE LAWS IMPLEMENTING FIRE SAFETY STANDARD FOR CIGARETTES.

(a) IN GENERAL.—With respect to fire safety standards for cigarettes, no State or political subdivision shall—

(1) require testing of cigarettes that would be in addition to, or different from, the testing prescribed in subsection (b); or

(2) require a performance standard that is in addition to, or different from, the performance standard set forth in subsection (b).

(b) TEST METHOD AND PERFORMANCE STANDARD.—

(1) To the extent a State or political subdivision enacts or has enacted legislation or a regulation setting a fire safety standard for cigarettes, the test method employed shall be—

(A) the American Society of Testing and Materials (''ASTM'') standard E2187–4, entitled ''Standard Test Method for Measuring the Ignition Strength of Cigarettes'';

(B) for each cigarette on 10 layers of filter paper;

(C) so that a replicate test of 40 cigarettes for each brand style of cigarettes comprises a complete test trial for that brand style; and

(D) in a laboratory that has been accredited in accordance with ISO/IEC 17205 of the International Organization for Standardization (''ISO'') and that has an implemented quality control and quality assurance program that includes a procedure capable of determining the repeatability of the testing results to a repeatability value that is no greater than 0.19.

(2) To the extent a State or political subdivision enacts or has enacted legislation or a regulation setting a fire safety standard for cigarettes, the performance standard employed shall be that no more than 25 percent of the cigarettes of that brand style tested in a complete test in accordance with paragraph (1) exhibit full-length burns.

(c) EXCEPTION TO SUBSECTION (b).—In the event that a manufacturer of a cigarette that a State or political subdivision or its respective delegated agency determines cannot be tested in accordance with the test method prescribed in subsection (b)(1)(A), the manufacturer shall propose a test method and performance standard for the cigarette to the State or political subdivision. Upon approval of the proposed test method and a determination by the State or political division that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (b)(2), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to this subsection notwithstanding subsection (b).

SEC. 603. INSPECTION BY THE ALCOHOL AND TOBACCO TAX TRADE BUREAU OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of the Alcohol and Tobacco Tax Trade Bureau may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (d); or

(2) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—Subsection (a) applies to any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—

(1) IN GENERAL.—The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

(2) VIOLATIONS.—Whoever violates subsection (a) or an order issued pursuant to paragraph (1) shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are—

(1) the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'');

(2) chapter 114 of title 18, United States Code; and

(3) this Act.

(e) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e) of title 18, United States Code, as amended by this Act.

SEC. 604. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected, and shall continue to be enforced to the fullest extent possible.

TITLE VII—TOBACCO GROWER PROTECTION

SEC. 701. TOBACCO GROWER PROTECTION.

No provision in this Act shall allow the Administrator or any other person to require changes to traditional farming practices, including standard cultivation practices, curing processes, seed composition, tobacco type, fertilization, soil, record keeping, or any other requirement affecting farming practices.

Amend the title so as to read: ''A bill to protect the public health by establishing the Tobacco Harm Reduction Center within the Department of Health and Human Services with certain authority to regulate tobacco products, and for other purposes.''.

The SPEAKER pro tempore. Pursuant to House Resolution 307, the gentleman from Indiana (Mr. BUYER) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Indiana.

Mr. BUYER. Thank you.

Mr. Speaker, I have a parliamentary inquiry: Because this is my substitute, do I speak last on the substitute?

The SPEAKER pro tempore. A manager in opposition will have the right to close.

Mr. BUYER. Thank you.

With that, I will yield to the cosponsor of this bipartisan substitute, Mr. MCINTYRE of North Carolina.

Mr. MCINTYRE. Mr. Speaker, I rise this evening in support of the Youth Prevention and Harm Reduction Act, which is embodied in the substitute that Mr. BUYER is describing and offering and on which he and I have worked together, which is a bipartisan bill.

I have worked with Mr. BUYER to craft a practical approach to government regulation of tobacco that protects health while preserving a vital economic engine for many communities, not only throughout my district in southeastern North Carolina and across the great Tar Heel State, but also across the country.

The underlying bill will grant the Food and Drug Administration wide authority to dictate to manufacturers and growers dramatic changes in product design and leaf cultivation, a concern that has been raised repeatedly by the tobacco growers in my district and tobacco growers throughout the States that are affected. The last thing we want, of course, is to have any government bureaucrat coming on the farm or dictating to farmers about how they grow their crops. This is the part that we want to be abundantly clear about.

□ 2015

The tobacco industry contributes over $36 billion to the U.S. economy each year employing over 19,000 individuals nationwide. In my home State of North Carolina, over 8,600 people are employed by the industry with a Statewide economic impact of nearly $24 billion. The manufacturing provisions and

the concern about the FDA and its involvement on the farm in the underlying bill would put many companies and growers out of business. And in this time of economic uncertainty, the last thing that any of us can afford is to lose more jobs. Our substitute specifically protects growers by preventing any government agency from requiring changes to traditional farming practices, including standard cultivization practices, curing processes, seed composition, tobacco-type fertilization, soil, record keeping or any other requirement affecting farming practices.

In addition, this bill is about public health and prevents minors from smoking. Our substitute considers cutting-edge scientific research, as Mr. BUYER has indicated a little while ago, which would promote a harm-reduction strategy to move smokers to less harmful tobacco products.

So we're talking about here about protecting public health, definitely protecting minors, and making sure that our growers and farmers are not put out of business.

According to applied economics, the use of these reduced tobacco products increases the average probability of smoking cessation by over 10 percent. The Buyer-McIntyre substitute specifically addresses youth tobacco by encouraging States to penalize minors for purchasing and possessing tobacco products. Under current law, retailers are prohibited from selling tobacco products to minors, but unlike with the purchase of alcohol, minors are not penalized for underage purchase and possession of tobacco products.

This also calls upon the States to increase their percentage of the Master Settlement Agreement dollars to fund tobacco cessation and public health programs. In the past 10 years, States have spent just 3.2 percent of their total tobacco-generated revenue on tobacco prevention and cessation programs.

We take this concern about our youth seriously. I had a son. Back when he was in high school he was part of the Tobacco Free Kids Program and we understand, appreciate, and respect that; and, in fact, our bill has even stronger provisions dealing with that.

The Buyer-McIntyre substitute is a commonsense way to help protect public health and protect our vital tobacco economy and the jobs that we cannot afford to lose, especially in this time of economic crisis in our country.

I urge my colleagues to vote ''yes'' on the Buyer-McIntyre substitute, a bipartisan support, which provides a reasonable and pragmatic way to deal with tobacco regulation and help protect our minors from the harms of tobacco.

I reserve my time.

Mr. WAXMAN. Mr. Speaker, at this time, I rise to claim the time in opposition to the amendment.

The SPEAKER pro tempore. The gentleman from California is recognized.

Mr. WAXMAN. Mr. Speaker, I am pleased at this time to yield 3 minutes to a very important member of the Energy and Commerce Committee and its Subcommittee on Health, the gentlelady from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank my colleague and chairman of our committee and a real pioneer and hero in this area.

I rise to give strong opposition to the Buyer amendment.

The Buyer amendment would undermine the precise goals of this underlying bill, that is to prevent kids from smoking. There is nothing in the Buyer amendment that would restrict tobacco marketing to youth, yet we know that marketing to our kids is a persistent tobacco company tactic. They do it to draw in new smokers at a very early age to replace their dwindling client base because of people finally being able to quit or, unfortunately, dying as a complication of smoking.

As a grandmother, I am horrified that my teenage granddaughters are the target of disgusting adds like this very one. Dressed to the Nines, this title was featured repeatedly in many magazines read frequently by young women and girls. The add highlights the latest fashion trends. It tells kids how to ''update your closet,'' and it directs them, of all things, to the Camel cigarettes Web site.

Under the Waxman-Platts bill, however, we specifically eliminate this kind of marketing to kids that depict smoking as cool or glamorous. And that's because it is not. Smoking is not cool. It isn't glamorous. It's an expensive ticket to an early death, and the tobacco companies and the magazines that run these adds, they know it, and they should be ashamed of themselves. But these days, corporate shame is in short supply, and we cannot rely on it to protect our kids.

In addition, this bill gives the FDA the authority to respond to the inevitable attempts by tobacco companies to circumvent new restrictions.

So I urge my colleagues to reject this Buyer substitute amendment because it lacks critical provisions that are so important to prevent children, our youth, from smoking.

I urge everyone to support the Waxman-Platts bill.

Mr. BUYER. I would say to the gentlelady who just spoke in the well that Mr. WAXMAN's bill was drafted years ago, and it was drafted prior to the Master Settlement Agreement. And it is the Master Settlement Agreement itself that has great restrictions upon advertisers. So there is a reason that I don't have it—I say to the gentlelady, there is a reason I don't have that part in the bill because the Master Settlement Agreement that is now administered by the attorneys general in 46 States, including the District of Columbia, who work in concert not only with the FDA but also with the Federal Trade Commission. These tobacco companies are not even advertising today in these types of magazines.

But one of the reasons I didn't go further in advertising is that when we work in concert with the Harm Reduction Center under Health and Human Services, what we seek to do is to inform the public with regard to the relative risks among different types of tobacco product, and that's what we seek to do. We seek to migrate people from the smoking to other types of products.

If I could, I would like to show exactly what I am about to share.

What I would like to share here with you is a chart, and what is important about this chart is about the continuum of risk and about all of the different types of products that are available in the marketplace today.

So when you think about this and you think about the continuum of risk, what I did is I sought to say, All right. Let's think about the products that are presently available out there.

So when you think about that, we have non-filtered cigarettes. That's the worse. I mean, you get those toxins. You get them right into your body and substance, and that's really bad. Non-filtered cigarettes.

Then you've got filtered cigarettes. We know that's a little bit better—all of these tobacco products are harmful. So we go from non-filtered cigarettes to a filtered cigarette.

Then I have a vented filtered cigarette, but those are really bad, too, because people try to gain access to that nicotine so they suck a little harder on that cigarette and they draw it deeper into their lungs. That's not a good thing.

Then we have tobacco-heated cigarettes like the Accord. Now, we know that that reduces a lot of the toxic substances, but we're really not sure where on the continuum of risk does it lie along with the electronic cigarette because there isn't sufficient science yet to back that up.

And these are products that—innovation that is coming out in the marketplace because people every day are making conscious decisions about what we eat, what we drink on a risk assessment, and that's what we are trying to do here in the statute.

So after electronic cigarettes, we have smokeless tobacco products. Now, when I think about this, we can go from a non-filtered cigarette and go all the way down 90 percent down the health risk chart, 90 percent, to get to a U.S. smokeless product.

Let's talk about the difference between a U.S. smokeless product and a Swedish Snus. The U.S. smokeless tobacco product is fermented. So through that fermentation and the natural processing of tobacco and the nitrosamines, you still have some serious carcinogens and some toxic substances. But it is still scientifically shown to be a much better and safer tobacco product than that of smoking.

You see, it is not the nicotine that is killing people. It's the smoke. It's the

smoke. It's the smoke. That's killing people.

So to get away from that—I heard somebody coughing. It was the smoke, I am telling you.

If we can pull them away from the smoke and move them down the continuum of risk chart—actually if we could get them into a Swedish snus, get them into a pasteurized product, we take away 98 percent of the health risk. And then if we can get them to—actually they are now called dissolvable tobacco products. These are orbs or strips that you can lay on your tongue or a stick that's a little like an oversized toothpick that you can stick in your mouth. These are tobacco products that contain no nitrosamines, and you can eliminate 99 percent of the health risk, but an individual can still gain their access to nicotine if they like.

And what we're trying to do, though, is move then down the continuum of risk, make informed decisions in order for them to be healthier but still gain access to their nicotine.

Then you have therapeutic nicotine devices, which are your gum, your patches, your lozenges.

And then we have pharmaceuticals. We want people to quit smoking. But in order to do this, what we've done—not only Mr. MCINTYRE but Mr. SHULER and others here in a bipartisan effort—is to create a harm-reduction strategy. And we embrace—so not only the goals of Mr. WAXMAN on abstinence, but we also embrace the goals of education, prevention and cessation activities as we try to move people and make informed choices along this continuum of risk.

Now, what is so, to me, unconscionable is that if, in fact, Mr. WAXMAN's bills were to pass, is that these new innovative types of nicotine delivery devices could not make their access to the market. Now as I said—I will say it for the umpteenth time—I respect Mr. WAXMAN and his desire to try to get people to eliminate smoking. We just recognized that today only 7 percent success rate with regard to these type of nicotine replacement therapies, and that's a failure rate, and we shouldn't do that.

I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, may I inquire how much time each side has remaining?

The SPEAKER pro tempore. The gentleman from California has 13 minutes remaining. The gentleman from Indiana has 7½ minutes remaining.

Mr. WAXMAN. Well, I plan to close the debate, and I know that Mr. BUYER has another speaker on his side, so I want to reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I would yield to one of the cosponsors of this substitute, Mr. SHULER of North Carolina, for as much time as he might consume.

Mr. SHULER. Mr. Chairman, I want to commend you for your hard work, and although we may disagree on legislation, I want to commend you for your hard work in the prevention of smoking and trying to get children off smoking as well.

So, Mr. Speaker, I strongly support the commonsense amendment proposed by the gentleman from Indiana. And I strongly oppose the underlying bill.

Putting a dangerous, overworked FDA in charge of tobacco is a threat to public safety. Last year, the FDA commissioner testified that he had serious concerns that this bill could undermine the public health role of the FDA. And the FDA Science Board said the FDA's inability to keep up with scientific advancements means that Americans' lives will be at risk.

What are these risks? Well, let me talk about three areas that just happened last year.

Last summer, 1,400 people were sickened by peppers from Mexico, but we shut down the entire tomato industry. Just last month, more than 100 people become sick because of salmonella and alfalfa sprouts. And in January, more than 500 people became sick because of salmonella from Peanut Corporation of America. Amazingly enough, this plant had never been inspected even after Canada rejected a shipment of peanuts. That's right. The FDA is overworked. We have to rely on the Canadians to inspect our food now.

Instead of putting our food and drug supply at greater risk, let's deal with the underage smoking head on. This amendment does that by putting more resources into prevention and harm-reduction programs that have helped reduce youth smoking by over 50 percent for the last 10 years.

Let's pass this amendment so that we can keep our kids safe from cigarettes and keep our children safe with the food that they eat.

□ 2030

I ask my colleagues to support the passage of the Buyer amendment.

Mr. WAXMAN. Mr. Speaker, I am going to reserve my time to close the debate, so I will allow the gentleman from Indiana (Mr. BUYER) to continue.

Mr. BUYER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Indiana for the excellent work that he has done on a substitute, for addressing this issue the way it should be addressed.

We are all concerned about cigarette smoke and the effects of tobacco on our health, and I don't think that is the debate that is here. But one of the things that concerns me in this debate is that there are some pieces that have kind of been left out, that are not being addressed.

Well, we all are concerned about what has happened with teen smoking, with the effects of tobacco on an individual's health. One of the things that has happened is the Synar amendment and the good work that the Synar language has done in reducing teen smoking has been left out, and what we are having brought forward is this bill that will actually give the FDA stamp of approval to some tobacco processes and uses. And for someone as a wife, a mother, a grandmother, a community volunteer that has actually worked to address school health curriculums, to address smoking, to fight and work with smoking cessation programs, I know that that is a dangerous step to give the FDA stamp of approval to tobacco usage.

In addition to that, this is legislation that is going to build a bureaucracy. It is going to pull the government into our farms, into our manufacturers, into our retailers further and further.

But, Mr. Speaker, I think that actually that's a lot of what is going on in this entire Congress, growing the bureaucracy. We're hearing it's going to take 250,000 new Federal employees to implement the stimulus and this massive budget that is before us; new Federal employees, 250,000 new Federal employees. It is building bureaucracies, taking power away from individuals, taking power away from the House and handing it over to a bureaucracy that continues to grow every single day.

And the steps that are being taken with moving tobacco to the FDA is another part of that. We know the FDA can't do the job in front of them now when it comes to dealing with policing drugs, looking at contaminated food, addressing the issues that we have had with everything from peanut butter to pistachios. They are not getting the job done, and now we want to pull them on to our farms and into our manufacturing facilities addressing tobacco, and we have processes that already work. But it's not about funding and keeping attention on processes that work.

What we know is this is all about growing a bureaucracy. I encourage my colleagues to vote against this bill.

Mr. BUYER. I yield myself such time as I may consume.

According to the Journal of Health Care Law and Policy, dated 2008, ''There is a very strong basis in science for believing that the harm caused by current cigarettes can be massively reduced by alternative nicotine delivery systems. Anti-tobacco campaigners who refuse to discuss harm reduction will merely be ensuring that they are not part of the ongoing dialogue that will shape this key area of policy.''

I also would like to cite Britton and Edwards in The Lancet, 2007. ''The risk of adverse effects associated with Snus use is lower than that associated with smoking, overall by an estimated 90 percent. Whatever the true overall hazard, use of low nitrosamine smokeless products is clearly substantially less harmful than tobacco smoking.''

Also citing the Scientific Committee on Emerging and Newly Identified

Health Risks, dated 2007, ''The magnitude of the overall reduction in hazard,'' meaning switching from cigarettes to smokeless, ''is difficult to estimate.'' But as outlined in their paper, for cardiovascular disease, it is at least a 50 percent reduction; for pancreatic cancer, it is at least 30 percent; for oral and other GI cancer, it is at least 50 percent reduction and probably more; and for lung cancer and chronic obstructive pulmonary disease, it's possibly even 100 percent.

Now, what I'm hopeful is that at some point, I'm going to make this quest that Mr. WAXMAN and I can somehow come together, because according to CBO the reduction in the rates of smoking in the Waxman bill is two-tenths of 1 percent per year. So we're going to take over $6 billion to reduce smoking rates under Mr. WAXMAN's approach by two-tenths of 1 percent per year. Which means over a 10-year time frame, the total that we're going to reduce for smoking in the entire country is 2 percent. We are going to reduce smoking rates in the country under Mr. WAXMAN by 2 percent.

We can do much better than that, and that's why we have this substitute is that we want to move people from smoking down the continuum of risk to eventually quitting, and I think that's exactly what the chairman embraces.

Please support the substitute.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. WAXMAN. Mr. Speaker, I strongly oppose this substitute amendment offered by Mr. BUYER.

The bill before us, the Waxman-Platts bill, has been carefully crafted over more than a decade, in close consultation with the public health community. It's been endorsed by over 1,000 different public health, scientific, medical, faith, and community organizations. It is also supported by a prestigious and bipartisan group of former public health officials, including former Secretaries of Health and Human Services, Tommy Thompson and Donna Shalala; former Surgeons General, David Satcher and Richard Carmona; former CDC Director, Julie Gerberding; and former FDA Commissioner, David Kessler. It reflects a strong, reasonable, and comprehensive approach to addressing the tobacco epidemic.

Now, this Buyer substitute is deeply flawed. It represents an inadequate response for the greatest preventable cause of death and disease in the United States.

One of the biggest problems in this substitute is that it places oversight of tobacco under a totally new, untested agency. They create a new government agency that lacks any experience in protecting the public health. FDA is our Nation's primary protector of the public health, and it has both the regulatory and scientific expertise to handle the complex task of regulating tobacco. The agency devoted 10 years to investigating tobacco in the 1990s. It has over 100 years of experience in setting science-based standards to protect and promote the public health.

Mr. BUYER's substitute would ignore all of this expertise, would ignore the whole record of all of the public health organizations, and set up a new agency. And the premise of his new agency would be tobacco harm reduction, and he showed us a chart. That chart in effect said that what we should do is try to encourage people to reduce the harm from tobacco by using other tobacco products.

There's no evidence to support his approach. He is basing his assumption that current smokers will use smokeless tobacco to quit, but there's no evidence to support this assumption. In fact, the U.S. Public Health Service's clinical practice guidelines finds no evidence to suggest that smokeless tobacco is effective in helping smokers quit. Rather than have smokers quit, it's just as likely that smokeless tobacco can be used to introduce youth to tobacco use and to discourage smokers from quitting. I would submit that what his proposal would do would be to do everything but get smokers to quit, and it does not focus on getting people not to start smoking in the first place. The only evidence one can cite for using smokeless tobacco to quit is inadequate. It's not based on science, and I'm sure it will be a tremendous boon to the smokeless tobacco industry.

A second major problem with the substitute is that it fails to provide any dedicated funding for tobacco regulation. Instead, it relies on a future appropriation that may or may not ever come along, and then this new agency is supposed to do something to reduce smoking in this country.

It fails to create effective Federal enforcement to prevent tobacco sales to minors. The Buyer amendment would not punish individual retail clerks. Instead, it would fine kids for possession rather than making sure that they don't have access to cigarettes in the first place. The Waxman-Platts bill would instead create a strong Federal enforcement system to ensure that retailers do not sell to minors, while providing adequate procedural protections for retailers.

Another flaw, it allows tobacco companies to keep targeting the kids. One of the most critical goals of our bill is to stop tobacco industry targeting of our children. This bill that's being offered as a substitute does nothing to address the problem. It leaves companies free to continue pushing their products on kids and teenagers, and I would submit that that is not a good substitute for the bill that is before us.

I'm also extremely concerned that it effectively exempts smokeless tobacco products such as chewing tobacco from any oversight. It assumes that those products are safe. Well, there's no evidence for that. It ignores the range of harm-reduction options that pose far less risk such as nicotine replacement therapies, which, by the way, are already being approved as safe by the FDA, and instead, he wants to substitute smokeless tobacco for smoking cigarettes.

The substitute fails to protect consumers from false and misleading claims about reduced harm. It would allow tobacco companies to market products as safer or posing less risk without providing scientific evidence that those claims are actually true. This means that consumers would still be vulnerable to false and misleading claims, and we know those claims: cigarettes are light, cigarettes are low tar. Those are the claims we've heard over the years, and they're wrong, they're dangerous, they're misleading, and nothing would be done to stop those kinds of claims under this substitute. Our bill would allow products to be marketed as less hazardous only when those claims are based on sound science and only when the health of the entire population is considered.

And finally, the substitute gives the tobacco industry a vote in advising the agency on scientific decisions. This flies in the face of everything we know about the industry. Big Tobacco has shown repeatedly that it will distort and discard scientific evidence in service of its business objectives without regard to the public health. We don't give drug or device manufacturers a vote in advising the FDA, and we shouldn't do that here. Giving the tobacco industry voting representation on a scientific advisory committee has no precedent.

I would submit you can choose between a substitute that's just been offered only in the last month or so or you can vote for a bill that has been reviewed by and approved by the Heart Association, the Lung Association, the Cancer Society, the Campaign for Tobacco-Free Kids, the American Public Health Association, the American Academy of Pediatrics, the New England Journal of Medicine, and the AARP, just to mention a few of the thousand groups that oppose the Buyer amendment and support the underlying bill.

This tobacco harm-reduction act proposal is no substitute. In fact, it seems to me that the only harm it reduces is harm to the tobacco industry.

I urge a ''no'' vote on the Buyer substitute.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to clause 1(c) of rule XIX, further proceedings on this measure are postponed.

□ 2045

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas

and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

PARLIAMENTARY INQUIRY

Mr. BUYER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. BUYER. Why was I not given the opportunity to ask for the yeas and nays and it's reserved for tomorrow?

Do I have to be present tomorrow to ask for the yeas and nays? I know you said further proceedings are extended.

The SPEAKER pro tempore. Further proceedings on that measure are postponed.

Mr. BUYER. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. BUYER. Isn't it normally a custom at the end of the bill for me now to ask for the yeas and nays?

The SPEAKER pro tempore. The Chair has the discretion to postpone further consideration of the measure under clause 1 of rule XIX.

Mr. BUYER. Further inquiry.

You will then place the House on notice as to when we could then ask for the recorded vote for tomorrow, not only on the substitute, but also on Mr. WAXMAN's bill?

The SPEAKER pro tempore. The gentleman should consult with the leadership about scheduling decisions.

CONGRATULATING THE ON-PREMISE SIGN INDUSTRY

Ms. CLARKE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 298) congratulating the on-premise sign industry for its contributions to the success of small businesses.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 298

Whereas safe, creative, and effective on-premise signage has served as a primary catalyst to successful small businesses in America since the establishment of the Nation;

Whereas most of the companies that manufacture on-premise signs in the United States are in and of themselves small businesses as described by the Small Business Act and generate thousands of manufacturing jobs that stimulate the economy and support the local, State, and Federal tax bases;

Whereas the on-premise sign industry in turn sustains millions of additional entities covered under the Small Business Act by providing to retail businesses across the country an affordable and effective advertising medium through which they can communicate to potential customers about goods and services they offer, direct those customers to their small business sites, and reinforce the memory of existing customers about the locations and the nature of these small businesses;

Whereas the Small Business Act empowers the Small Business Administration to take actions to relieve the competitive disadvantages that small businesses face;

Whereas one such competitive disadvantage for small businesses is a lack of marketing research and advertising budgets to attract and retain customers;

Whereas the Small Business Administration has recognized the value of on-premise signage as a remedy to these competitive disadvantages and has taken action to remediate this disadvantage by collaborating with the sign industry to collect educational information about signs and to publish that information on its website that is free of charge and easily accessible to all small businesses; and

Whereas the on-premise sign industry will play a critical role in supporting the Nation's small businesses during the current economic downturn: Now, therefore, be it

Resolved, That the House of Representatives (1) applauds the United States Small Business Administration for educating small business owners on the benefits of using well-placed, well-designed on-premise signs to overcome competitive disadvantages in the areas of marketing and advertising, and (2) encourages the on-premise sign industry to continue its efforts to produce a new and greater understanding of how to develop safer, more effective, and more affordable signage products so as to alleviate small businesses' competitive disadvantages in marketing and advertising.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from New York (Ms. CLARKE) and the gentleman from Iowa (Mr. KING) each will control 20 minutes.

The Chair recognizes the gentlewoman from New York.

GENERAL LEAVE

Ms. CLARKE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. CLARKE. Mr. Speaker, I yield myself such time as I may consume.

The resolution we are voting on today would recognize the contributions of the on-premise sign industry to American commerce. The designers and manufacturers of signs are themselves small businesses that employ thousands of Americans.

But this industry's economic effect extends beyond those Americans that it employs directly. On-premise signs are an effective and affordable advertising medium, helping small businesses communicate with potential customers.

Many small businesses do not have the resources to invest in expensive advertising or costly marketing campaigns. This is especially true in tough economic times like right now. This industry provides an affordable advertising option for small business on Main Street USA.

Mr. Speaker, this resolution acknowledges the contributions of the on-premise sign industry to American small business. I urge my colleagues to vote ''yes'' on the resolution.

I reserve the balance of my time.

Mr. KING of Iowa. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KING of Iowa asked and was given permission to revise and extend his remarks.)

Mr. KING of Iowa. This resolution is about the on-premise sign industry. They say that a business without a sign is a sign of no business. This commonsense truism is proof that a well-designed, on-premise sign can help small businesses succeed.

According to the U.S. Small Business Administration, on-premise signs are the ''most effective, yet least expensive form of advertising for small businesses.''

Small businesses need all the help they can get during these difficult economic times that we are currently experiencing, which would allow them with the signage help, to use effective advertising as a good start.

I say this as someone who brings over 35 years of small business experience to the table, which would include 8 years on the House Small Business Committee, from which this resolution comes.

Just to touch some of the high spots on the on-premise sign industry, we have small businesses in particular that are at a competitive disadvantage with the large industries in the country today. One of the things that helps them compete is the effectiveness of being able to place signs in proper locations.

When I think about driving down the road and often we're looking for the signage that directs us on where we turn off—the right turn for gas, food, or clothing, or whatever it might be—it wouldn't be America if it weren't for the on-premise signs. It helps direct customers to the small business sites.

I want to also add, Mr. Speaker, that the Small Business Act empowers the Small Business Administration to take actions to relieve the competitive disadvantage that small businesses face. The Small Business Administration has recognized the value of on-premise signage, as we recognize in this resolution tonight.

I will say that it's a sign of the entrepreneurs in this country. It's a sign of their success. And lack of a sign is an indication of a potential business failure. We simply cannot find these businesses to do business with them if it were not for signage, Mr. Speaker. That's what brings this resolution here.

I'd also address that small business feels this pressure of this downward economic spiral as much as or more than any other sector of this economy. They are pressured by their customers' lack of revenue, they're pressured by budgets being squeezed, by large corporations, the pressure by the demands of an economy that has shrunk dramatically and that continues to stagnate in the bottom of the trough. They're pressured by taxation and regulation more so than large businesses are.

The businesses that need these signs up in front of them are also the ones that are under the scrutiny of the IRS. They're under the scrutiny of the Federal regulators. There is some information that I have accumulated that shows that the businesses in this country are subjected to over 680 Federal regulating agencies. Six hundred-eighty. And the burden that small business has is they don't have multiple floors in their high-rise office buildings that are full of lawyers and counselors that are in the business of keeping these businesses in compliance with all the Federal regulations.

They need to have their property rights preserved. They need to have low taxation and low regulation. Big business will often come to this Congress and advocate for more regulations because they know it puts them at a competitive advantage over the small businesses that are at a distinct disadvantage, Mr. Speaker.

These businesses need every advantage we can give them because they are the incubators for the businesses that will grow into the large employers into the future. They happen to also be the businesses that employ a significant majority—70 to 80 percent—of the employees in this country.

They can't make it without signs. They can't make it without being able to exercise those property rights. The Small Business Administration recognizes that. We recognize that, also, in this resolution tonight, as we recognize the burden of this economy, the burden of this budget, and the extravagant expenses and spending that's taking place that's rolling out from the top reaches of the government in this country.

Somehow, there has been this tsunami of a current that has swallowed us up—a Keynesian current—the idea that we can spend and borrow our way into prosperity, even though a family can't do that, a small business knows they can't do that, the on-premise sign industry knows that you can't do that.

You've got to have effective utilization of the resources in order to find a profit so that you can hire people. That's what creates jobs, is profit. Productivity marketed well, with good advertising, creates the profit that's necessary in order to hire employees and it creates the good jobs.

I want to provide the provision so that in this country our small businesses can succeed with signage, with low taxes, low regulation, and not putting the burden off onto future generations.

With that, Mr. Speaker, I would reserve the balance of my time.

Ms. CLARKE. Mr. Speaker, I reserve the balance of my time.

Mr. KING of Iowa. I would yield myself the balance of my time.

To reiterate these points that I've made, it may not serve a purpose here, but I would take us back to where we stand with the Federal spending that exists today.

This Federal spending that doubles our deficit in 5 years and triples it in 10 years, this spending, this profligate spending that's rooted in the Keynesian philosophy—John Maynard Keynes—who said, ''I can solve all the unemployment in America.'' This is during the economic crisis called the Great Depression of the thirties.

How did he propose to solve all the unemployment problem in America? He said, If I can just go out to an abandoned coal mine and drill a lot of holes into the bottom of that abandoned coal mine and put U.S. dollars in those holes, fill them back up again and fill the coal mine full of garbage''—and that was the word he used, was garbage, which I thought was interesting—then he would turn the entrepreneurs in America loose and they could go about digging through that garbage and that would put everybody to work and it would solve the unemployment.

This is the mindset that prevails in this psychology that comes from those who are spending trillions and trillions of our grandchildren's dollars.

It's interesting. I don't know that John Maynard Keynes when he talked about digging holes and burying money and filling the coal mine up with garbage, he didn't talk about the signage necessary to be able to direct the entrepreneurs to the landfill or the coal mine so they could begin to dig through that garbage and come up with this money.

In fact, Keynes said: The more foolish the spending, the better, because at least when you spend it in a foolish way, it's not competing directly with the private sector that has, by virtue of it being able to compete, demonstrated that it is a more prudent expenditure than government can possibly make.

So I don't submit that we bury money in the coal mine or fill the coal mine up with garbage. I think that the EPA would probably raise an objection with that, Mr. Speaker. But I do submit that we get our wits about us, get a handle on what we're doing with our expenditures, get control of this profligate spending that's taking place and take responsibility in our time, in our generation, this year, now, here, in the House of Representatives, instead of delaying it off onto future generations.

Let's tighten our belt now like a family would tighten their belt now. Let's make sure that the entrepreneurs in America have the tools they need to help us recover from this downward spiral in our economy.

Let's keep the taxes low, let's keep our spending low, let's keep our borrowing low. Let's keep our regulations low and let's put our signs up high so everybody can see where to turn off to the small business and do business there.

I yield back the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind all Members to clear the well while another Member is under recognition.

Ms. CLARKE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Ms. CLARKE) that the House suspend the rules and agree to the resolution, H. Res. 298.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SPRATT. Mr. Speaker, I ask unanimous consent that Members may have 5 legislative days to revise and extend their remarks and insert material relevant to the consideration of H. Con. Res. 85, the concurrent resolution on the budget for fiscal year 2010.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010

The SPEAKER pro tempore. Pursuant to House Resolution 305 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution, H. Con. Res. 85.

□ 2058

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the concurrent resolution (H. Con. Res. 85) setting forth the congressional budget for the United States Government for fiscal year 2010 and including the appropriate budgetary levels for fiscal years 2009 and 2011 through 2014, with Mrs. TAUSCHER in the chair.

The Clerk read the title of the concurrent resolution.

The CHAIR. Pursuant to the rule, the concurrent resolution is considered read the first time.

General debate shall not exceed 4 hours, with 3 hours confined to the congressional budget, equally divided and controlled by the Chair and ranking minority member of the Committee on the Budget, and 1 hour on the subject of economic goals and policies, equally divided and controlled by the gentlewoman from New York (Mrs. MALONEY) and the gentleman from Texas (Mr. BRADY).

The gentleman from South Carolina (Mr. SPRATT) and the gentleman from Wisconsin (Mr. RYAN) each will control 90 minutes of debate on the congressional budget.

The Chair recognizes the gentleman from South Carolina.

Mr. SPRATT. Madam Chair, President Bush has left President Obama a

hard hand to play. The economy is receding, the budget is in deficit by $1.752 trillion, according to OMB, and the end is nowhere in sight.

□ 2100

President Obama has responded with a budget that meets the challenge head on. The Budget Committee's resolution before us tonight reflects his policies and his proposals.

The President has recognized that we have not one but two deficits. The first is an economy running at 6 percent to 7 percent below its full capacity. To move our economy closer to its capacity, the President has signed into law a package of stimulus measures totaling $787 billion.

Here is what the Congressional Budget Office says in its analysis issued 2 weeks ago about the stimulus package, and I am quoting, ''The adoption of the American Recovery and Reinvestment Act and very aggressive actions by the Federal Reserve and the Treasury will help end this recession this fall.'' Let's hope they are right.

In light of this prognosis, it is hard to believe, but our colleagues from across the aisle use their budget to call for terminating, ending, the Recovery and Reinvestment Act.

The President next turned to the budget. He has sent us a budget to cut the deficit by two-thirds, two-thirds by 2013, from $1,752,000,000 from this year to $533 billion in 2013.

Now, it is all but impossible to balance a budget when the economy is in recession, and, for that matter, it is ill-advised. To end, or at least to mitigate this recession, our economy is need of more demand for goods and more demand for services, and any demand we generate to make the economy run better will make the deficit run larger at least for now.

But here is the stark reality: The deficit that President Bush left behind constitutes a massive 12.3 percent of our gross domestic product. At least two-thirds of that stems from tax and spending policies undertaken by the Bush administration. Anyone, almost anyone, would agree that this is an unsustainable deficit, defensible only in deep intractable recessions.

President Obama clearly believes that, because he has responded with a budget that pares the deficit down to 3 percent of GDP in 2013. His budget cuts the deficit to $533 billion in 4 years.

The budget embodied in our resolution before us tonight uses CBO projections instead of OMB, and reduces the deficit to $586 billion in 2013. That is 3.6 percent of GDP or, roughly, the real rate of growth for that year.

Our budget is not so committed to deficit reduction that it overrides or overlooks other needs. In fact, it takes on topics that previous budgets have found too tough to tackle, like health care for the millions of Americans who lack insurance.

On top of that, it slows down defense spending with an increase of 4 percent, and makes a moderate adjustment to nondefense discretionary spending, lifting it a bit above this year.

Notwithstanding deficits, the President's budget launches some bold initiatives to make our economy more productive and our people more competitive: First, in education through Pell Grants in particular; next, in health care for the millions who are uninsured; and, finally, on alternative energy to reduce our dependence on foreign oil and the depletion of our environment. This resolution upholds those priorities.

Now, some will single out instances where additional revenue is raised, for example, by allowing certain concessions for upper-bracket taxpayers to expire at the end of 2010, which is the date they were set to expire.

But the bigger picture will show that this budget leaves in place the middle-income tax cuts adopted in 2001 and 2003, the 10 percent bracket, the child tax credit, and the marriage penalty relief. It indexes the alternative minimum tax to keep it from coming down on middle-income taxpayers, for whom it was never intended. It also extends estate tax exemptions at the 2009 level, $3.5 million per decedent, and indexes the exemptions for future years.

Our colleagues on the other side of the aisle have complained about the President's tax and spending policies; but let me read from CBO's own nonpartisan analysis of the President's budget, which is basically before us tonight.

I am quoting: Proposed changes in tax policy would reduce revenues by an estimated $1.7 trillion over the next 10 years. Reduced revenues, by an estimated $1.7 trillion over the next 10 years. That is CBO talking.

The President's major initiatives, those in health care, energy, education, the environment, are all implemented by way of reserve funds. And I would stress that these funds are deficit neutral. They are yet to be funded, and will only become operative to the extent they are funded and will only be enacted if they are deficit neutral.

The resolution before us sounds all of these themes and, with a few exception, supports the principles that underlie the President's own budget. This is just the beginning; however, it is a bold beginning for the 2010 budget.

Our resolution is laid out in the form of a 5-year budget using CBO's scoring and CBO's projections of the economy. OMB has run its budget out over 10 years and our Republican colleagues have done the same, but a 5-year budget is not at all unusual; in fact, it is the customary timeframe for budgeting. In recent years, four deficit reduction acts have been enacted, and all implemented budgets of less than 10 years. Graham-Rudman-Hollings, the Bush Budget Summit, the Clinton Budget in 1993, and the Balanced Budget Act of 1997 all were 5-year budgets.

The farther out you run forecasts, the more tenuous they become. It is speculative just to predict what the economy is going to do 10 months from now much less 10 years from now. Five-year forecasts are, therefore, more realistic, more reliable; and, if the projected results don't pan out, they are more amenable to adjustment.

All projections rest on assumptions about the future, and the assumptions can have a profound effect on the bottom line. To show you how uncertain assumptions can be and projections can become, look at CBO's recent experience. Just since last January, CBO's estimate of the deficit is off by $436 billion, since January. Look at the long run, because small differences compound over time into big differences. Over 10 years, the difference between OMB's estimate of tax revenues received and CBO's is $2.8 trillion. That is a huge difference that has a huge impact on the bottom line of these competing forecasts.

Fortunately, the congressional budget process is an annual process. Since we revisit the budget every year, we can take steps to correct its course, which we will surely do with deficits of this gravity looming over us.

For our part, I can tell you that we are mindful of the second 5 years. As we approach 2015 and 2016, we will be making corrections to see that the deficit stays on a downward trajectory. We believe that these midcourse corrections can best be made when our economy has emerged from the recession and we have a much better and clearer view of an economy that bounces back.

Right now, our economy is mired in the worst recession since the 1930s. It stands in marked contrast to the fiscal situation that the Bush administration faced 8 years ago. Instead of inheriting a surplus of $5.6 trillion as did President Bush, President Obama has inherited a deficit, a deficit of $1.7 trillion to $1.8 trillion. At least $1.3 trillion is attributable to the spending and taxing policies of the Bush administration.

In effect, President Bush told us we could have it all, guns, butter, and tax cuts, too, and never mind the deficits. Well, 8 years and $5 trillion later, the country is confronted with the worst deficits in our peacetime history. These are not cyclical deficits so much as they are structural deficits. They were built into the structure of the budget over the last 8 years, and they will overhang our budget for years to come as we try to wind them down.

This situation cannot be reversed in a year, but we offer today a budget resolution that puts us on the right path. It will have to be renewed, it will have to be complemented, it will have to be adjusted many times before the economy and the budget are right again, but today we can start that process by voting for this resolution.

I ask the Chair if she could tell me how much time was consumed.

The CHAIR. The gentleman from South Carolina has used 9 minutes.

Mr. SPRATT. I reserve the balance of my time.

Mr. RYAN of Wisconsin. Madam Chair, let me inquire about the time allotments. I realize we have 2 hours equally divided. It is my understanding the gentleman is going to do 10-minute blocks. Is that what the chairman is going to be doing? Okay. Let me ask, Madam Chair, how much time is remaining on their side.

The CHAIR. They have used 9 minutes.

Mr. RYAN of Wisconsin. I yield 10 minutes to myself to control that block of time. Madam Chairman, this is a big debate. This is a very, very significant debate. This is a debate about the budget of our country, the fiscal future of our country. It is a debate that is probably the biggest fiscal debate we have had in this country in decades.

It is 9 p.m. on a Wednesday night. This is a debate that is going to go on for 3 hours, into the late part of the night. I wonder why the majority decided: Let's have this debate when everybody is watching CSI. Let's have this debate when no one is watching C–SPAN.

If we are so excited about this budget, why aren't we having this debate in the broad daylight? If we really think this is the way forward for America, why don't we talk about it when America is watching? It is almost like a pay raise debate.

Now, let's talk about this budget. We need more than just 3 hours, I would say, to debate this budget. Let's look at just what this budget does.

Now, you are going to hear three phrases: Spends too much, borrows too much, taxes too much. That underscores what this budget really does.

Madam Chairman, the debt held by the public under this budget doubles in 5½ years, triples in a little over 10 years. Let's put it in a different way.

The kind of red ink this budget proposes for our children and our grandchildren, for our country, is more under this presidency than the presidencies of George Washington to George W. Bush combined.

We used to see these charts out in front of the offices of the Members who call themselves Blue Dogs, until the charts were banned out in front of offices, that said: Here is what the national debt is. Here is your share. It is shameful. It is terrible. We have got to get our debt. And yet, we are told that the Blue Dogs are marching in lockstep for this budget that doubles the national debt in 5½ years and triples it in 10½ years.

And one thing would be interesting, one thing would be a decent argument if all the tax increases in this budget, $1.5 trillion in tax increases, the biggest tax increase we last had was $345 billion. So $1.5 trillion in tax increases, small businesses, the assets that make up our pension funds, our 401(k) funds, our college savings plans, energy. One estimate from MIT says the cap-and-trade scheme could raise taxes on households by as much as $4,500 a year. The Congressional Budget Office says, no, it is more like $1,600 a year. The point is, a lot of taxes.

Are these tax increases being used to reduce the deficit? Are these tax increases being used to pay down debt like President Clinton proposed in 1993, the last time we had a really large tax increase? No. They are to fuel higher spending.

But what is worse than all of that from a fiscal recklessness standpoint is all these new taxes, $1.5 trillion, is to finance even more spending. So we are putting our country on this vicious cycle of chasing ever higher spending with ever higher taxes that never quite catch up with that spending to give us a record amount of debt. The problem is, one day maybe people won't buy our debt. What happens when that happens?

So we are going to hear from our colleagues over the next 1 hour, 45 minutes about all the great investments in education, the great investments in this and the investments on that, and spending money on this and spending money on that, and just how great and compassionate that is. I want to tell you one thing. I want to show you what the Congressional Budget Office just told us, and here is what they told us.

My three children, who are 4, 5, and 7 years old, when they are my age, here is the tax bill that will be due them—this is the Congressional Budget Office—if we don't get this under control. These are the tax rates that will be necessary to tax the next generation. When my kids are my age raising their kids in Janesville, Wisconsin, just like I am doing with my wife and myself, the bottom tax bracket for that generation if we pass this budget and pass this bill on to them, the 10 percent bracket goes up to 26 percent. Middle-income taxpayers who now pay a 25 percent income tax bracket pay 66 percent.

□ 2115

The upper bracket, which is the one that the small businesses pay, instead of paying 38 percent, or it is about to be 40, will pay 92 percent.

This is not some mythical pie-in-the-sky estimate. This is the Congressional Budget Office saying if you are going to raise taxes to pay for all this borrowing, here's what the next generation is going to get. We are passing on to the next generation the most reckless budget, the most reckless deficit and borrowing spree, in generations.

Here is my biggest concern, and I want to yield to some of my colleagues here. My concern is that at the beginning of this budget debate what we really ought to be talking about here is do we want the America we know and love, or do we want to take that system, put it aside and adopt another form of government, adopt a European-style system? Because that is, after all, what we are talking about here. Do we want to have our tax levels, our debt levels, the size of our government levels at these huge levels that we know very well from history's stories show us high unemployment, stagnant wages and lower standards of living?

I just find it so interesting and so ironic that European capitals are lecturing us today on fiscal discipline. It is kind of embarrassing actually. I find it amazing that the Chinese are lecturing us about getting our borrowing under control because they are worried about the value of our currency in our bonds. It is embarrassing. And yet, in the middle of the night, we bring this budget up that proposes this enormous gusher of more spending, more borrowing and more taxing. And we think this is the road to prosperity? This is the road to serfdom.

We will offer an alternative tomorrow. Yes, our friends on the left will disagree with that alternative. We want America back. We want the country we grew up in. We want the country that says we are going to have a safety net to help those people who cannot help themselves, help them when they are down on their luck. We don't want everybody laying in a hammock where they are dependent on the government. We want a country that rewards achievement, production, activity, working hard, improving your life, making life better for you and making sure in your generation you take on your responsibilities and fix the problems so your kids are better off. That is the America we grew up in. That is the America we want, and that is the America you are kissing away with this budget.

We are going to talk numbers. We are going to talk statistics. But at the end of the day, we are passing an unconscionable amount of debt on to the next generation. And it is going to kill our current economy. I'm not one who is typically that passionate. I am not one who typically comes down here and says things like this. But I have never seen a budget like this in my life. I have never seen the numbers quite this awesome in how big they are. This is a budget that should be rejected.

We want bipartisanship. But for the majority to have it, you have to collaborate with us. And we are asking the Blue Dogs, I know you're out there. I know you're thinking about this vote. I know you're listening. Help us. Do you want your fingerprints on this mountain of borrowing? Do you want to go home to your constituents whom you told you were going to be conservatives and say you signed up for this stuff? You have the votes to stop this. The people who call themselves Blue Dog Democrats can stop this bill. They have the votes to do that. Do it, and join us, and let's work together to fix this.

I want to close my comments the way I opened them in the markup. The gentleman from South Carolina (Mr. SPRATT) is a true gentleman. He brings real definition to this northerner as to what it means to be a southern gentleman. I would love nothing more than to sit across the table from that

man and strike a real budget bargain that actually reduces our debt, that actually puts our fiscal house in order. Because that is the kind of man that could do that kind of a budget. He did it in 1997. I think he can do it again.

Unfortunately, this administration, this House leadership, is leading us off the leftward cliff. They are leading us off a leftward cliff. And it is in the power of those Democrats who call themselves Blue Dogs to stop it from happening. And I am begging you, please, stop this crime on the next generation.

ANNOUNCEMENT BY THE CHAIR

The CHAIR. Members are reminded to address their remarks to the Chair.

Mr. RYAN of Wisconsin. Madam Chair, how much time do I have left in my allotment?

The CHAIR. Fifteen seconds.

Mr. RYAN of Wisconsin. I reserve the balance of my time.

Mr. SPRATT. Madam Chair, before yielding 11 minutes to the gentlewoman from Pennsylvania, I yield 1 minute to Mr. ANDREWS, the gentleman from New Jersey.

Mr. ANDREWS. Madam Chair, my very sincere and articulate friend from Wisconsin forgot a few facts. He forgot that during the watch of his party, for every $1 of debt they inherited, they left us with nearly $2.

He neglected to mention that the budget before us cuts by two-thirds the deficit that we inherited from our friends on the other side. He neglected to mention the budget before us cuts by $1.5 trillion taxes on middle-income Americans who drive school buses or sell real estate. And he neglected to mention that under their method of job creation, for every one job they created under their way, we created 108 under our way of managing the economy.

This is a very big debate and a very big choice between a failed status quo of the past and a progressive way to change our country in the future. That is why we are going to vote ''yes'' for this budget.

Mr. SPRATT. I yield 11 minutes to the gentlewoman from Pennsylvania (Ms. SCHWARTZ).

Ms. SCHWARTZ. Thank you to Chairman SPRATT for his tireless and excellent work on this budget. It is a budget that embraces the President's goals to rebuild the economy, to restore fiscal integrity and to give Congress the ability to make investments needed for our future prosperity and security.

First, it is important to understand and remember that President Obama and this Congress inherited the results of 8 years of failed economic and fiscal policies, doubling the national debt in 8 years and left this administration with $1.3 trillion in debt and an economy in deep recession. We have already taken action to rebuild our economy and to create new jobs providing tax relief to 95 percent of Americans, creating jobs by assisting small businesses and our States, investing in needed infrastructure and investing in energy independence, health IT and education.

This budget builds, by these essential steps, by enabling Congressional action, that will lead us to future economic growth in the areas of education, energy and health care. We will not be prepared, we will not be economically competitive if we do not tackle these challenges.

For the next few minutes, my colleagues and I will focus on the critical investments we need to make in health care. This budget sets aside a revenue-neutral reserve fund for health care reform. ''Revenue neutral'' means that we will find the money to pay for health care reform. And it includes reconciliation language to ensure that we have the debate much needed here in Congress and with the American people on the issues of cost, quality and access to health care for all Americans. Through the discussion, we would hope that we can be bipartisan.

We expect to develop a uniquely American solution to address the concerns of American families and American businesses. Forty-seven million uninsured Americans, millions more underinsured and rising costs in health care premiums for our families, for our businesses and, yes, increasing costs for government. This American solution will achieve three important goals. One, we will contain the unsustainable growth in health care costs borne by public and private sectors. Two, we will improve quality and efficiency so that Americans get the very best and appropriate health care they need. And three, we will expand access and remove barriers to affordable health coverage for all Americans.

I urge my colleagues to support this budget because it is honest, it is fiscally responsible, and it enables us to address the long-term goal of quality, affordable health coverage for all Americans, which is the foundation of economic prosperity and security for our citizens and our Nation.

Now I would like to ask to join in the conversation the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. This budget addresses our Nation's priorities. It confronts our economic crisis. It makes critical investments in our long-term growth. It cuts the deficit by nearly two-thirds and cuts taxes for middle-class Americans. It reduces wasteful spending while making long overdue investments to get our country back on track.

At its core, the idea is that we cannot fix our economy without fixing our health care, as the gentlewoman spoke about. Every day I hear stories from my constituents about a broken system; the woman who lost her job and health care benefits, the small business owner struggling to offer health care coverage to his or her employees, people with preexisting conditions who cannot find a health insurance policy at any cost.

There are no easy answers when it comes to making our health care system work for everyone. One thing is clear: This is our window of opportunity. The country cannot wait another year. Bills are piling up, and people are putting off the health care they need. This budget is essential to ensuring quality, affordable health care for all of our citizens. And it says to them, as my colleague knows, it gives them flexibility, keep what you have now, or you have a choice of a private or a public health insurance plan.

This budget takes action to control the underlying cost of health care. It addresses chronic illness on which we spend 75 cents of every health care dollar. We must do a better job encouraging healthier life styles. It covers preventive services and improves care coordination, all of which improves the quality and creates a more efficient health care system that delivers better care, not just more care. And finally, we need to reform this broken health care system, not in spite of our struggling economy, but because of it.

I urge my colleagues to stand behind this responsible budget. It is the foundation of a strong economy, future growth and true health care reform. I thank the gentlewoman for leading this segment of the budget debate. Health care is what our future needs to be about. This budget does it.

Ms. SCHWARTZ. I thank the gentlewoman.

Now I want to recognize the gentleman from Rhode Island (Mr. LANGEVIN).

Mr. LANGEVIN. I want to thank Chairman SPRATT, and I want to thank Congresswoman SCHWARTZ for yielding.

Madam Chair, I rise in strong support of the fiscal year 2010 budget resolution that is before us this evening. It is clear that in order to rebuild our economy and achieve long-term fiscal sustainability, we are going to make strategic investments in programs like health care, education and energy while simultaneously providing meaningful tax relief to families and businesses who are struggling right now to regain their economic footing. Well, this budget reflects those crucial priorities while adhering to an honest accounting of our fiscal challenges.

Now I believe that our greatest budgetary challenge right now is one that is deeply and unmistakably intertwined with the strength of our Nation's economy, and that is the need for health care reform.

Dr. Peter Orszag, the Director of the Office of Management and Budget, recently testified before the House Budget Committee that ''the single most important step that we can take to put our Nation back on a path to fiscal responsibility is to address rising health care costs.'' Well, I could not agree more. As the cost of health care continues to rise, it is burdening our families, placing employers at a competitive disadvantage and costing our government, and ultimately the taxpayers, billions in unnecessary expenditures.

Well, Madam Chair, this budget supports our shared goals for health care

reform and provides the framework necessary to improve the health of our Nation, reduce expenditures over the long-term and ultimately regain the economic strength of our great Nation.

I ask my colleagues to support this resolution. I give great credit to Chairman SPRATT and my colleagues on the Budget Committee for the hard work that they have put in to craft a responsible, truthful budget.

Ms. SCHWARTZ. I thank the gentleman. And I want to yield to the gentleman from neighboring New Jersey, Representative ANDREWS.

Mr. ANDREWS. I thank my friend for yielding.

Madam Chair, for 8 dreary years, we have heard what the other party could not do. No, they could not stop the hemorrhaging of dollars from our pockets to pay for health care. No, they could not bring quality health care to every American. No, they couldn't provide health care for hardworking people who stand behind cash registers or pump gas or work at a nursing home. No. No. No.

We have turned a new leaf. There is a new opportunity to talk about what America can do. And this budget says what we can do together in health care. It says to those who have health care and like their coverage, they can keep it. It says to those who like the doctor or the hospital they go to, they can continue to do that.

But it says to those Americans who work so hard every day but cannot have a health care card in their pocket when they take their child to a pediatrician that it is your time now, it is your turn now to have some attention from this Capital and from this government.

□ 2130

And this budget facilitates and makes possible a plan where hardworking Americans can finally have access to affordable health care. The naysayers will say, no, it's too soon. No, it's too much. No, it's too grandiose. I don't think it's too soon. I think it's too late for a lot of people. I don't think it's too much. In some ways it's too little, and it certainly is time to stop the hemorrhaging of dollars from the pockets of our people, provide health care for hardworking people, and that is what this budget does.

Ms. SCHWARTZ. And last, and certainly very important in this debate is someone who's been very outspoken on health care, my colleague, the gentlewoman from Illinois, Representative SCHAKOWSKY.

Ms. SCHAKOWSKY. I think I've been waiting for this budget, this opportunity most of my adult life, certainly, all of my public life.

Budgets aren't just about numbers. They're about visions and values, and to me there is no more important value than this budget's commitment to guaranteed, affordable, quality, comprehensive health care for all Americans.

No sector of our economy is immune from the twin problems of rising health care costs and declining access. Virtually no family in our country is immune. 47 million Americans are uninsured, but they're not the only ones struggling. Over half of all Americans are delaying, foregoing or skimping on necessary medical care. The consequences are serious.

Businesses, especially small businesses, are being forced to lay off long-term staff, cut or eliminate benefits, or even close their doors because of health care costs.

And this budget also makes room for improvements in Medicare, providing reasonable payments to doctors, and improving the quality of care for our seniors and persons with disabilities.

Some in this body have spoken against health care provisions in this budget because they say the cost is too great. But the American people know that the cost of maintaining the status quo is even greater and more unsustainable.

We can and, going forward, we will debate on how to achieve reform. And I'll be working hard to give everyone the option of choosing a public health insurance plan. But if we don't pass this budget now, we will miss the historic opportunity to finally make sure that every single American will have access to the affordable comprehensive health care that we all need.

Ms. SCHWARTZ. Madam Chairman, I think my colleagues have made the point, and we all have. It's time to take action on health care.

Mr. RYAN of Wisconsin. Madam Chairman, I will yield 3 minutes to the gentleman from Ohio, a member of the Budget Committee, Mr. AUSTRIA.

Mr. AUSTRIA. Madam Chairman, I'd like to thank the ranking member from Wisconsin for yielding. And as we just heard from the ranking member, this budget will increase the size, scope and cost of the Federal Government by historic amounts.

And when I fly home on weekends to my three sons—I also have three sons—it is difficult for me to go back home knowing the amount of debt, historic amounts of debt that I am putting on my children, our children and our grandchildren, that will be paid for for years to come.

And now to chase some of the spending, what this budget does, it now includes nearly $1.5 trillion in new taxes, a tax hike over the next decade that's going to further weaken America's prospects for sustained economic growth and job creation well into the future. And it's no surprise that the bulk of these tax hikes are allegedly to hit those nameless, faceless wealthy Americans, so to speak. But, in fact, those people, those individuals that we're talking about, many of those are small business owners and investors, the same small business owners and investors who create 60 to 80 percent of the jobs in this country, and who are precisely the people whose enterprise is needed to restore the economy.

This budget includes a cap-and-trade proposal that sounds harmless, but, in fact, it is very harmful. It's a $629 billion tax increase on who? On hardworking families, families that are struggling to make it from paycheck to paycheck.

If you use natural gas, if you turn on the light switch and use electricity, you heat your home, you fill up your gas tank with gasoline, anything you use with carbon, we're now going to raise the cost of energy on you. We're going to raise, in this bill, the cost of energy for the average American family by about $1,600 per year. And I have seen reports that are two, three times that amount.

And this tax will further erode the job growth of the U.S. manufacturing sector. And I am from a State in the Midwest, Ohio, where we have a lot of manufacturing. And I fear that we're putting American companies at an even greater competitive disadvantage with China and other countries.

When we take a step back, we may ask ourselves, why would the President and the Democrat leadership want to raise taxes on small businesses and families during a recession?

Well, Madam Chairman, we just, we heard earlier, it's because of all the spending that we heard about earlier from our ranking member, that they need these tax hikes to give the illusion that they're not increasing the deficit and debt as much as they really are.

The problem is, there's no spending restraints in this bill. And that illusion is only going to be able to last so long because, even with the massive tax increases in this bill, this budget spending growth is so explosive that it outpaces revenue for the entire budget period.

So it's clear the tax hikes that we're looking at today, I think, are just for starters. I mean, even the New York Times recently warned that, in fact, the President will inevitably have to raise taxes.

The CHAIR. The time of the gentleman has expired.

Mr. RYAN of Wisconsin. I yield 30 seconds to the gentleman.

Mr. AUSTRIA. Let me just point out, because we are going to hear more about this. I want to make one key point, and that is that this budget relies on the flawed notion that the Federal Government can spend all it wants for as long as it wants and just borrow from other countries and tax our own citizens. And for what? Just to keep this good deal of spending going?

We can do better. Americans expect better, and we need to fix this problem. It's a concern short-term and long-term.

Mr. RYAN of Wisconsin. At this time, Madam Chair, I would like to yield 5 minutes to the gentleman from California, a member of the Budget Committee and the Ways and Means Committee, Mr. NUNES.

Mr. NUNES. Madam Chairman, outlined in the Democrats' budget proposal is something called cap-and-

trade. Not many people are familiar with what cap-and-trade means. But simply, it's an energy tax. It's a tax on everyone who drives a car, flips on a light switch, or consumes a manufactured item made in the United States. In fact, it's the largest tax increase in American history, amounting to almost $2 trillion, and it will impact everyone. This is why I refer to it as cap-and-tax.

Even President Obama admitted to the San Francisco Chronicle that, under this cap-and-tax scheme, energy prices would skyrocket. Total costs of this tax are estimated at nearly $2,000 for each American household.

So what does this mean to the American household? What would they have to give up to make up for this $2,000?

You could quit eating. Or just don't buy any furniture or appliances for the year. Or maybe don't buy your children any shoes or clothes for the year. Or if you're real concerned about global warming, just stop using electricity and stop heating your home. Or, like some people do today in Washington, just stop paying your property tax. That would make up the $2,000.

Under this scheme, the Democrats treat energy as a luxury. When energy becomes a luxury, all else becomes a luxury too because energy makes everything possible.

Seldom do the experts agree on much, but on cap-and-tax, there's a clear consensus. It will destroy millions of jobs and devastate our economy.

Republicans want to reduce carbon emissions. We believe it's a worthy goal. The Republican budget alternative that we will talk about tomorrow expands domestic oil exploration in Alaska, on the Outer Continental Shelf and other untapped natural resources. This will create new American jobs today, high-paying jobs, not phantom green jobs.

At the same time, the Republican budget mandates that the revenues from this new oil and gas exploration, literally hundreds of billions of dollars, be directed to things like solar panels and wind farms. No Democrat plan has ever contemplated such a massive investment in solar and wind. And this, all at no cost to the taxpayers. The oil companies pay for it.

Our budget also highlights the importance of investments into nuclear energy. Nuclear power produces zero carbon emissions. Let me repeat, zero carbon emissions. It provides us with clean, cheap and abundant electricity.

Construction of 200 nuclear reactors would reduce carbon emissions more than any disastrous cap-and-tax scheme. An investment in nuclear power would also help America achieve energy independence, lower consumer prices and, in sharp contrast with the Democrats cap-and-tax scheme, nuclear power investments would actually create jobs.

A choice is hereby laid before this body: A Democrat budget that taxes energy and creates the largest tax increase in American history, while having no impact on carbon emissions, or a Republican alternative that actually invests more in renewable energy than the Democrats, takes more carbon out of the air, and doesn't cost the taxpayers anything.

A vote for the Democrat budget would represent much more than a lack of common sense. It would be a clear sign that the priorities of the Democrats rest, not with the American people, but with the special interests of the radical environmentalists.

The Republican budget is about common sense. It uses American resources to create American jobs on behalf of the American people.

I would urge my colleagues to reject the Democrat budget and, hopefully, we can get enough Blue Dogs to support the Republican alternative that we'll offer tomorrow.

Mr. RYAN of Wisconsin. Madam Chair, at this time I would like to yield 2 minutes to the gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. Madam Chairman, Thomas Jefferson said in 1821, ''There does not exist an engine so destructive of the government and so demoralizing of the Nation as a public debt. It will bring on us more ruin at home than all the enemies from abroad.'' This was said in 1821.

One of my colleagues on the Democrat side a while ago said something about the hemorrhaging of the dollar. One of the reasons the dollar is hemorrhaging right now is we're inflating the money supply so rapidly that the dollar's going down the tubes. And if we keep on this trail, it's going to be worthless. We're spending money so fast it's unbelievable.

Mr. Geithner's got to put another 2 or $3 trillion into the financial system, and this budget, $3.5 trillion, is going to bankrupt this country. And my colleagues, like Mr. RYAN said a while ago, we're going to saddle our kids and our posterity with a debt that they'll never be able to repay. The inflation and the taxes they'll face will be unbelievable.

Let me just say, since we don't have a lot of time, there are parallels with what's happened in history. The same things we're doing today—if you don't believe this, read the book The Forgotten Man. The same things that we did during the Great Depression we're doing right now today, and it prolonged the Depression, and it lasted 10 or 11 years because of that.

And in the 1970s we had a similar situation. We had inflation that was 14 percent, unemployment that was 12 percent. And Ronald Reagan came in and, instead of raising spending like you're doing today, he cut taxes across the board and, as a result, we had the longest period of economic expansion that we've had in history.

Why don't we learn from history?

It seems to me my colleagues on the Democrat side think we can spend our way out of this. Tax and spend, tax and spend. It will not work. It hasn't worked in the past, it only makes things worse. We are heading toward a major, major depression if we don't cut this spending and start doing things that will stimulate economic growth like cutting taxes.

Mr. SPRATT. Madam Chairman, I will yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER) for a rejoinder.

Mr. BLUMENAUER. Madam Chairman, I have listened to my friend, Mr. RYAN, whom I deeply respect, but am taken aback by his introduction. He's concerned that we're having the debate this evening. This is why we call it prime time. This is when you stage the Academy Awards, the Super Bowl, things you want America to see.

But I could understand why they would want it during the day when people are working and not listening to this debate because they want, as Mr. RYAN says, to go back to the America they grew up in, the policies of the Fifties, the energy policies of the Sixties, the fraying infrastructure of years ago.

This is a budget that points to today's problems with solutions for the future, a carbon-constrained economy where carbon pollution will no longer be free, and we can actually create the jobs they're talking about.

Remember the last time you heard them in high dudgeon; it's when the Democrats controlled everything and we passed that awful Clinton budget that produced, not the doom they called for, but sustained prosperity.

□ 2145

Mr. SPRATT. Madam Chair, I yield 3 minutes to the gentleman from Florida, from the Blue Dogs, Mr. BOYD.

Mr. BOYD. This budget resolution, ladies and gentlemen, directs the Education and Labor Committee to find savings via the reconciliation process. As we know, President Obama's blueprint budget assumed that those savings would come from providing all future student loans through the government's direct loan program and ending the Federal Family Education Loan program.

I'm here today to express my concern that, if this reconciliation bill implements the President's proposal, it could prove detrimental to thousands of employees who serve in the current student loan industry throughout this country, 650 of which are located in Panama City, Florida.

While I'm supporting stabilizing the student loan industry and am supporting initiatives to make our Federal Government more efficient, I believe it is prudent for us to find a way to continue to use the present Federal Family Education Loan industry to preserve efficiency and to provide employment to these many Americans during this time of economic crisis.

Chairman MILLER, in light of these concerns, this budget resolution includes report language that urges your

committee to review the options for the student loan program that will maintain a role for the Federal Family Education Loan program limits. I would like to put this question to you, sir, as chairman of the Education and Labor Committee:

As your committee moves forward this year, Chairman MILLER, will you be willing to work with me and with other members with similar concerns to preserve a role for the private student loan program infrastructure that currently exists and that services 75 percent of all loans at American colleges and universities?

Before yielding to Mr. MILLER for his response, Madam Chair, I would like to yield first to the gentleman from North Carolina (Mr. ETHERIDGE).

(Mr. ETHERIDGE asked and was given permission to revise and extend his remarks.)

Mr. ETHERIDGE. Madam Chair, I support this budget and, in particular, the significant investment it makes in education. We must invest in education if our workers are going to be able to compete in the 21st century global economy. However, I share my friend Mr. BOYD's concerns about ending guaranteed student loans. This would threaten hundreds of jobs in North Carolina. It would also cut off access to the valuable services some of the lenders provide that help students pay for, apply to and pay for college.

In North Carolina, we have a unique situation where a State nonprofit provides significant benefits to students in addition to providing the loans. I am concerned that the legislation will have the unintended consequences of reducing the benefits that students receive from our nonprofit lenders.

We should take steps to preserve the good things done by guaranteed agencies to improve college access and affordability and to keep loan defaults low even if Federal Family Loans are reduced.

Madam Chair, I rise in support of H. Con. Res. 85, the budget resolution for FY 2010.

H. Con. Res. 85 builds on the work of this Congress to put our economy back on track, addressing the current crisis and building for future needs. This bill lays out a plan to cut the deficit by nearly two-thirds by 2013, and creates jobs with investments and reforms in health care, clean energy, and education.

A budget is more than just a document, it is a statement of our nation's priorities and values.

As the only former state schools chief serving in Congress, I am particularly pleased that the budget prioritizes education and innovation. In recent months, first with the economic recovery legislation and then as we finished the 2009 appropriations process, Congress devoted significant funding to education to create quality jobs now and in the future. This budget resolution provides a blueprint to follow through on these priorities.

I have always believed that education is the most important investment we can make for our future prosperity. In the current economic downturn, it is even more critical that we ensure our workforce is able to compete in the 21st century global marketplace.

This resolution reverses the previous Administration's neglect of education and provides significant and needed investments in our nation's schools. It reflects the fact that education is a lifetime activity, spanning from early childhood to post-secondary education and technical training.

The resolution strongly supports early learning, including the President's initiatives to help strengthen and expand early childhood education programs. It increases child nutrition funding, paying for school meals because a hungry child just cannot be successful in school.

At the other end of the spectrum, this resolution builds on Congress' recent efforts to help students afford and complete college.

Education is the key to economic growth, future success, and access to opportunity for our citizens, and this Budget Resolution makes a clear statement that education is a top priority. I urge my colleagues to vote in favor of it.

The CHAIR. The time of the gentleman from Florida has expired.

Mr. SPRATT. I yield the gentleman 1 additional minute.

Mr. BOYD. Madam Chair, I would like now to yield to the gentleman from California, the chairman of the Education and Labor Committee, Mr. MILLER.

Mr. GEORGE MILLER of California. I thank the gentleman from Florida and the gentleman from North Carolina for posing these questions, and I know that we will be able to work together as my committee and this Congress consider proposals to reform the Federal student loan program.

Access to Federal financing for higher education is a top priority. As you know, last year, we passed a stopgap measure to ensure that students and their families continued to have access to Federal student loans even in this economic climate. This stopgap measure was never intended to be a permanent solution, and we need to look at reforms to make sure that we have a reliable, efficient and sustainable program.

I expect that there will be a role for private lenders in the future of the student loan program. Private lenders, for example, have played a significant role in ensuring high standards for servicing, and future reforms must harness this expertise. Also, let's not forget that, no matter what reforms are enacted, there is over $500 billion outstanding in loan volume in the current FFEL program that will need to be serviced as borrowers repay their loans.

My staff and I have met with a number of private lenders, and we will continue to do so as we move forward. I look forward to continuing this dialogue with the gentleman from Florida and with the gentleman from North Carolina.

Mr. BOYD. I thank the gentleman from California.

Mr. SPRATT. I would inquire of the gentleman from Wisconsin if he wishes to have further speakers at this point or if we should go ahead.

Mr. RYAN of Wisconsin. Let me ask the Chair how much time is remaining on each side.

The CHAIR. The gentleman from Wisconsin has 70½ minutes remaining. The gentleman from South Carolina has 64 minutes remaining.

Mr. RYAN of Wisconsin. Madam Chair, I will yield 5 minutes to the gentleman from Texas, the vice ranking member of the Budget Committee, Mr. HENSARLING.

Mr. HENSARLING. Madam Chair, never in our history have so few voted so fast to indebt so many. This is courtesy of a Democratic-controlled Congress.

$700 billion of bailout money, $6,034 per household; a $1.138 trillion government stimulus plan, $9,810 per American household; a $410 billion omnibus spending plan, $3,534 per American household.

On top of this, the Democrats now propose the single largest budget in American history and the largest as a share of the economy since World War II. It is a budget that will increase spending to $3.6 trillion, over $31,000 per American household. It is a budget that spends too much. It is a budget that taxes too much. It is a budget that borrows too much, and it threatens to bankrupt our country.

Even before all of the spending described above, our Nation was headed for a day of reckoning, but don't take my word for it. Listen to the Federal Reserve:

''Without early and meaningful action to address the rapid growth of entitlements, the U.S. economy could be seriously weakened with future generations bearing much of the cost.''

Listen to the former Comptroller General with the Government Accountability Office:

''The rising cost of government entitlements are a fiscal cancer, a fiscal cancer that threatens catastrophic consequences for our country and could bankrupt America.''

The Democrats' budget will nearly triple the national debt in 10 years, costing taxpayers a dizzying $148,926 per household. Madam Chair, just look at this chart. It is a sea of red ink for generations to come. This budget, this Democratic budget, will create more debt for America in the next 10 years than was run up in the previous 220. Now, Madam Chair, let me repeat that just in case anybody missed it. This Democratic budget will create more debt for America in the next 10 years than was run up in the previous 220. Our Nation has never seen this level of debt in its entire history. It very well may bankrupt us.

Now, Madam Chair, using history as my guide, no Nation has ever borrowed and spent its way into prosperity. At the outset of World War II, Henry Morgenthau, FDR's Secretary of Treasury, said the following:

''We have tried spending money. We are spending more than we have ever spent before, and it does not work . . .

After 8 years of this administration, we have just as much unemployment as when we started . . . and an enormous debt to boot.''

Let's recall Japan's lost decade of the 1990s when they attempted to borrow and spend their way into prosperity. They took on the greatest amount of debt of any industrialized Nation in the world, and after 10 years, they had no economic growth, no new jobs, and their per capita income fell from second in the world to 10th. Read what the New York Times had to say about it:

''Japan failed to generate a convincing recovery. This has led many to conclude that spending did little more than sink Japan deeply into debt, leaving an enormous tax burden for future generations. Among ordinary Japanese, the spending is widely disparaged for having turned the Nation into a public works-based welfare state and for making regional economies dependent on Tokyo for jobs.''

Madam Chair, this Democratic budget spends too much. It taxes too much. It borrows too much, and it threatens to bankrupt our Nation.

On top of this, Madam Chair, the Democratic budget is proposing a national energy tax, a national energy tax, which, according to studies at MIT, could pose a $3,128 burden on every working family in America. They're offering a half-a-trillion-dollar tax increase on small businesses—the job engine in America, the font of three out of four new jobs created in America. They're offering a tax on capital of up to one-third when we desperately need capital to help preserve the jobs we have today and to grow the jobs of tomorrow. Madam Chair, I've heard from struggling Americans about how this Democratic budget is going to impact them.

I've heard from Gary of Garland, Texas, who said, ''The money that government is so lavishly spending is coming from people who have worked very hard and made good decisions and, thus, pay taxes. Money is being stolen from our children and grandchildren to bail out just about anyone who was irresponsible.''

The CHAIR. The time of the gentleman has expired.

Mr. RYAN of Wisconsin. I yield the gentleman an additional minute.

Mr. HENSARLING. We've heard how this Democratic budget affects small business. We've heard from Susan of Tennessee Colony:

''I have owned my company for 25 years . . . but today, I have had to lay off 25 people and cut hours on the remaining 35 . . . and now Mr. Obama wants to place higher taxes on me because I am successful. So much for our American dream.''

We've heard how this Democratic budget affects the education dreams of America. We've heard from Bruce in Idaho Falls:

''We are at the point where we just have enough money to send our oldest daughter to college. An additional energy expense would make it impossible for us to pay for the expenses for our daughter's college education.'' This is how the Democratic budget affects the education dreams of Americans.

Madam Chair, the President's chief of staff has said, ''Never let a serious crisis go to waste. It's an opportunity to do things you couldn't do before.''

Well, the Democrats are going to spend like never before. They are going to tax like never before. They are going to borrow like never before. They will bankrupt our Nation. There is a better alternative that promotes freedom, economic opportunity and jobs for all. It's the Republican alternative. We'll see it tomorrow.

Mr. RYAN of Wisconsin. At this time, I'd like to yield 3 minutes to the gentleman from Ohio, a member of the Budget Committee, Mr. JORDAN.

Mr. JORDAN of Ohio. I thank the gentleman for yielding and just would say, Madam Chair, that the passion that the gentleman from Wisconsin displayed in his opening remarks was right on target. It was totally appropriate because this budget is an assault on liberty. It's an attack on freedom, and it does so in four ways.

First of all, it is the largest tax increase in history, which attacks the liberty and freedom of current taxpayers. We're going to have to pay more in taxes. We all understand that. It diminishes our opportunity to go after our goals and our dreams—for the American people to pursue those things that have meaning and significance to them. It's an attack on future generations of Americans, as we've heard from every single speaker, because this budget piles up the largest debt in history. There will be more debt in the next 6 years than it took the 43 previous Presidents to accumulate. From George to George—from Washington to Bush—we didn't accumulate as much debt as this budget will do in the next 6 years.

Think about this: A $23 trillion national debt this budget takes us to. Think about this: To pay that off, we first have to get to balance. Then we have to run a $1 trillion surplus for 23 years, and that's not even counting the interest. That's what we have to do to pay this. That's how big this is.

There are two other ways it attacks freedom: The cap-and-trade that the gentleman from California talked so eloquently about. This is going to be a tax on every single American and on every single small business owner. It's going to make it that much tougher for us to compete in the international marketplace, particularly against our emerging competitors in China and in Japan.

Then, finally, the further nationalizing of health care: The money set aside in this budget to create this board that's going to now decide what kind of health care treatment you and your family receive, not you and your doctor, not you and your family. A bunch of bureaucrats in Washington are going to be deciding what kind of health care you're going to get.

In my mind, this is not alarmist talk. These are the facts. The liberties and freedoms of Americans are at stake, and it's important we recognize that.

I want to close with this, Madam Chair: Twelve days ago, in our district, Olen Beck was born—9 pounds, 3 ounces, 19¼ inches long, named after his grandfather. Little does this baby Olen know, but he already owes more than $30,000 in debt, and if this budget passes before this young man can even write his name, he will owe $70,000. That's what this budget does.

One of the things that makes this country great is the willingness of parents to make sacrifices for their children so they can have life a little better than they did, and they, in turn, become adults and parents, and they do the same thing for the next generation. It has been that cycle that has allowed the United States of America to be the greatest Nation in history. When we begin to break that trend, to break that process, that's when we have problems, and that's what this budget does, and that's why I urge a ''no'' vote.

□ 2200

Mr. RYAN of Wisconsin. Madam Chair, I yield 2 minutes to the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Madam Chair, I rise today in opposition to this budget resolution. People who live in the real world who work for a living, who build houses, wait on tables, they understand you can't spend money you don't have. They know you can't spend your way out of an economic crisis. They are cutting at home and at work. They are cutting out the extras. There is no fluff in their budgets, and there shouldn't be in any in ours.

But the Democrat budget fails to reflect the commonsense values of Americans every day. This budget spends too much, it borrows too much, and guess what, it taxes too much.

John F. Kennedy and Ronald Reagan both knew that the worst things that you could do during a recession is raise taxes. But unfortunately, that's exactly what President Obama's budget does, to the tune of well over $1.5 trillion, much of which will be placed squarely on the shoulders of my State's number one job creators, small businesses.

The truth is that despite the claims to the contrary this budget won't create new jobs in places like Westminster, South Carolina, and Due West, South Carolina, and New Ellenton, South Carolina. It will crush them. In the long run, this budget will saddle future generations of Americans with mountains of unsustainable debt.

This budget finances the present by mortgaging our children and our grandchildren's future.

The people back home deserve better, Madam Chairman. The next generation

deserves better, Madam Chairman. And that's what the Republicans are going to give this House tomorrow.

I urge my colleagues to join me in voting ''no'' to the Democrat budget, vote ''no'' against higher spending, vote ''no'' against higher taxes, and vote ''no'' against borrowing.

Mr. SPRATT. Madam Chairman, I yield 1 minute first to the gentleman from New Jersey (Mr. ANDREWS) for a rejoinder, and then I will go to Mr. SCOTT.

Mr. ANDREWS. I thank my chairman for yielding.

Our friends often honor the memory of our late President Reagan, but they forget one thing that President Reagan said, that facts are stubborn things.

I think I understand why, because they overlook the fact that this budget cuts taxes by $1.7 trillion for people who teach school or fight fires or who sell real estate for middle-class people. They overlook the fact that they inherited a situation where we're on track to retire the debt within a decade but they wound up doubling it from $3.4 trillion to $6.3 trillion under their watch. They ignore the fact that 95 percent of Americans get a tax cut under this budget, and their favorite constituents, a few of them do not.

Facts are stubborn things. The fact is that our approach has created jobs and economic growth; theirs does not.

Mr. SPRATT. Madam Chair, I yield 12 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Madam Chair, this budget makes important investments in education. From early childhood through college, it is well known that education is the key to the success in the United States. And in today's high-tech, information-based economy, the old adage that the more you learn, the more you earn, certainly applies.

Because those with a good education will earn more, and they will be less likely to require social services and less likely to be involved in crime and less likely to be unemployed. And communities that invest in education will be more likely to attract businesses and jobs and will suffer less crime and social problems.

To address the committee budget in detail, I will now yield to the gentleman from California, the chairman of the Committee on Education and Labor, for the purposes of a statement (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Thank you, Mr. SCOTT. And I want to thank you, and I want to thank the budget chairman, JOHN SPRATT, and all of the members of this committee for this budget.

This budget does what business leaders have come to Washington year after year over the last 8 years during the Bush administration and asked us to provide resources for a quality education in K–12 to provide the resources so our children will graduate from high school prepared to go on to college, prepared to go into careers, prepared to go into the job market in a globalized world; but they failed to do that for 8 years. Now we finally have a budget that gives us the resources so that we can provide that quality education, so we can invest in teachers, we can invest in the professional development of those teachers, we can provide the resources and the technology that our classrooms across this country scream out for on behalf of our children, so that they can participate in the technology advances in our society.

We also make sure that when they graduate from college, that the college will be more affordable than anytime in history because of the actions of this Congress last year and the actions of this budget.

Since last year, we increased the Pell scholarship by over $1,500. We cut the interest on need-based Federal student loans in half. We enacted loan forgiveness so people can follow their careers and their desires whether they want to be a teacher or a firefighter or a public prosecutor or a public defender or a public health nurse. They have the opportunity to be able to do that because of the loan forgiveness that has been provided.

And this year, because of the changes that the President is asking for, the direct loan program will be able to provide tens of billions of additional dollars to make sure that people can afford college at this time when it's most necessary that they receive a college education to compete in this globalized economy.

And I want to thank the Budget Committee for making this budget available so we can vote ''aye'' on this budget tomorrow.

Mr. SCOTT of Virginia. Madam Chairman, I yield to the gentleman from New York, a member of the Budget and Education Labor Committee, Mr. BISHOP.

Mr. BISHOP of New York. I thank Mr. SCOTT for yielding.

As Chairman MILLER indicated, since January of 2007 this Democratic Congress has made great strides in ensuring that students across the country have access to high-quality education. Passage of this budget resolution continues this commitment to ensuring that every child who dreams of going to college can do so.

Our colleagues on the other side of the aisle have described this budget as a budget that expands Federal control of education. What it really expands is access to educational opportunity, particularly in the area of higher education. And not only does this budget significantly expand access, it does so in a fashion that is fully paid for.

The budget resolution would accommodate the President's major initiatives in higher education, which include increasing the Pell Grant maximum by an additional $155 and indexing that maximum to the CPI plus 1 percent. It would also include phasing out FFEL lending and moving to 100-percent direct lending providing students with the same access to support but doing so at a 5-year savings of $47 billion.

It also calls for restructuring the Perkins Loan Program, increasing funding for this program by a factor of six and increasing the number of students who can benefit from this program by 2.7 million students.

And finally, it calls for a creation of a college access and completion fund of $2.5 billion over 5 years so that schools can adopt best practices in both access and completion.

Taken as a whole, these four proposals will be of significant assistance to students. We cannot achieve economic prosperity without an educated populous. This budget will ensure that those who can benefit from higher education will do so and that students will get their chance at their slice of the American dream.

I urge my colleagues to vote for this budget resolution.

Mr. SCOTT of Virginia. I yield to the gentlelady from Massachusetts, a hard-working member of the Budget Committee, Ms. TSONGAS.

Ms. TSONGAS. Madam Chairman, I would like to thank the gentleman from Virginia.

I am pleased to rise in support of this Democratic budget resolution which makes a much-needed investment in early education. We have heard much about the costs of action but not enough about the costs of inaction.

As we look ahead to an increasingly competitive global economy, it has never been more important to ensure that our citizens are well prepared. Simply put, we will not again experience sustained economic growth if we do not invest in educating our future workforce now.

A number of my colleagues on the other side of the aisle have proposed a freeze on all non-defense spending for the next 5 years. I understand their concerns about fiscal responsibility. And I know their proposals are well-intentioned. However, I can think of nothing worse for the health of our economy in the short term and in the long term than restricting access to education.

As we all know, State and local governments around the country have been forced to lay off teachers, cut programs, and reduce the number of children able to participate in early education and after-school programs. Education provides access to a better life, and early childhood education sets a foundation upon which later academic success is built.

If we take the shortsighted approach offered by our Republican colleagues, any small amount of savings we gain today will quickly be overwhelmed by the very real losses to our productivity tomorrow. Recognizing this basic fact, businesses, both large and small, have made supporting education one of their top priorities for their communities and for Congress. And this is certainly true in my State of Massachusetts.

I represent old industrial cities where public education dollars pay a critical role in helping all of our children gain the skills that they need to succeed in our knowledge-based economy and in helping newcomers integrate into our American society.

During the last administration, we failed to properly fund education, particularly for the youngest and most vulnerable. But through the economic Recovery and Reinvestment Act, we have already begun to reorient our priorities by including funding for Head Start, Early Head Start, and other early education programs.

This Democratic budget builds upon those investments and helps to strengthen and expand these programs, including proven home-visitation programs. These funds are critical because an active Federal partner can play a strategic role in concert with local and State partners to keep the education pipeline firm.

I thank the gentleman from Virginia, and I call on my colleagues to support this budget.

Mr. SCOTT of Virginia. Madam Chair, I would like to now call on the gentlelady from Wisconsin, an effective member of the Budget Committee, Ms. MOORE.

Ms. MOORE of Wisconsin. Madam Chairman, I want to thank the gentleman from Virginia for his leadership.

Education is certainly the key to unlock the door to freedom, George Washington Carver once said. This horticulturist, inventor, chemist, educator, and, yes, former slave, was lifted through educational opportunity in America. His destiny was changed because of education, and America's gross domestic product was changed because of him.

Unfortunately, however, the last decade of divesting in American educational opportunity, in preference for short-term tax breaks, has reversed the course of the United States global dominance, particularly in the areas of science, technology, engineering, and math.

Year after year after year, the former President's education budget gutted and underfunded vital educational programs. Innovation and health research have been shackled under ideological and budgetary bondage. Happily, President Barack Obama begins the reinvestment in education with $100 billion dollars invested in our future, invested in our children, and, yes, invested in our economic growth.

Since only 40 percent of our youths age 25–34 have a college degree, I am particularly pleased that the chairman's mark will enable us to focus on college affordability through increasing Pell Grants and on college retention efforts provided through programs such as Upward Bound and Trio. Indeed, that golden door to freedom will only open with an appropriately educated workforce where we lift our young people to their rightful place in a global economy.

I thank the gentleman from Virginia.

Mr. SCOTT of Virginia. Madam Chairman, the budget we will vote on tomorrow will invest in education, Head Start, especially Early Head Start, Title I, nutrition programs, drop-out prevention programs, quality elementary and secondary education and after-school programs, and college awareness programs. It will have financial aid so that young people can attend college, Pell Grants, reduction in student loan interest rates, and assistance to college.

The budget will provide the necessary funding for the United States to regain our economic competitiveness by achieving a well-educated workforce that will make our neighborhood safer.

And, Madam Chair, I would like to thank the gentleman from South Carolina, the chairman of the committee, Chairman SPRATT, and Chairman MILLER, and President Obama for making education a priority in a fiscally responsible budget.

Mr. RYAN of Wisconsin. Madam Chairman, at this time, I would like to yield 2 minutes to the gentleman from New Jersey, a senior member of the Budget Committee, Mr. GARRETT.

Mr. GARRETT of New Jersey. Madam Chairman, tonight the Democrats are continuing their lengthy rhetorical tradition of saying one thing on the floor of the House but saying a far different thing in their budget.

We know the greatest long-term threat to our Nation's economic security is the looming explosion of spending in our Nation's largest entitlements.

We know this. Everyone in this House knows this. But in case anyone has forgotten, let me just share some facts that I did with the committee.

□ 2215

You know, back in 1959 when I was born, at that time the employer-employee share of the payroll tax used to support Social Security was 4.5 percent. When I was about ready to go to school in 1965 and Lyndon Johnson was the President, they added Medicare as an entitlement, and the taxes went up to 8.8 percent.

Today, the combined payroll tax for these programs is 15.3 percent, far higher than the programs' creators ever imagined. But what is worse is that, despite the fact that 15.3 percent of every dollar earned in America is used to fund these programs, that alone is not nearly enough money to keep them afloat.

When a child is born in this country, in the United States, as soon as that child takes its first breath, they owe for all those type programs $184,000 the day they're born. For those keeping track, this is more than three-and-a-half times the median household income.

Just to preserve current benefits that these programs provide, this generation would have to pay twice the rate of taxes—that's more than 30 cents out of every dollar earned in America—to maintain the status quo.

So, in short, even as my friends on the other side of the aisle repeat their claims to be protectors of those most in need, and those most likely to need the assistance that our largest safety net programs provide, their choices in this budget, as in their past two budgets, do absolutely nothing but to hit the gas on the demise of our Nation's most critical safety net, while at the same time consigning the next generation of Americans to a likely insurmountable burden of debt.

Every year that we don't fix this problem we add an additional $2 to $3 trillion in unfunded obligations to our children. And yet the Democratic majority often claims that their judgments are a moral document. I ask you, what kind of morals do we subscribe to if we prescribe our children to a life of indentured servitude in service of government largesse?

We know that there is a better way. We can reform these programs to ensure that they can do so, and we can start by amending this ill-conceived budget.

Mr. RYAN of Wisconsin. Madam Chair, I yield 2 minutes to the gentlelady from Wyoming (Mrs. LUMMIS).

Mrs. LUMMIS. Madam Chairman, it takes one second to say ''no.'' One second to say ''no'' to this budget tomorrow. One second to save the American people $23 trillion. One second to save the American people and their children and their children's children from the debt that we are piling on them. One second to save them from taxes every time they turn on a light. One second to save them from expenditures that we'll never see the end of. It will take one second to say ''no.''

Or we can say ''yes'' to the Republican budget. If you say ''yes'' to the Republican budget, we can get to the point where deficits disappear. We can get to a point where the American people will be proud of their Congress for spending only as much as they take in.

One second to say ''yes'' or one second to say ''no.'' I encourage my colleagues to vote with the American people, for their pocketbooks, for their financial security, to save them from debt. One second. Say ''yes'' to the Republican budget. Say ''no'' to the Democrat budget and save us and our children and our grandchildren from a future of debt that we may never recover from.

Mr. RYAN of Wisconsin. At this time, I'd like to yield 2 minutes to the gentleman from Indiana (Mr. PENCE), our House Republican Conference Chair.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I rise in opposition to the Democratic budget.

The budget, brought by the majority to this floor in this debate, spends too much, taxes too much, and borrows too much, and the American people know

it. The Democrat budget will double the national debt in 5 years, triple it in 10, and the numbers tell the tale. 2010 spending, $3 trillion, 25 percent of GDP, more than $1 trillion in tax increases. The 2010 deficit, $1 trillion, and estimates suggests deficits nearly $1 trillion for the next 10 years.

The truth is, Madam Chairman, the Democrat majority has brought to this floor the most fiscally irresponsible budget in American history. During debates like this we hear a lot about the numbers, but this isn't just about the numbers. The truth is, it's not about dollars and cents. It's about the American dream, and it's about our kids. It's about small business owners, working families, and family farmers that are dreading the idea of facing higher taxes, higher marginal rates, a national energy tax. And it's about our children and our children's children who may not yet understand what they have to fear and a mountain range of debt.

Let us not do this. Every American family, every American business is answering these challenging times with sacrifice and frugality. This Congress should do no different. Let us reject this Democrat budget. Let us embrace fiscal discipline and reform and growth in the form of the Republican alternative.

Mr. SPRATT. I yield 1 minute for rejoinder to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. I thank my friend for yielding.

My friend, a very articulate new Member from Wyoming, said it only takes one second to say ''no.'' I would respectfully say the Republicans have gotten it down to that short a period of time because they say it so often.

''No,'' we don't have an approach to solve the global warming problem. ''No,'' we don't have an approach to fix the health care approach. ''No,'' we don't have a plan to create jobs. ''No,'' we don't have a plan to improve education.

This idea that when you turn a light on, your taxes are going to go up, is just false. There's nothing in this budget that requires any energy tax to be raised upon any person. If there ever is such a discussion of that, it will come to the floor under a separate vote, under a separate debate, and Members can make their judgment.

So I'm not surprised it takes them, Madam Chairman, only a second to say ''no.'' Because they say it so often, they've gotten very good at it.

Mr. SPRATT. I yield 9 minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. I thank the chairman for yielding time, and I would like to begin our discussion of the energy component of this budget by yielding to the gentlelady from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Madam Chair, as a member of the Budget Committee, I rise in support of this pro-growth resolution. Finally, America is moving forward, and I want to thank our able chairman, JOHN SPRATT, for doing what the American people want us to do. They've told us they can't wait anymore.

This budget resolution addresses the necessity for our Nation to reduce its crippling and dangerous dependence on foreign oil. We must produce our own energy and do so through sustainable, renewable sources, while creating jobs here in America. Our people cannot wait.

We must re-imagine and re-tool America's energy economy. Alternative energy technologies provide one clear path to industrial growth and local employment. Our people cannot wait.

This Congress started with the Obama Recovery Act which set our ship of State on a new path forward to spur development and production of new energy sources and technologies. Our people cannot wait.

And this budget resolution includes a further commitment to renewable energy and energy efficiency. Especially through the deficit neutral energy fund, we will encourage and engage communities to emit fewer greenhouse gases and develop alternative energy technologies and production to create jobs in a new energy age.

The resolution not only helps our Nation recover, it focuses on cutting the deficit in half by 2013 through all the efficiencies and establishes a balance between investing in key areas to grow our economy and saving in order to help put our Nation on a growth path forward.

We are asking this of our citizens, are we not? And we should ask no less of our government. Our people cannot wait.

I rise in strong support of the resolution, and I thank my colleague for yielding.

Mr. BECERRA. I yield to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. I appreciate the gentleman's courtesy because this budget represents a reinvestment in our Nation's public lands, infrastructure, and energy independence. It is a visionary budget that will help renew and rebuild America while protecting the environment. The Republicans tomorrow will present not one but two budgets that would shortchange those very environmental protections.

We propose rather than continue to ignore the dangers of climate change, which the Republicans have done for the last 8 years, an unprecedented coalition, we join with to urge carbon pollution no longer be free to be dumped into our environment by establishing a reserve fund for energy and climate change that leaves the opportunity for committees of jurisdiction to pass legislation to reduce greenhouse gases at least for those who are going to be legislators and not just communicators.

A strong investment in the area of energy and environment is important at a time when a third of our Nation's waters don't meet water quality standards, over 150 million people live in areas that exceed EPA's air pollution standards, and 76 million people live within 4 miles of a Superfund site. Tomorrow, the Republicans will give not one but two budgets that will shortchange those initiatives.

We have water systems, transportation systems, levee systems that are tested. We've seen it on television just this week, and the challenges of the 21st century demand a renewed national focus on ensuring the soundness of those programs. Tomorrow, the Republicans will propose two budgets to shortchange them.

Instead, Madam Chair, I suggest strongly that we work on moving forward with this budget, with agencies like the EPA and the Department of the Interior, to get back to improving air, water quality, preserving public lands, cleaning up toxic waste, reducing our dependence on foreign oil, and reverse the damage of the last 8 years, while we create millions of jobs and strengthen our communities and protect the planet.

Mr. BECERRA. I yield to the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. I thank the distinguished Member from California for yielding.

The concurrent resolution before the House reflects President Obama's bold vision for investing in America's future. Throughout the previous administration, a sustainable and clean energy policy was ignored and our dependence on foreign oil grew. I am proud that this Congress has done more in the past 2 months to promote energy efficiency and combat global climate change than the previous administration accomplished in a full 8 years.

At the local level, I enlisted counties across the Nation to join Cool Counties, a program designed to reduce greenhouse gas emissions. Now is the time for the Federal Government to take similar action.

This budget increases investment in renewable energy and energy efficiency by 18 percent and provides for a clean energy policy that will safeguard our environment, our Nation, our economy, and create jobs. Through the use of a reserve fund, this budget makes significant energy investments in a deficit-neutral manner.

This Congress, through the American Recovery and Reinvestment Act, made almost $60 billion in energy investment—$39 billion in direct funding and $20 billion in tax incentives.

Our actions will modernize our electricity grid. The current grid is outdated, inefficient and unreliable. A smart grid will enhance energy efficiency, lowering energy bills and improving air quality. A 5 percent increase in the efficiency of the grid will eliminate carbon emissions equivalent to the emissions of 53 million automobiles.

This Congress, through the Recovery Act, invested in the weatherization of

millions of American homes, enabling families to better insulate their homes and lower energy bills, and we know that weatherization is among the most efficient ways of lowering our energy dependency on foreign oil.

Investment in energy independence will benefit our economy. Instead of relying on foreign countries to meet our energy needs, this budget will promote the creation of green jobs right here in America. Instead of losing manufacturing jobs, as we have over the past 25 years, we can add jobs in wind and solar power generation; in the manufacturing of advanced batteries; in weatherization programs; in the creation of the smart grid; in the expansion of broadband; and in hybrid vehicle production. Investment in clean energy, Madam Chairman, is an investment in the American worker. It creates jobs.

We must invest once again in America, in efficient automobiles and wind turbines. These investments will protect our climate and lay the groundwork for a new age of industrial expansion founded on technological innovation.

The energy investments that this budget enables fulfill President Obama's vision for clean energy independence and promote a healthy environment while strengthening our economy.

I urge my colleagues to support the budget resolution.

□ 2230

Mr. BECERRA. Madam Chair, may I inquire of the amount of time I have remaining that has been yielded to me.

The CHAIR. The gentleman has 3 minutes remaining.

Mr. BECERRA. Madam Chair, this budget resolution provides bold and necessary investments that will create jobs today and encourage clean energy technology and infrastructure investments that will be the foundation of long-term energy independence—something we desperately need.

No one wants to see us continue to send $700 billion to our foreign competitors when it comes to oil. No one wants to see so much of that money go to people who are hostile to this country and our values.

The previous administration had a woefully deficient record of promoting renewable energy investments, of providing assistance to modest-income families who are most affected by high energy prices, and of making long-term investments in energy independence.

This economic recovery plan by President Obama reflects real change. This economic recovery plan is what the American people hunger for. This economic recovery plan is what people expected to see out of a new President when they voted in November of 2008.

Madam Chair, this plan delivers what people have been asking for: Bold ideas that are ready to take this country in a far new and different direction.

In energy, no one can say otherwise. This is a plan that is farsighted and will take us to a point where we can become independent of all those foreign sources of energy and we can start to live a future that will give us a chance to invest in our children's education, their health care, and better housing, because we will produce our own energy and we will do it in a far cleaner way.

This is a farsighted budget that the President has put before us. We should pass it.

Mr. RYAN of Wisconsin. Madam Chair, at this time I yield 2 minutes to the gentleman from Georgia, Dr. BROUN.

ANNOUNCEMENT BY THE CHAIR

The CHAIR. Members are reminded that they may not traverse the well or put up displays while other Members are under recognition.

Mr. BROUN of Georgia. Madam Chair, the gentleman from Virginia (Mr. CONNOLLY) just indicated his intention to vote for the Democratic budget. I wonder if the gentleman from Virginia (Mr. CONNOLLY) knows that this Democratic budget raises taxes by $1.2 trillion; it makes each American's share of the national debt $70,000 dollars; or that it opens the door to a national energy tax that will cost every single family in America at least $3,128 a year.

Madam Chair, knowing that, does the gentleman from Virginia (Mr. CONNOLLY) still intend to vote for this Democratic budget?

I would yield to the gentleman from Virginia to please answer my questions.

Mr. CONNOLLY of Virginia. I'm hopeful that the gentleman will allow me to answer. Actually, he is misinformed. This budget actually cuts taxes by $2 trillion. It finances the AMT——

Mr. BROUN of Georgia. I reclaim my time. I was just asking for a yes or no answer.

Mr. CONNOLLY of Virginia. Sir, I'm not going to answer your question yes or no. I'm going to answer it thoughtfully as a member of the Budget Committee.

Mr. BROUN of Georgia. Reclaiming my time, this budget is going to cost every single American family in this country $3,128. It's going to cost jobs all across this country. I hope that when the gentleman's people within his district see the job loss and the increased cost, that he is ready to answer those questions.

Madam Chair, have you seen today's headline: Colossal Budget Passes. Each household owes $3,128 in new taxes. President Obama's budget will tax every American household. Now for the next decade. Each household now owes Washington over $120,000. Georgia sees 10th year of rising unemployment as the 2010 budget debt balloons.

We cannot continue this taxing too much, spending too much, borrowing too much. It's going to bankrupt America. That's what this budget does.

Mr. SPRATT. I will yield the gentleman 30 seconds of my time if he'll explain his arithmetic and show us the taxes he's talking about in the text of the resolution. Because they're not there. This has been asserted again and again as a mantra. It doesn't exist.

Mr. RYAN of Wisconsin. I'd be happy to step in for the gentleman if the chairman wants to yield me the 30 seconds from his time to explain how you're not cutting taxes by $2 trillion. I'd be happy to explain that.

Mr. SPRATT. It comes from CBO. Don't take it from me. From the analysis of the President's budget: Proposed changes in tax policy would reduce revenues by an estimated $1.7 trillion, with 6.1 percent over the next 10 years. CBO.

Mr. RYAN of Wisconsin. If the gentleman will yield, that means if you don't think putting the alternative minimum tax on $26 million households isn't a tax increase, then maybe you're right. If you don't think raising the dividends tax by 100 percent, the capital gains tax by 33 percent, and income tax rates across the board is not a tax increase, then by your definition that might be a tax cut.

What you're doing is you're playing baseline mumbo jumbo. You're saying we're going to assume all these massive tax increases in America. Oh, and ours are going to be a little lower than that, but they're still going to be up, and it's a tax cut. That's baseline mumbo jumbo. The point is this—the budget you're bringing to the floor raises taxes.

Mr. SPRATT. I reclaim the time. I'm glad to yield you some time, but it needs some sort of limit to it.

Mr. RYAN of Wisconsin. Thank you for the 30 seconds.

Mr. SPRATT. I still don't know what the arithmetic is and I don't know where the taxes are, except the tax cuts, as you know, expire on December 3, 2010.

Mr. RYAN of Wisconsin. May I ask the gentleman a question?

Mr. SPRATT. The President's budget will allow them to expire, except he then proposes to have the capital gains rate be 20 percent instead of 15 percent, which is less than it's traditionally been. And same thing for dividends—20 instead of 15 percent.

We don't dictate that in this resolution. We leave matters of that kind—specific policy choices—up to the Ways and Means Committee.

I'm going to reclaim my time so we can go forward.

Mr. RYAN of Wisconsin. May I inquire, Madam Chair, as to how much time is remaining, because it's my understanding that we're in possession of a 10-minute block at this moment.

The CHAIR. The gentleman from Wisconsin has 52½ minutes remaining. The gentleman from South Carolina has 40 minutes remaining.

Mr. RYAN of Wisconsin. I will yield myself 1 minute to explain.

On January 1, 2011, income tax rates go up. That's a tax increase. On January 1, 2011, the capital gains tax goes

up. That's a tax increase. On January 1, 2011, dividend taxes go up. That's a tax increase.

On January 1, 2010, the alternative minimum tax hits 26 million taxpayers who weren't hit by it before in their budget. That's a tax increase.

You can't hide it. If it walks like a duck, quacks like a duck, it's a duck.

At this time I yield 2 minutes to the gentleman from Florida (Mr. MARIO DIAZ-BALART).

Mr. MARIO DIAZ-BALART of Florida. Baseline mumbo jumbo, as Mr. RYAN just said. How appropriate, Madam Chairwoman, because tonight is April Fool's Day. How appropriate that we be considering this Democratic budget tonight. But, unfortunately, this is real. This is no joke. This is no laughing matter.

This budget raises taxes on all of our families, our small businesses, and on all Americans. And it puts our economy on a path towards insolvency by borrowing trillions and trillions of dollars more.

This budget, as we've already heard, is really the President's budget, Madam Chairwoman. And this President has promised—he had promised a new era of transparency, honesty, and accountability. Let me tell you, those who supported him—and even those who did not—were optimistic that that part, at least, would be true.

Let me quote from the President's budget document, ''Too often in the past several years budgets tricks were used to make the government's books seem stronger than they actually were.'' He continues on, saying, ''We should not tolerate these kinds of tricks when it comes to accounting for the public's tax dollars.''

I think we all agree on that. But, unfortunately, as we have just seen, this budget is full of those same old tricks and gimmicks. It's full of the usual tired tactics, the same old business-as-usual, that mentality that's typical here in Washington.

Unfortunately, this is not the change that the American people expect. No, it isn't. This budget employs an arsenal of gimmicks to mask an unsustainable explosion of more spending, more deficits, and greater debt than this country has ever, ever seen, inherited and not.

Now it also raises taxes by $1.5 trillion—with a T—trillion dollars, burdening American families and small businesses, the principal job creators of our country, costing American jobs. Yes, it would also increase the national debt to $17.1 trillion in just 5 years—the highest level ever in the history of this country.

Now compared to what the President has inherited, this is child's play. We can do better. We must do better for the sake of our children, our grandchildren, and our future.

Mr. RYAN of Wisconsin. At this time, I yield 2 minutes to a senior member of the Ways and Means Committee, the gentleman from California (Mr. HERGER).

Mr. HERGER. Madam Chair, American families, farmers, and small business owners are making big sacrifices in their personal budgets so they can ride out this difficult economic climate. It's apparent, however, that many in Washington don't share this sacrifice when it comes to government spending.

Unfortunately, the budget proposed by President Obama and endorsed by the House Democrats would take us down a dangerous path. This budget's projected deficits over the next 10 years will exceed all of our previous deficits combined. This massive spending spree is a slap in the face of future generations that will have to pay the bill.

This budget includes trillions of dollars in tax increases that, incredibly, won't even come close to paying for this new spending. These tax hikes jeopardize the jobs of millions of Americans by squeezing small businesses already nearing the breaking point and would create a drag on any attempt to jump-start our economy.

I call upon my fellow Members to support the Republican alternative budget that reduces spending, dramatically simplifies the Tax Code, lowers taxes, and slashes the debt to a manageable level.

The Democrat budget ignores the entitlement crisis, while our alternative addresses the serious problem that puts our Nation's financial future in tremendous risk.

Madam Chair, we must maintain the great American tradition of providing our children a better opportunity than we received. This House should stand by the American taxpayer and support the alternative Republican budget.

Mr. RYAN of Wisconsin. At this time I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE).

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. I thank the gentleman for yielding. I rise in strong opposition to the Democratic budget that is before the Congress and in support of the Republican alternative and the Republican Study Committee alternative—two far more responsible budgets.

I know there are many on the Democratic side of the aisle who are proud to call themselves fiscal conservatives. You cannot vote for this budget, which spends too much, which increases spending by more than two-thirds over the course of this budget, to $5.1 trillion per year without avoiding the charge of ''big spender.''

You cannot support this budget, which taxes too much—which taxes $1.5 trillion over the course of this budget, without avoiding the charge of being a big spending tax-and-spend liberal. That is what you're facing in this budget. You cannot support this and continue to call yourselves fiscal conservatives.

My greatest concern is that this budget calls for borrowing too much. Our budget debt will rise to $23 trillion by 2019—2½ times the amount that it is today, yet we will have those on your side of the aisle who will claim to be fiscally conservative on a debt that we leave our children and grandchildren and mortgages their future. That is not fiscal responsibility.

Thomas Jefferson once wrote, ''To preserve the independence of the people, we must not let our rulers load us with perpetual debt.'' Unfortunately, it increasingly appears that Congress has chosen this disastrous path.

I urge my colleagues to avoid this spending addiction and to vote tomorrow for responsible budgets that will lead our Nation back to prosperity and a brighter future for our children and grandchildren.

Mr. RYAN of Wisconsin. Madam Chair, I yield 2 minutes to the gentleman from Minnesota (Mr. PAULSEN).

Mr. PAULSEN. I thank the distinguished ranking member for yielding.

Madam Chair, this is a very important debate tonight. The budget that is being presented tonight by the majority party would create an explosion of debt—a monumental burden of debt that would be placed on our children and our grandchildren.

□ 2245

It is a budget that will hurt job growth in our country because it raises taxes too much, largely on the backs of small businesses. It is a budget that spends too much. While American families and small businesses are struggling to make ends meet, this budget pushes spending up by over 9 percent this year alone. How many of our constituents are seeing their paychecks rise by 9 percent? It is a budget that will not only lead to record spending and deficits this year, it will double the national debt in 5 years and triple the national debt in just 10 years.

Madam Chair, when I was born, the share of the national debt was $1,500. Today, my four daughters each have a share of approximately $35,000 of our national debt. But the more alarming fact is that if the budget passes, that share and that burden on them will rise to $70,000 for each of my four daughters and each person in this country.

So this budget creates a vicious spiral: Higher taxes will hurt job growth, and this huge debt in the budget is going to force the government to borrow more to pay the bill. By the year 2012, the United States will be paying $1 billion per day just to pay the interest on our national debt. Just think what we could do with $1 billion a day.

Madam Chair, it is our obligation to pass on to the next generation more choices and better opportunities. But if we pass this budget, we risk for the first time that future generations will have less opportunity and fewer choices. We can do better.

The alternative budget plan that has been put together by Mr. RYAN is a better path. It is a path of less spending, less deficits, and less borrowing. It is

time to put our fiscal house in order and reject the budget that is on the floor.

Mr. RYAN of Wisconsin. At this time, Madam Chair, I yield 2 minutes to the gentleman from Oklahoma (Mr. COLE).

Mr. COLE. I thank the gentleman for yielding. And, Madam Chair, I rise to oppose this Democratic budget. As we have heard repeatedly tonight, it spends too much, it taxes too much, and it borrows too much.

But I want to be fair to my friends on the Democratic side. There is one area of the budget where there is a glaring exception to that rule, and that is the defense of the United States of America.

Over the course of a 10-year projected Obama budget, we will move from 20 percent of the Federal budget down to 14 percent devoted to defending the country. We will move from just over 4 percent of the gross national product to 3 percent to defend the United States of America. We will risk canceling major weapons systems, like the future combat system, a tanker that will help us project air power around the world and missile defense, at a time when the North Koreans and the Iranians are developing missiles. That risks jobs, that risks security. That is reckless in a dangerous world.

That is not just my opinion, Madam Chairman. Let me read from Robert Samuelson's recent article, ''Obama, the Great Pretender.''

''It would be responsible for Obama to acknowledge the big gamble in his budget. National security has long been government's first job. In his budget, defense spending drops from 20 percent to 14 percent of the total from 2008 to 2016, the smallest share since the 1930s. The decline presumes a much safer world. If the world doesn't cooperate, deficits will grow.''

More importantly, American soldiers and American security will be at risk, Madam Chairman. So let's reject this budget because it does spend too much, it does borrow too much, it does tax too much. And let's embrace the Republican alternative which spends less, borrows less, taxes less, but, most importantly, puts more resources where it counts, defending the United States of America.

Mr. SPRATT. I yield first 1 minute for a rejoinder to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. I thank my friend for yielding.

I would want to say to my friend from Oklahoma that this budget has robust defense increases. What it doesn't have is throwing money into a bottomless pit in a war in Iraq that has consumed so much of our resources for so long.

My friend from California, one of the senior Ways and Means members, criticized our budget. These are familiar words, because this is what Mr. HERGER said once before: The simple fact is that the plan will not lower interest rates, it will not lower inflation, it will not create jobs, it will not lower the deficit. The tax plan will spur inflation, lose jobs, increase the deficit, and hurt our economic growth.

Mr. HERGER said that in August of 1993 about the Clinton budget plan, which was going to destroy all these jobs. It created 23 million new jobs, as opposed to the 200,000 new jobs the Republicans created during their 8 years on their watch.

Mr. SPRATT. I now yield 2 minutes for a colloquy to the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Madam Chairman, let me begin by thanking the chairman for the opportunity to discuss the House budget resolution. And I appreciate the chairman's willingness to work with me to include language in the budget resolution to support pay parity within the Federal workforce of our civilian and military employees.

Our men and women in uniform have distinguished themselves throughout history, particularly during this time of war; and, at the same time, we cannot forget the critical role civilian employees play in providing logistical support to our military as well as their important work on behalf of our taxpayers and essential government services.

I would also note that the House budget resolution lays the foundation to carry out President Obama's bold vision for fixing the American economy.

While advancing the major priorities of the Obama budget, the budget resolution is by definition a less specific document than the President's budget and, therefore, does not assume all of the specific offsets included.

For example, I have expressed concern about the President's proposals to cap tax deductions for mortgage interest and charitable deductions. Similarly, I and others believe the $250,000 threshold to allow families to qualify for tax cut extensions is too low. I am pleased, therefore, that the budget resolution does not assume any specific tax offsets to meet its revenue targets.

If I may ask the distinguished chairman of the Budget Committee two questions.

First, Mr. Chairman, does the chairman agree that the pay parity language included in the resolution provides equitable treatment for Federal employees, civilian and military?

Mr. SPRATT. I do. And I thank the gentleman for his leadership in our committee on this issue of ensuring that all Federal employees are equitably treated.

Mr. CONNOLLY of Virginia. I thank the distinguished chairman. On the issue of tax policy, might I ask the distinguished chairman, is it the case that the budget resolution does not specify particular tax offsets, but rather leaves that decision to the Ways and Means Committee?

Mr. SPRATT. That is correct.

Mr. CONNOLLY of Virginia. I thank the distinguished chairman.

Let me close, Madam Chair, by thanking the chairman once again for his generous collaboration with me and my colleagues on this, my first budget as a member of the committee. Through his steady leadership, the budget resolution before the House today delivers the profound change in course and investments in America's communities for which my constituents have long been waiting.

Mr. SPRATT. I now recognize and yield 4 minutes to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. I thank the chairman for yielding.

Madam Chairman, we would urge a ''yes'' vote on behalf of this budget for many reasons. One is the strong increase in funding for our veterans.

In less than 2 months, just about every Member of this House will go and make Memorial Day speeches. In November, just about every Member will make speeches lauding our veterans on Veterans Day.

Tomorrow, Madam Chairman, the Members of the House have a chance to do something more than talk; we have a chance to vote for a budget that strongly supports our veterans. But do not listen to us. Listen to the national commander of the American Legion, who says in a letter dated March 25, ''The American Legion applauds the Budget Committee for the budget resolution recommendation for $53.3 billion in discretionary funding for veterans.''

Listen to the executive director of the VFW, who in a letter dated March 25, 2009, says, ''On behalf of the 2.2 million men and women of the VFW and our auxiliaries, I would like to express our strong support for your proposed budget mark for veterans funding. The $53.3 billion in appropriated veterans funding demonstrates your appreciation for those who have worn the uniform of this Nation, and it acknowledges the debt that this Nation owes to its former defenders.''

Listen to the voice of the Iraq and Afghanistan Veterans of America through its executive director. ''For the second year in a row, the committee's budget resolution surpasses even the recommendation of the independent budget, the blueprint for the VA budget endorsed by the leading veterans organizations, including the Iraq and Afghanistan Veterans of America. By increasing veterans funding by 11.5 percent, or $5.5 billion, the committee has displayed their serious commitment to supporting our Nation's veterans.''

Listen to the words of the Vietnam Veterans of America. ''The Vietnam Veterans of America appreciates that Chairman SPRATT continues to make it possible even in this difficult budget year amidst tough economic times for the appropriators to be able to properly fund health care and other vital services for veterans,'' says the VVA's national president, John Rowan.

Listen to the Disabled American Veterans who say that, ''Our support for

the discretionary funding levels included in Chairman SPRATT's budget closely reflect the recommendations of the independent budget and reaffirm the goal to provide sufficient funding for the VA.'' They say they particularly appreciate the fact that the chairman's budget rejects any proposal to bill veterans' third-party insurance for the care of service-connected illnesses or injuries.

These are not the words of Republicans or Democrats. These are the words of the elected leadership of the veterans service organizations of our country.

Veterans funding is one of the strongest aspects of this proposal. The increase is 11.5 percent. It is precisely the request that had been made. There is no issue with respect to requiring veterans to pay more than they presently do for their own health care.

I think the Members would be wise to listen to the words of the American Legion, listen to the words of the DAV, listen to the words of the Iraq and Afghanistan Veterans of America, listen to the words of the Paralyzed Veterans of America, listen to the words of the VFW, listen to the words of the Vietnam Veterans of America. There is strong support in this budget from the chairman, and it is one more good reason to vote ''yes'' for this budget.

Mr. RYAN of Wisconsin. At this time, Madam Chair, I yield 2 minutes to a gentleman from the Budget Committee, the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. I appreciate the gentleman yielding.

Madam Chair, I rise in opposition to the Democrat budget.

In 2010, the death tax is set to expire; however, the President's budget retains the death tax, and the Wall Street Journal said yesterday, and I quote, ''The President's budget calls for the largest increase in the death tax in U.S. history in 2010.''

The death tax is an unfair attack on small businesses and farmers across this Nation. You know, Members go across to their county fairs every summer. I was at one of mine. One piece of equipment, one combine with one head cost $425,000. One piece, $425,000. The death tax forces Americans to have to make tough decisions. They have to make decisions that they have to hire attorneys, you have got to hire CPAs, you have got to hire your financial planners. It is tough. You are taking time away from these people's business when they can be out working and making money. It is not right.

You know, the time has come that this death tax expire. It should expire. Most of all, to quote again from the Wall Street Journal yesterday, ''What all this means is that the higher the estate tax, the lower the incentive to reinvest in family businesses. Former Congressional Budget Director Douglas Holtz-Eakin recently used the Summers Study as a springboard to compare the economic cost of a 45 percent estate tax versus a zero rate.''

It goes on to say that, ''He finds that the long-term impact of eliminating the death tax would be to increase small business capital investment by $1.6 trillion. This additional investment would create 1.5 million new jobs.

''In other words, by raising the estate tax, in the name of fairness, Mr. Obama won't merely bring back from the dead one of the most despised of all Federal taxes, and not merely splinter many family-owned enterprises. He will also forfeit half the jobs he hopes to gain from his $787 billion stimulus bill. Maybe that's why the news of this unwise tax increase was hidden in a footnote.''

Madam Chairman, it is time that we make sure that this death tax expires. It is time that the government's cold hand gets out of the warm grave.

Mr. RYAN of Wisconsin. At this time, I yield 2 minutes to the gentleman from California (Mr. MCCLINTOCK).

Mr. MCCLINTOCK. I thank the gentleman for yielding.

Madam Chairman, Americans are awakening to the danger of a budget that spends too much, borrows too much, and taxes too much, because they know what that means. They know that you can't spend yourself rich; they know you can't borrow your way out of debt; and, they know that you can't tax your way to prosperity.

No Nation in the world has ever spent and borrowed and taxed its way to economic health, but many Nations have spent and borrowed and taxed their way to economic ruin and bankruptcy.

If you all want to know where all of these policies are taking us, just look to my home State of California.

□ 2300

There a tragic succession of Governors increased spending at unsustainable rates. They ran up unprecedented debts, and they imposed crushing new taxes. And the result is that today runaway spending has impoverished our economy. Interest costs are eating our budget alive. And our tax burden is producing one of the highest unemployment rates in the Nation and the biggest out-migration of domestic population in our history.

Indeed, we debate this budget on the very day that California begins collecting the biggest tax increase ever imposed by any State government in our Nation's history, the natural consequence of runaway spending, just as President Obama relies on the biggest tax increase by the Federal Government in our Nation's history. There will be backbreaking new taxes on small businesses, on investment, on energy production and on charitable giving. And this isn't complicated stuff. If you increase taxes on productivity, you get less productivity. If you increase taxes on energy production, you get less energy. If you increase taxes on charitable giving, you get less charity. If you increase taxes on investments, you get less job creation.

Madam Chairman, I have watched too much spending and too much borrowing and too much taxing wreck my home State of California. I beg you, do not let those same policies ruin our country.

Mr. RYAN of Wisconsin. Madam Chair, I would like to yield 2 minutes to the gentleman from Texas (Mr. CONAWAY).

Mr. CONAWAY. Madam Chairman, the Democratic budget that we are considering tonight for fiscal year 2010 proposes to spend $3.55 trillion, collect $2.186 trillion in tax revenues thereby creating a deficit of $1.222 trillion. That would be a record deficit except for the estimated fiscal 2009 deficit of $1.694 trillion. In fact, their 5-year budget window shows deficits in each year that are larger than any deficit ever recorded. The Democratic budget's best year is fiscal year 2013 which shows a deficit of $586 billion, which is $127 billion larger than the current record holder of $459 billion for fiscal year 2008 which was also on the Democrats' watch.

These estimates, as large as they are, may in fact be understated if the CBO's assumptions on how fast the economy recovers prove to be optimistic. Madam Chairman, we tend to think that expanding economies will last forever, but they don't. Today we believe that this recession will last forever, but it won't. It is temporary.

The debt that will be used to finance these record deficits is permanent debt. It will never be paid back.

I recently had a fifth grader in Fredericksburg, Texas, at a town hall meeting ask me what is our plan to pay off the national debt? I had to tell the young man the ugly truth is that there is absolutely no plan to pay off the national debt. To pay off debt, we have to run a surplus, which is something this budget does not remotely contemplate. The interest carry on this permanent debt represents a forever claim on the earnings of all future generations.

The CHAIR. The time of the gentleman has expired.

Mr. RYAN of Wisconsin. I yield the gentleman 30 additional seconds.

Mr. CONAWAY. In other words, those future generations will have to tax themselves to pay for the interest on this debt each year before their tax revenues can begin to address their problems. This begs the question of why should we use permanent debt to address temporary problems? We should not. We have used this technique for far too long, and this budget continues this inexcusable use of future generations' resources to fix our problems. We should not pass this budget. I urge my colleagues to vote against it tomorrow.

Mr. RYAN of Wisconsin. At this time, I yield 2 minutes to the gentleman from Utah (Mr. CHAFFETZ).

Mr. CHAFFETZ. My wife and I have three young kids. My son, Max, just turned 16. He got his driver's license. I want everybody to be warned that my

son now has his driver's license. You have all been warned.

I really worry, though, about the legacy that we are leaving our kids. My son is going to inherit something if the Democrats pass the budget that they propose, where 30 cents, 30 cents of every dollar spent, nearly 30 cents of every dollar will be spent by the Federal Government. I just think that is wrong. He is entering a world where they are going to have the single largest tax increase in the history of the United States of America where their debt has been doubled. We have got to stop running this country on a credit card. People have to pay that debt. And it is mere kids and our grandkids.

So I reject this budget that is proposed. I think we need to look closely what is the proper role of government. I think every time we send a dollar of the American people's money, we have to remember that we are reaching into everybody's pocket and pulling that money out and giving it to somebody else. Is that the proper role of government? Who is in the best position to actually spend those dollars? There are some that argue that only government can solve our problems. I reject that. It is only the American people that can grow this economy and grow this country. It has been on the backbone of the American entrepreneur, the woman who opens a business, it is the local small business man that is going to grow this country. It is not this government.

And so I reject this budget. We are going to find out real quickly if those Blue Dogs are Blue Dogs or if they are lap dogs. Because we have the chance to reject this budget and get fiscal constraint in order. We cannot be all things to all people. We have to learn to say ''no.'' Government is not here to solve all of our problems. It is about life, liberty and the pursuit of happiness. And I want my son to enter that world as optimistic as he can possibly be and a government that gets out of the way.

Mr. SPRATT. I yield 1 minute to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Our friend from Utah just said that we have to learn to say ''no.'' That is something that his party has learned to say quite well. No plan for health care, no plan for education, no plan for job development, and no plan for energy independence. One of our colleagues talked about the estate tax. Interesting exchange, Madam Chairman, that our presentation was about honoring America's veterans and fully funding in a way that the VFW and the American Legion supports, and rather than any response to that point, the other side immediately jumped to talk about the estate tax, which I understand. And the reason we understand it is that this budget assumes that changes will be made in the present estate tax law so that 99.7 percent of American families will not pay the estate tax, 99.7 percent.

So our presentation was about veterans who wore the uniform of the country. Their presentation was about the .3 percent of Americans who would pay the estate tax under this proposal. That is where our priorities are.

Mr. SPRATT. Madam Chair, how much time is remaining?

The CHAIR. The gentleman from South Carolina has 32 minutes remaining. The gentleman from Wisconsin has 37 minutes remaining.

Mr. SPRATT. I will go ahead and use the balance of my time.

The CHAIR. The gentleman is recognized for 2 minutes.

Mr. SPRATT. Madam Chair, I have sat here keeping a list of things that were wrong that cannot be recited in 2 minutes. One speaker got up and said there were no spending restraints. Deficit neutral reserve funds are all about spending restraints. We cannot undertake any of those initiatives until they are paid for. It is a substantial restraint. PAYGO is built into this budget. And it is guaranteed to be accorded a vote on this House floor to become statutory PAYGO instead of rule-of-the-House PAYGO.

There is a lot of talk about the costs of this budget, $3.9 trillion. It makes me gag as well. But do you know why it is up so big? TARP, Freddie Mac, Fannie Mae and AIG, much of which, much of which was incurred and fixed on your watch, the watch of your administration, Hank Paulson and others. That is why it happens in this year's numbers, secondly.

Thirdly, as you listen to this debate you would think that President Obama has been in office in town for years now. Everything is effectively blamed on Democrats. His administration has been in office 3 months. What we are seeing today and next year and the following years is the wind down and the work off of the Bush structural deficits. They simply won't go away in short order. But Obama didn't wrack up this debt in the last 3 months. It has been created in the last 8 months when President Bush took a $5.6 trillion surplus over 10 years, and by 2004 converted it to the biggest in history, to a $412 billion dollar deficit, the biggest deficit at that time in American history. That happened under his watch, under his administration, under his spending policy and taxing policy.

So all of this effort, and in particular, this newfound concern over debt, I share your concern. But where were you over the last 8 years? Your silence was almost deafening. This President Bush built up the debt of the United States from $5.7 trillion to $11 trillion. What we are now doing is living in the backwash of the Bush administration trying to straighten up the mess that he left behind.

Mr. RYAN of Wisconsin. Madam Chair, at this time I would like to yield 3 minutes to the gentleman from Texas, the vice ranking member of the Budget Committee, Mr. HENSARLING.

Mr. HENSARLING. I thank the gentleman for yielding.

Madam Chair, I listened very carefully to the distinguished chairman of the House Budget Committee. But unfortunately, I think he may need a history lesson on who has controlled this institution for the last 2 years. And also, as I read the Constitution, Madam Chair, I would say to my friend from South Carolina, if I were allowed to speak to him, it says that it is Congress, Congress is in charge of spending decisions, Congress has the ability to spend money, create debts and create deficits. And I agree. President Obama inherited a huge deficit. He inherited it from Democrats in the United States Congress. So he took a $1.3 trillion debt, it was a $160 billion deficit rather, and now he and the Democrats in Congress are adding to it a sea of red ink for as far as the eye could see. Never in the history of this country have we seen so much debt.

Their budget, Madam Chair, will simply bankrupt this country. And they seem to be oblivious to the facts. Again, never, never have so few voted so fast to indebt so many. And it is just the start of their economic calamity that they are trying to impose upon the Nation.

Now we hear all of this lofty talk about, well, we need this wonderful budget and all of this spending to get us out of the recession. Then why, why is it that the President's own OMB says that we are out of this recession in the fourth quarter of 2009? Then why impose this unconscionable burden of debt on our children?

Madam Chair, there was a time in America's history when the American ethic was, you work hard today so your children can live better tomorrow. Well, this Democratic economic program just turns that around and says, let government live better today so our children can work harder tomorrow. It is an outrage. It is an outrage. A national energy tax. Tax on small businesses. Taxes on the capital of capitalism. As one of my colleagues said, the gentleman from Florida (Mr. MACK), our budget is about we the people. Their budget is about I the government. If you think you can borrow your way, spend your way, tax your way into prosperity, Madam Chair, then that is the budget for you. But if you think America is about rolling up your sleeves, working hard, risking capital and dreaming bold dreams so that people can go to work and find their own future, then there is an alternative, Madam Chair. It is the Republican budget that will be offered tomorrow. And it will give a great Nation a great future.

Mr. RYAN of Wisconsin. Madam Chair, how much time do I have remaining?

The CHAIR. The gentleman has 34 minutes.

Mr. RYAN of Wisconsin. I yield myself 4 minutes.

Madam Chair, let me read you a story about a project that is deemed shovel-ready that is getting funded in

the stimulus package in Wisconsin. The town of Arena, it is a beautiful small town in Iowa County, the town of Arena will get $426,000 to replace the River Road bridge. It averages about 10 cars a day. A quote from the town chairman, ''I was surprised as anyone when I got a call that the bridge was going to be fixed. I can tell you that the bridge is a very low priority for us.'' Stimulus package, shovel-ready project. If you think this is the kind of way we ought to be spending our taxpayer dollars, then vote for this budget, because they are going to do a lot more of this stuff. If you think that is the key to prosperity, borrow that money, build the bridge that gets 10 cars a day that the people from this town say is a low priority, then we are going to do more of that. Vote for this budget.

I want to speak not in numerical terms, not in statistics, but in history and morality. We are the greatest nation on Earth. We are an exceptional nation. And I want it to stay that way. History is replete with episode after episode of great civilizations and great nations not being defeated militarily, but being defeated by themselves, doing themselves in through atrophy and stagnation.

□ 2315

That is what could happen here if we don't watch it. The kinds of borrowing that is being proposed in this is staggering.

I want to ask you, how much money do you think I have in my wallet? I have $50,000,000,010 in my wallet. I've got 10 U.S. dollars and 50 billion Zimbabwe dollars. Ten U.S. dollars right now are more valuable than the Zimbabwe dollar. This is what happens when a country tries to inflate its way out of its debt. It's worthless.

I'm not saying we're going to become Zimbabwe. Far from it. But I'm saying our greenback is under duress. People are wondering if this is going to retain its value.

The question is, are we going to be able to keep finding people to buy all our bonds if we borrow and borrow and borrow? If, under this Presidency, as this budget proposes, we borrow more money than all prior presidencies combined, are we going to get all these people to give us that money?

And then guess what? Guess who pays for it? The next generation. Our children. Our children already are on a glide path to pay twice the level of taxes we pay today; that's if you don't pass this budget. It gets much worse if you do pass this budget.

We're going to debase our currency if we keep going down this path. Do you know what that means? I know that's wonky stuff. That means people lose their savings. That means senior citizens living on fixed incomes lose their savings. Their standard of living goes down. That means the middle class that's saving for retirement, saving for college, that gets wiped out.

It is getting to that kind of a serious moment in this country where, if we keep thinking we can just borrow and borrow and borrow, tax and tax and tax, spend and spend and spend, we're going to do it in to our own country. I don't want that to happen.

This is the greatest country on the planet. This is the land of opportunity. This is the country that has shown the world that we can reach unprecedented amounts of prosperity, where everybody can climb up that economic ladder.

We want a society where we equalize opportunity for all people. We don't want to pass this budget that says we're going to equalize the results of everybody's lives. We are going to micromanage their affairs.

We want America to succeed and to prosper, and that's why we want to defeat this budget.

I reserve the balance of my time.

Mr. SPRATT. Madam Chairman, I reserve the balance of my time.

The Acting CHAIR (Mrs. DAHLKEMPER). The gentlewoman from New York (Mrs. MALONEY) and the gentleman from Texas (Mr. BRADY) each will control 30 minutes on the subject of economic goals and policies.

The Chair recognizes the gentlewoman from New York.

Mrs. MALONEY. Madam Chairman, I yield myself as much time as I may consume.

Madam Chairman, as Chair of the Joint Economic Committee, I am pleased to speak in the time reserved by the Budget Act for a discussion of economic goals and policies.

I rise today to put our fiscal problems into a broader economic context. Our budget is an important blueprint for getting our economy back on track by making critical investments in health care, clean energy, and education that will create jobs and enhance our global competitiveness. We will also restore fiscal responsibility by cutting the deficit by nearly two-thirds by 2013.

Throughout this budget debate, it has been generally acknowledged that President Obama inherited a fiscal mess. The previous administration had taken office facing a robust economy and a fiscally sound government. President Bush inherited a projected surplus of $5.6 trillion. We stood poised to deal with the budget challenges posed by the retirement of the baby boom generation, and prepared to invest in improving the future standard of living of our children and grandchildren.

Under President Bush's management, our economy set record after record, but they were all the wrong kinds of records. His administration's policies produced historically poor levels of job growth, the greatest gap between the haves and the have-nots since the 1920s. Record number of uninsured Americans, 47 million in 2006. A record $10.6 trillion Federal debt when he left office, and the largest single-year deficit in U.S. history, $459 billion in 2008. And he left over $1 trillion in deficits in 2009. Record oil prices, record current account deficits, the broadest measure of our trade deficit, the largest in history, record declines in housing prices and home equity that have left families owing more than their homes are worth.

As you can see on this chart, through a series of disastrous choices and flawed policies, the Bush administration squandered surpluses and left us with record deficits. Here are the projected surpluses, but this is the reality of the actual budget deficits left us by the Bush administration. President Bush presided over a tragic and unprecedented reversal of fortune for our Nation and for our American families.

As this next chart shows, the 8-year tenure of President Bush was a period of the lowest and slowest job growth of any administration in 75 years. His administration left us with a mere 2 million more jobs than when he came into office. Compare that to the 8 years under President Clinton, where nearly 23 million jobs, more than 10 times as many, were created. You can see this small red bar. That's the jobs that Bush II created. Compare that to all the prior administrations that produced many, far many more jobs than this failed administration.

Despite his frequent assurances that his policies were working to make the economy stronger, President Bush earned the dubious distinction of presiding over not one but two recessions. After a jobless recovery from the recession in the first term, the economy fell back into recession in December of 2007, and has been shedding jobs at an alarming rate ever since.

By nearly every measure, the 2001 and 2007 recovery period was among the weakest in the post-World War II period. There were warning signs that all was not well. During the recovery, two important economic variables, growth, and the growth in fixed nonresidential investment, grew more slowly than during the other expansions. Both grew more slowly than they did during the expansion of the 1990s, when taxes were raised, not cut.

Consumption, net worth, wages, and salaries, and employment also grew at remarkably slower rates during the Bush recovery than during other expansionary periods.

The one bright spot for some in the recovery was the large growth in profits that went to corporations driven, in large part, by the ever-increasing productivity of the American worker. However, the increases did not translate into bigger paychecks for hard-working middle-class families.

Unlike the expansion of the 1990s, under President Clinton, where workers' productivity and compensation grew in tandem, during the 2000 recovery under President Bush, workers' compensation lagged far behind their robust productivity growth. The increased wealth just went to a very few

at the top of our economy, exacerbating the divide between the haves and the have-nots.

As this chart shows, the typical household income, after accounting for inflation, was actually $324 lower at the end of 2007, leaving them struggling to stay afloat, even before the current recession hit.

It is now all too clear that even the relatively weak economic growth during the Bush administration was not broadly shared and was built on an unstable foundation. The soaring housing prices that helped fuel our economic recovery now appear to have been a classic asset bubble. The disastrous effects of the collapse of that bubble have now spread throughout our entire financial system and around the globe.

When President Obama took the oath of office on the steps of this building just 2 months ago, he immediately inherited a deficit of over $1 trillion for Fiscal Year 2009, and trillions more in deficits over the next 10 years. He became heir to an economy in the worst crisis since the Great Depression. Almost 4½ million jobs have been lost in the last 15 months.

As this chart shows, in the waning days of the Bush administration, the economy shrank at an astonishing annual rate of 6.3 percent in the fourth quarter of 2008, the fastest rate of contraction in over 25 years. In 2008, the final year of the Bush administration, $11.2 trillion of wealth simply vanished into thin air as housing prices fell almost 20 percent.

Our gross Federal debt stands at more than $10.6 trillion, nearly $35,000 per person in America. That is how much every person in America owes to the Federal debt. And as a share of our economy, that's the highest level since 1955, when we were still paying off debts from World War II.

This is the fiscal mess President Obama inherited, and we have our work cut out for us to clean it up. One year ago I stood here in this same spot, as part of this same process, and pointed out that when our opponents were asked how to address our financial problems, their answer was, to cut benefits for middle-class families and cut taxes for the wealthiest few. And our opponents still offer the same solutions.

We propose a different course. Restoring growth is key to getting our economy back on track, and spurring growth takes investment. Congress has worked closely with President Obama in his first 70 days to develop an integrated and multipronged attack to revive the economy.

Under the American Recovery and Reinvestment Act, we have provided relief to middle-class, middle-income taxpayers, invested in infrastructure, renewable energy, and education to create and save millions of jobs and extend unemployment benefits for millions of jobless Americans.

Congress has also acted, with President Obama, to reauthorize and expand the Children's Health Insurance Program, so that it now covers 11 million low-income children.

□ 2330

The economic recovery packages we passed were aimed at boosting demand in the short term because consumers are reluctant to spend, but we were careful not to enact provisions that will exacerbate our long-term deficits and debt. This budget builds on those policies by making important additional investments that will strengthen our economy, invest in the future and put us back on the path of fiscal responsibility.

According to the Congressional Budget Office, ''rising costs for health care [are] the single greatest challenge to balancing the Federal budget.'' Clearly, containing health care costs is critical to addressing the country's long-term fiscal challenges, and we must act now. That is why a key priority of our budget is health care reform, which will expand coverage, improve the quality of care and address those skyrocketing costs of care that are weighing down our economy and are putting pressure on family budgets.

During the last administration, the growing cost of care pushed the number of uninsured Americans to record levels. At the end of the recovery in 2007, there were 46 million uninsured Americans, 7.2 million more than when President Bush took office.

I would like to thank Chairman SPRATT and the Budget Committee for including a deficit-neutral reserve fund in the budget resolution for the 9/11 health programs, consistent with last year's budget conference agreement. This will provide some legislative flexibility for the Energy and Commerce and Judiciary Committees to pass H.R. 847, the 9/11 Health and Compensation Act, and to ensure it is fully paid for under PAYGO rules. H.R. 847 would provide medical monitoring and treatment to World Trade Center responders and to community members whose health has been impacted by Ground Zero toxins in the aftermath of September 11, 2001. We have a moral obligation to care for the heroes and heroines of 9/11, and this reserve fund is an important step toward fulfilling that obligation.

Our budget makes investments in education a priority so that every child has the opportunity to receive a quality education. According to a report by the Education Trust, the United States is now the only industrialized country where young people are less likely than their parents to earn a high school diploma.

Improving education and training will prepare our children to compete and win in the global economy. This budget builds on investments with further support for early childhood education, setting high standards and providing the tools to achieve them for elementary and secondary school students. This budget reaffirms our commitment to making college affordable for every American by raising the maximum Pell Grant award to help more students obtain a college education.

Our budget also embraces the President's goal of increasing America's energy independence and energy security. Record gas prices last summer left Americans at the mercy of the gas pump. We build on the funding and tax incentives in the Recovery Act by expanding our investments in renewable energy and energy efficiency that will reduce America's dependence on foreign energy, and we provide new training opportunities to prepare workers for green jobs in a clean, green economy. Our budget is the blueprint for strengthening our economy and for putting people back to work. After 8 years of misguided policies, we must be mindful of the future as we take steps to rebuild our economy.

President Obama has called on us to address the systemic challenges facing our economy by making investments in accessible, affordable health care, energy independence and quality education. The investments we make now will pay off later as we emerge from this current crisis stronger and better prepared for challenges of the 21st century.

Thank you, and I yield to the gentleman from Texas (Mr. BRADY) for 10 minutes.

Mr. BRADY of Texas. I would yield myself such time as I may consume.

Madam Chair, this evening reminds me of my first session of Congress in 1997. It was a night like this, and we were struggling with a budget that was out of control. We had a Democrat President and a Republican Congress, and while it was a hard fight and we had to make a lot of tough decisions, Republicans in this House and President Clinton together passed a balanced budget agreement that succeeded. It got spending under control. It lowered taxes. It didn't raise them. Not only were we able to balance the budget, but we were able to pay off almost a half a trillion dollars worth of national debt.

I remember because almost no Democrats voted for that. They claim credit now for balancing the budget, but they voted against the law that balanced our budget and allowed us to pay off that national debt. Tonight feels like that because, I think, we have the opportunity, unfortunately, to go the other direction. My worry is that this Obama-Democrat budget guarantees red ink for decades and that we may never see a balanced budget in our lifetimes if this budget passes.

The Americans I know, the Texans I know, are growing increasingly worried about our unprecedented spending spree. You know, the President's budget and the Democrat budget we're talking about tonight raises taxes. It explodes spending, and it heaps on mountains of new debt for the next decade. It's clear America's finances are on the wrong track. We need to change the

path now. We need to change it today or risk never seeing a balanced budget in our lifetimes, and I worry from an economic standpoint that all of this new debt is going to drag our economy down further and that, eventually, it will lead to higher inflation, which really hurts and hits families and their paychecks by eroding those paychecks and their nest eggs.

We can't spend, tax and borrow our way back to prosperity. Congress has a responsibility to get on a more responsible path that leads back to a balanced budget, and we've got a Republican alternative, a Republican Study Committee alternative as well, that, I think, starts us down in that direction.

I oppose strongly the budget that's proposed today that increases spending by $3 trillion over the next decade. Just think about it: Federal spending under this Democrat budget would increase nearly $1 trillion in the next year alone. $1 trillion in the next year alone. Think about that. Economists tell us that $1 trillion is represented by this: If you'd started a business on the day Our Lord was born and you'd lost $1 million every day since, we still would not be to that first $1 trillion. We're going to add more than that in new spending just in the next year. We're going to spend twice as much as that in new debt added to the Federal debt. Those are staggering numbers, amounts of debt I never dreamed I would see in my lifetime. It gets worse. Under this budget plan and budget path, over the next 10 years of debt held by the public, it will triple to over $17 trillion. Again, it's an amount that most people never dreamed we would see.

According to the Joint Economic Committee, the debt, as a share of our economy, will almost double during that period. Some economists think it will go up even faster. According to a recent study of many financial crises by Professors Kenneth Rogoff and Carmen Reinhart, it has become an instant classic. U.S. national debt can be expected to increase by $8 trillion to $9 trillion just over the next 3 years. During that period, inflation of 8 to 10 percent, something most of us haven't seen since the '70s, is more than likely the way the government will end up paying for this huge run-up in Federal debt. These economists compare the coming economic environment to the '70s, which had rising inflation, weak economic growth, rising unemployment, and what we called the misery index. Unfortunately, that may be what we're heading for.

Because this budget and the President's budget cooks the books and uses faulty economic assumptions in its forecast, it has a variety of accounting gimmicks that really hides the true cost of these dangerous budget priorities. As the Washington Post said last week—and it's not exactly a conservative newspaper—''In this budget, Congress deals a blow to honest budgeting.''

The Democrats now are attempting to shoehorn expensive administrative proposals based on unrealistic economic assumptions, and the budget uses gimmicks to mask spending. So we're going to see much higher debt and, eventually, higher taxes. The fact is the U.S. can't afford to engage in this spending spree on top of a stimulus, on top of a budget just passed, huge spending on top of the new bailout dollars, and now this budget hitting Americans straight in the face. You would think we'd be listening to warnings from China and from others of our creditors to remind us that there are limits to the appetite for U.S. Treasury securities.

We are on a dangerous path. What we see in this budget are tax increases on small businesses, on professionals, on exporters, and on entrepreneurs. We see huge, new cap-and-trade taxes and costly new entitlements that will drive us deeper into debt and that will really raid the pocketbooks of most American families.

Before I reserve my time, the question is: Who pays for all of this? Because there's no free money in Washington. Someone eventually has to pay for it, and it won't be just the wealthy.

It's going to be the middle class. It's going to be professionals. It's going to be hardworking families. It's going to be the elderly. We're going to see higher capital gains and dividends taxes, a lot of which our seniors live off of in their retirement. They've already seen their retirement portfolios devastated. Now we're going to tax them if those gains go back up.

There will be tax hikes on charitable donations. At a time when more and more people need local charity services and contributions are down, we're actually going to discourage our professionals and small businesses from giving to our local charities. I guess they think they can use the money more wisely here in Washington.

You're going to see a carbon tax, an energy tax, that in Texas will drive energy bills up 100 percent in some areas, 50 percent in others. It will be a huge cost to families on their utility bills. The taxes on small business in a number and in a variety of ways are going to destroy jobs. The marriage penalty comes back in a major way. You're going to increase the income taxes on professionals and small businesses by at least 20 percent. What's interesting is this small group of professionals and small businesses makes up about 5 percent of the taxpayers in America. They already pay 60 percent of the taxes. They carry 10 times the load. This budget is going to tax them more.

So the signal we're going to send to people is, if you go to college and get a degree, if you develop a skill, if you start a new business, if you build up your life, we're going to punish you for it. We're going to punish you for it in higher taxes. We're going to discourage you.

This budget brings back the death tax. Can you imagine working your whole life to start a business or to run the family farm, and at the very end, Uncle Sam swoops in and takes up half of what you've earned? You intended to give it to your children or to your grandchildren, but Uncle Sam comes in and takes it. It's the number 1 reason most small businesses aren't able to hand their businesses down to their children. It's the number 1 reason family farms don't survive. Today, we're seeing more women-owned and minority-owned businesses that are facing the same death tax. They aren't going to survive. The death tax needs to go away permanently as it did under President Bush and the Republican tax relief measures.

Finally, coming from an energy State, we see unprecedented increases on America's energy industry. The very people who develop our oil and gas. Onshore, small and independent energy companies will face devastating tax increases, including one where it actually punishes them and treats them like they're foreign investors. It punishes them for drilling and for exploring here in America. It makes no sense at all.

At this point, we have several members of the Joint Economic Committee and others who would like to share their thoughts on this budget and on the condition of America's financing.

With that, I would like to reserve, Madam Chair, the balance of my time.

Mrs. MALONEY. I yield myself as much time as I may consume.

Madam Chair, as we consider the budget proposal for the coming year, we are facing, really and truly, one of the most important votes in recent memory. We can choose now to honor the pledge we made to the American people in the last election and begin the process of health care reform, make investments that will lead to energy independence and invest the needed funds to reinvigorate our educational system or we can follow the same failed policies that brought us to the crisis we find ourselves in now. Our budget builds on our integrated approach to lifting us out of the recession, and it returns us to fiscal discipline by cutting the deficit by nearly two-thirds by 2013.

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Now, the gentleman mentioned our tax plan. Well, I am very proud of the Democratic plan. Our plan makes permanent the $800 Making Work Pay tax cut while preserving all dedicated payroll taxes that go to Social Security and Medicare. This is a new tax cut President Obama promised in his campaign.

The Democratic plan expands the child tax credit helping millions of families with children. It makes the $2,500 opportunity tax credit permanent to make college more affordable. This is a new tax cut President Obama promised in his campaign.

It permanently protects millions of middle-class families from being hit by

the alternative minimum tax. It expands the earned-income tax credit by providing tax relief to families with three or more children and increasing marriage penalty relief. It provides for automatic enrollment in IRAs and 401(k)s and expands the current tax credit for saving for retirement. It eliminates capital gains on small businesses, cuts taxes for 95 percent of American workers, cuts spending—nondefense discretionary—over 10 years to its lowest level as a percent of the economy in nearly half a century. It cuts the deficit in half over 4 years, grows nothing but jobs and ends an era of irresponsibility and gimmicks.

I would like to inquire, Madam Chairman, as to how much time remains on both sides.

The Acting CHAIR. The gentlewoman from New York has 12 minutes remaining. The gentleman from Texas has 21 minutes remaining.

Mrs. MALONEY. I reserve the balance of my time.

Mr. BRADY of Texas. Madam Chairman, I would yield 5 minutes to a member of the Joint Economic Committee for more than 6 years, the gentleman from Texas, Mr. RON PAUL.

Mr. PAUL. I thank the gentleman for yielding.

Madam Chairman, I rise in opposition to this resolution.

You know, they say so often that there is not enough bipartisanship around here. We hear that complaint a lot of time. But, you know, when I look at it, I see that there's been too much bipartisanship in creating the problem we have had. And it hasn't been the last—this crisis that we're in the midst of, this financial crisis, didn't pop up here in the last 60 days. It didn't pop up here in the last 8 years, but it's taken several decades to get to this point where we are today dealing with a budget that is just totally out of control and a monetary and economic system that is uncontrollable as well.

It is said that this budget is going to be $3.6 trillion with a $1.1 trillion deficit. An amazing thing is that $1.1 trillion deficit is going to be $400 billion less than this year. I will wait and see if that really comes out because that probably won't work out that way. Matter of fact, characteristically, the statistics that we hear when we talk about the budget are never reliable, especially when you're in a recession. In a recession, nobody can protect the revenues. The revenues are going to be a lot lower than they said and the expenditures are going to be a lot higher.

So I am making a prediction that the spending will be over $4 trillion this year and that the deficit is going to be over $2 trillion and that the picture that we are looking at today is much worse than we're willing to admit.

Matter of fact, I think the problem we face today is not so much a budgetary problem. It's much different. I think we talk a lot about the budget. Just think about how many hours we talked about it today. But the budget and the deficit is a symptom of something much more serious. And that is, what have we allowed our government to become? I think it has been the loss of respect by us here in the Congress to understand and take seriously article I, section A. If we did that, we wouldn't be doing all of these things that we're doing.

If we understood the tenth amendment, we wouldn't be doing all of this. We wouldn't have a deficit. If we understood monetary policy, we wouldn't have a monetary system that encourages all of this that gets us off the hook because conservatives like to spend a lot of money, and liberals like to spend a lot of money. And they don't have to worry. We raise taxes. We borrow it. And we do it, and we've been doing it for decades and getting away with it. But it's coming to an end because we've always been dependent on the Fed to come in and monetize the debt.

Now, have they backed off in any way? No. They are expanding it. Not only do they buy in the market, they are buying it directly from the Treasury. They're only encouraging us to do even more of this.

We have endorsed, as a Congress and as a people, a welfare/warfare State. And that is not part of what America is supposed to be. And it encourages the spending and the borrowing and the deficits and all of the inflation.

And we take—for instance, we were supposed to get a lot of change with the new administration. One thing I was hopeful about is that they might look at this overseas wild expanding and expansion of the war going on in the Middle East, but the military budget, the war budget, is going up 9 percent. And as long as we have the expansion of the war, the dependency on the spending overseas, we're spending over $1 trillion over a year maintaining the world empire at the same time we have runaway spending here on welfare here at home. It is unsustainable.

We have a debt that will not be paid. We know that when it reaches a certain level, it cannot be paid. But it is always liquidated.

Now, if an individual or a company goes into debt, it can be liquidated in the old-fashioned way of bankruptcies. Countries don't go bankrupt. What they do is they default on a debt. That doesn't mean they won't pay it. They pay it off in bad money. And literally, that is the purpose of the Federal Reserve right now is to lower the real debt. So if you destroy 50 percent of the value of the dollar in the next year or two, the real debt has gone down 50 percent.

Literally, the Federal Reserve board is praying for, encouraging inflation to lower the real debt because it can't be sustained.

But who does that hurt? It hurts the people who save, the people who save get 1 percent on their earnings, and we tax the little bit they get, and the people who are doing the right thing are being punished the most.

So the ones who live beyond their means get bailed out. And it's a very bad, bad system that we have. And we have to decide what the role of government ought to be.

You know, we do blame the banks and we blame the business people and everybody. But you know, I have a lot of people that come to my office and say, Cut his, cut his, but don't cut my program.

So we have to decide as a people what should the role of government be. And if we think the role of government is going to be, and should be, the policeman of the world and to run the welfare State, this budgetary problem will never be solved.

The Acting CHAIR. The time of the gentleman has expired.

Mr. BRADY of Texas. Madam Chairman, I would like to grant 30 seconds to Mr. PAUL to conclude.

Mr. PAUL. I thank you for yielding.

And let me just close by saying the greatest danger I see right now is the placing of the blame for the crisis that we're in is that we had too much freedom, too much capitalism, not enough regulation. And they did this in the 1930s. They are doing it even more now.

Instead of saying that we overspent, overtaxed, overregulated, we have lost our confidence. And if we don't change that attitude and if we accept this notion, accept international regulation, believe me, we're in big trouble. We will lose our freedom, and we will lose our sovereignty as well.

Mrs. MALONEY. Madam Chair, I yield myself as much time as I may consume.

I would like to address the deficit that the gentleman mentioned and point out that President Obama inherited deficits over $1 trillion. The Obama administration inherited an economy deep in recession and a projected annual deficit of well over $1 trillion. This deficit didn't arise out of the blue.

President Bush inherited a $5.6 trillion projected 10-year budget surplus, which he dissipated on misguided fiscal policies and choices. That surplus represented an opportunity to address some of the major issues confronting our country, including preparing for the needs of the retiring Baby Boom generation.

The Democratic plan cuts the deficit by more than half. The President sets a firm goal of cutting the deficit in half over 4 years, and this budget does just that. It takes the record deficit that President Obama and the 111th Congress inherited in 2009, and cuts the deficit from $1.7 trillion in 2009 to $586 billion in 2013.

And it also makes more realistic deficit estimates. To provide for a more realistic accounting of the government's financial position, our budget—like the President's plan—includes likely foreseeable costs that have been omitted from past budgets. These include costs of our overseas deployment, Medicare reimbursements to physicians, and emergencies such as natural

disasters that can't be predicted with precision but that occur every year. These were all off-budget during the Bush years. We have put them on with more transparency.

And I would like to say that very importantly, the Democratic plan begins to address health care. It begins to address rising costs. It sets us on a path to increased coverage for the 46 million who do not have medical coverage. It aims to improve the quality of care. And Republicans have no real plan for addressing rising health care plans and health costs. And the Republican plan for health care, including Medicare, is to give everyone a voucher and deregulate the insurance market.

So I say the Democratic plan is better in terms of reducing the deficit, and it also invests in health care, energy independence, and education and to long-term goals and needs of our young people and of our citizens who need to compete and succeed in the global market.

I would like to inquire as to how much time remains on my side and the other side.

The Acting CHAIR. The gentlewoman has 8½ minutes remaining. The gentleman from Texas has 15½ minutes remaining.

Mrs. MALONEY. I reserve my time.

Mr. BRADY of Texas. I yield myself 30 seconds.

The gentlelady is right. The President did inherit a $1.2 trillion deficit, but he inherited it from a Democratic Congress that had the purse strings for the past 2 years. In fact, the Democratic Congress didn't even send President Bush a budget because they wanted to spend more than he did. So just because—I will tell you, Republicans, we didn't do a good job with controlling spending. When we left control, the deficit was about $160 billion. The deficit under this budget will be 10 times that much. And ours is bad enough. This is unthinkable.

With that, I would like to yield 5 minutes to another member of the Joint Economic Committee and an expert in health care reform, the gentleman from Texas, Dr. BURGESS.

Mr. BURGESS. I can't help but notice this seems to be an all-Texas Joint Economic Committee on our side tonight. Ranking Member BRADY is very good to allow me the time to speak in opposition to the budget resolution that's on the floor this evening.

You know, I think back to the late 1980s in Texas and it was a tough, tough time. We had the savings and loan collapse, we were in the middle of our own recession, energy prices collapsed literally overnight, real estate that collateralized loans was suddenly worth near zero. Loans were being called. It was a true mark-to-market phenomenon.

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And what happened during that time? Well, you saw families tighten their belts. You saw businesses not expand, not borrow money, and they were dark days and they were tough times. And we lost some businesses, and people had to leave the area.

But I don't recall at any point during that time anyone from the Federal Government coming down with a big bag of money and saying, gee, can we help you out of these tough times; can we perhaps buy you out of this recession in which you find yourself.

No, what I recall the Federal Government sending me was the Resolution Trust Corporation that absorbed a bunch of assets and sold them off to foreign holdings, and it really wasn't all that helpful. In fact, if the Federal Government had shown up, I don't know that I would have welcomed their presence, but we got through that.

Those dark days quickly gave way to sunshine and light and 25 years of expansion and growth in the North Texas area. In fact, it is only very recently where my part of North Texas has begun to feel the effects of the recession that has gripped the country for the last five quarters.

Now, Ranking Member BRADY talked about the fact that the budget deficit is going to grow by $8 trillion to $10 trillion over the next 3 years, and I would just simply ask rhetorically—and I will not yield time but I'm going to ask rhetorically—at what point over the next 3 years during the expansion of the deficit by $8 to $10 trillion do we begin to accept some responsibility on the other side and from the new administration? Surely, at some point over the next 3 years, this ceases to be a George Bush problem and becomes a Barack Obama problem. Surely, sometime over the next 3 years, this ceases to become a George Bush problem and becomes a NANCY PELOSI problem.

But, Madam Chair, the American people don't want us to point fingers at each other, but they do appreciate facts, and let me share a few facts.

Here is a graphic representation of the budget deficits for the last several years prior and on into 10 years into the future. The last year over which we had control over the appropriations process, the budget deficit was $160 billion. It was outlandish. In fact, we lost the majority because we were spending too much, and the budget deficit was $160 billion.

And where do we find ourselves a little over 2 years later? As Ranking Member BRADY pointed out, it's now 10 times that much. It is no accident that we're having this debate at midnight on April 2, so that the American people maybe won't notice what has happened because surely when they wake up in the morning and find out that this budget deficit has now increased 10 times since the beginning of fiscal year 2007, that they're going to have some serious questions.

And, Madam Chair, I would also point out, that at this point when the budget deficit was so high under Republicans at $160 billion, we put $100 billion right before the end of that fiscal year into the gulf coast of Louisiana and Mississippi because of Katrina and Rita. We had to help a recovering Indonesia from the tsunami, and oh, yeah, we were still fighting two wars as Dr. PAUL pointed out, and we had supplemental appropriations of $60 billion and $80 billion during that cycle as well. And that's why our budget deficit was so high at $160 billion.

Well, we had a big hurricane last September, and we've given $12 billion to the good people of Galveston. That's a scandal in and of itself.

Well, spending money to get out of a recession did not work in the 1930s. It certainly didn't work for Japan in the 1990s. And I certainly don't intend to be part of that today.

We've heard some talk this evening about jobs and job creation. Well, what better way to continue a recession than to kill job creation, and that's exactly what this budget proposes to do by instituting what's going to be known as a cap-and-trade, or really, what we should honestly call a carbon tax. And what is that carbon tax going to do? It is going to be used to offset the expansion in health care in this country.

The Acting CHAIR. The time of the gentleman has expired.

Mr. BRADY of Texas. I yield Dr. BURGESS an additional 30 seconds to conclude.

Mr. BURGESS. I thank the gentleman.

Madam Chair, it is no accident that the cost of expansion of health care in this country at $1.2 trillion estimated by the Congressional Budget Office is almost exactly the amount of money that will be raised with this egregious carbon tax of $1.5 trillion. If you want to kill jobs, if you want to drive jobs overseas, tax energy. That's a proven way to do it, but I don't recommend it.

I hope when the American people wake up tomorrow they can turn on a light without the feeling that when they turned that light on they just paid for their neighbor's health care.

Mr. BRADY of Texas. Madam Chairman, I reserve the balance of my time.

Mrs. MALONEY. Madam Chairman, my good friend on the other side of the aisle mentioned energy policy, talked about taxing energy. Well, the Democratic plan makes critical investments in energy, with $1 billion more in appropriated funding for 2010 than the 2009 level of regular appropriations.

It also includes a deficit neutral reserve fund for legislation to promote energy independence, spur the reduction of greenhouse gas emissions, and help businesses, industries, States, communities, and households adjust to an economy with reduced emissions levels.

It provides job opportunities in the new energy economy and relief for Americans. It creates green collar jobs to help address rising unemployment and keeps jobs in America, provides tax incentives for renewable energy, funds weatherization to help low-income

families save $350 per year, on average, on their energy bills.

But very importantly, going forward, we need to improve fiscal discipline through statutory PAYGO, pay-as-you-go, rules, and the Democratic budget improves fiscal discipline by requiring House passage of statutory pay-as-you-go rules as a condition for making current policy adjustments to the baseline for tax cuts and the Medicare physician payment system. Statutory PAYGO was critical to turning the budgets around in the 1990s, but the Republican Congress and the Bush administration allowed it to expire in 2002, contributing to the deep deficits they accumulated.

As one of its first acts, the 110th Democratic Congress instituted a tough new House PAYGO rule. The resolution would reaffirm and strengthen the commitment to pay-as-you-go by providing for action on statutory PAYGO to enforce a realistic baseline.

It also is very important about oversight and accountability and enforcement. Our budget generates valuable savings by expanding oversight activities and large benefit programs, more aggressively pursuing fraud, and increasing tax compliance and enforcement activities to ensure taxpayer dollars are spent wisely. It is a wise plan, with wise investments.

I reserve the balance of my time.

Mr. BRADY of Texas. Madam Chairman, I yield 2½ minutes to the distinguished gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Madam Chair, I rise tonight to oppose the budget under consideration.

We hear a lot of talk about PAYGO, but PAYGO is routinely waived here on matters such as the recent stimulus package. On a $790 billion piece of legislation PAYGO did not apply. I think we need to point that out.

But this budget I think is problematic for a number of reasons. First, it imposes higher taxes on income, investment in energy, and yes, the death tax comes roaring back. The national debt doubles in 5 years. The national debt triples in 10 years. Let me repeat that. The national debt will double in 5 years and will triple in 10 years. It took 43 Presidents 232 years to accumulate $5 billion in debt. This budget gets us to $5 billion in 5 years. In short, this budget spends too much, borrows too much, and taxes too much.

On energy, users of electricity, gasoline, petroleum, natural gas will all pay more. Let me translate that. We will all pay more, the American taxpayer. We are going to pay more because of these so-called cap-and-trade or, as my colleague Mr. BURGESS from Texas said, cap-and-tax. Well, this is simply a carbon tax, an energy tax on every American who consumes energy, and again, that is just about every American I know. You know, according to the CBO, we expect that this cap-and-trade tax will cost every household at least $1,600 again in higher energy costs, and actually, there are studies out there that say it will cost even more than that. This will also result in the loss of at least 3 to 4 million jobs, according to NAM, National Association of Manufacturers.

So, in short, I would say to everyone here tonight, because of these higher taxes on income and energy, the very people we're asking to get us out from under this very difficult recession, small business people are going to pay more. Small manufacturers that use natural gas in a very big way, they will be punished because of this. The death tax punishes them, too. It makes it harder for them to pass these businesses on to their children and to their grandchildren.

This is an ill-advised budget. The income tax that we will see go up here, too, will also punish many small businesses because they're organized. These Subchapter S companies, partnerships, and proprietorships, they will pay the bill.

So let's think about this. This budget is ill-advised. It is not in the best interests of the American people. I strongly urge that it be rejected.

Mr. BRADY of Texas. Madam Chairman, I reserve the balance of my time.

Mrs. MALONEY. May I inquire on the time, please, on both sides of the aisle.

The Acting CHAIR. The gentlewoman from New York has 5½ minutes remaining, and the gentleman from Texas has 7 minutes remaining.

Mrs. MALONEY. Madam Chair, this budget, the Democratic budget, invests heavily in education. This budget embraces the President's goal of furthering investments in education for Americans from early childhood through post-secondary education and training. Our budget provides a fiscally responsible plan to improve American education and train a workforce that is prepared to compete and succeed in the global economy.

A highly educated and skilled workforce is critical to the overall success of our economy. The benefits to investing in education include higher earnings, higher graduation and employment rates, less crime, decreased need for special education and welfare services, and better health.

In 2008, the unemployment rate for workers with a bachelor's degree was 2.8 percent, while the unemployment rate for workers with a high school diploma was double at 5.7 percent. For workers with less than a high school diploma, the unemployment rate was 9 percent. So if we want to attack unemployment, prepare our young people for the future, we should invest in education. That's what this budget does.

I reserve the balance of my time.

Mr. BRADY of Texas. Madam Chair, I yield 2½ minutes to a distinguished gentleman from Texas (Mr. GOHMERT), a member of the Small Business Committee himself.

PARLIAMENTARY INQUIRY

Mr. GOHMERT. Madam Chairman, parliamentary inquiry?

The Acting CHAIR. The gentleman will state his inquiry.

Mr. GOHMERT. We have been talking about the time. When I came in, I understood the gentlelady across the aisle had yielded 10 minutes of her time to Mr. BRADY. Was there a different understanding from the Chair?

The Acting CHAIR. The Chair understood the gentlewoman from New York to be reserving her time and inviting the gentleman from Texas to yield a 10 minute block of his time.

Mr. GOHMERT. Oh, when she said I'm yielding 10 minutes to my friend from Texas, the Speaker took that to mean I'm reserving my time? Okay. Thank you.

The gentlewoman from New York reserved her time and signaled that the gentleman from Texas should yield his time.

Mr. GOHMERT. Oh, I see. So when she said I yield my friend from Texas 10 minutes, that meant she was reserving her time? All right. Thank you for the clarification.

I did want to take up a couple of things that were mentioned. First of all, my friend across the aisle had indicated that opponents had wanted to cut benefits to the middle class and reward the wealthiest few and even held up a chart showing the kind of deficits that were run up in 2007 and 2008. And this is the same kind of mantra we've been hearing and actually heard that in 2005 and 2006.

And the fact is there was too much money being spent after President Bush took office. When Republicans had the White House, the House of Representatives and the Senate, too much money was being spent, and that's why before the Democrats took office or took the majority, there was a $160 billion deficit that was run up.

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It was too much money. It was too much deficit. And that's why the American public said: Enough. We're going to put the Democrats in charge. We don't want another $160 billion deficit.

And so what did we get in 2007 and 2008? We got the numbers that the jobs were falling, we got a problem economy, and the runaway spending went wilder than ever. Now, just in 2 months—and I was objecting back then, I'm objecting louder now—because now they're going to increase that 10 times teams. We spent nearly $800 billion on a spendulus bill in January, February. Then we had another—they got the other $350 billion of the $700 billion from last year.

Going nuts spending money—$1 trillion dollars? That would pay for an entire year of every individual taxpayer getting back every dime they have.

So when we hear that this party—these people on this side of the aisle—want to make benefits to the wealthiest, you can look at the bill I filed. It was for a tax holiday to let those who were paying taxes get their money

back. That's a solution. That gets the economy going.

This cap-and-tax on energy, that is going to penalize the people that are just struggling to pay their gasoline bill. And then to hammer the deductions for charities and mortgages, that also hammers the people in the middle class trying to get by. And it brings home the point that this majority is about the GRE—government running everything.

The Acting CHAIR. The time of the gentleman has expired.

Mr. BRADY of Texas. I yield the gentleman an additional 30 seconds.

Mr. GOHMERT. I have a bill that I filed the last Congress, I'm filing again, that would have no increases. A level spending bill. No automatic increases. And they're running that up like crazy.

The Federal Government has been too busy trying to run everybody else's business, telling Detroit, telling Wall Street, telling the lenders, the banks what to do, that they forgot that their job was to provide a defense against enemies foreign and domestic, like Madoff, the cheaters. We should have been after them. That's the job of this government—not telling everybody how to run their business.

Mrs. MALONEY. I yield myself such time as I may consume.

Over the last 8 years, through fiscally reckless policies, President Bush squandered the Clinton-era surplus and left behind a legacy of debt and deficits. He made a number of records, but they were the wrong kinds of records. Record deficit, record trade deficit, record debt.

Over the 7 years from 2002 to 2008, those surpluses from the Clinton years would accumulate to $3.2 trillion. Instead, under President Bush, the government ran 7 straight years of budget deficits totaling $2.1 trillion. When President Obama was inaugurated in January, he inherited from President Bush an estimated deficit of $1.5 trillion—the worst budget deficit in history. And trillions more in deficits over the next 10 years.

Now the Democratic budget resolution begins the process of turning around the Republican budget legacy of deep deficits, mounting debt, an economic decline due to the Bush administration's reckless fiscal policy. It takes steps to put the budget back on a fiscally sustainable path by restoring fiscal responsibility and substantially reducing the deficit.

The President set a firm goal of cutting the budget deficit in half over 4 years, and this budget does just that. It takes a record $1.5 trillion deficit that President Obama and the Congress inherited in 2009, and cuts the deficit from $1.7 trillion in 2009 to $586 trillion in 2013.

Our budget makes strategic investments in health care, education, energy independence, areas critical to a strong economic future. For these and other key priorities, it includes deficit neutral reserve funds that will accommodate legislation in these areas consistent with the pay-as-you-go principle.

Our budget generates valuable savings by expanding oversight activities and large benefit programs, more aggressively pursuing fraud and increasing tax compliance and enforcement activities to ensure taxpayers dollars are spent wisely.

It is a balanced and fair budget that makes investments in critical areas.

I would inquire as to how much time is remaining on both sides.

The Acting CHAIR. The gentlewoman from New York has 1 minute remaining. The gentleman from Texas has 4 minutes remaining.

Mrs. MALONEY. I reserve the balance of my time.

Mr. BRADY of Texas. At this time I'd like to yield 2½ minutes to a gentleman on the Armed Services Committee, an engineer—he knows his numbers—the distinguished gentleman from Missouri (Mr. AKIN).

Mr. AKIN. I think that it's kind of interesting. People have said that America is becoming a socialized Nation, just like the countries over in Europe, a socialized Nation. But that's not a fair thing to say because with this level of debt, the Europeans wouldn't even accept us as part of the European Union.

I've noticed tonight that we have spent more time blaming President Bush than talking about the positive solution of a Democrat budget. And that's not a good sign when we spend—at midnight—talking about how bad Bush is when we're supposed to be debating a Democrat budget.

I don't think the Democrats are proud of this budget. And if I were the Democrats, I wouldn't be proud of the budget either.

While we're talking about President Bush though, I have got some numbers so we can just do a direct comparison and just see what is the difference here.

Just in the last couple of months—we're only just finishing up March—we've got the second half of the Wall Street bailout. That's about $350 billion. We burned through the economic stimulus—or the porkulus bill—$787 billion.

Now if you were to add will of the cost of the war in Iraq, all of the cost of the war in Afghanistan, and add it altogether, it would be less than this thing. Then you've got the omnibus deal. Hey, we're starting to spend some real money.

Let's take a look at a comparison. If we want to talk about Bush, we can blame the hurricane on him. We've already done that. It's really bad when a President brings a hurricane in.

Let's talk about this annual budget deficit. This is the average annual deficit under Bush—$300 billion. We're not proud of that. But the current President's budget—this is what they're proposing—has got him beat two to one. I'm not sure I'd be proud of that number.

Here's the highest deficit when the Democrats were in the House under Bush, $459 billion. But, oh, President Obama, his projection is $1.2 trillion. Clear winner by more than two to one. Then, the increase in national debt, $2.5 trillion, $4.9 trillion. Again, a two to one.

When you take a look at it, here's what it looks like. Every one of these lines going down is a deficit. Now does anybody see something disturbing in this pattern?

Now we have heard the gentlelady from New York is bragging about the fact that given some time, this number here, the low number, is going to be cut in half. That doesn't give me any sense of satisfaction at all. If I looked at that, I'd say, Holy smokes, I'm moving to some other country. These people in America have been smoking funny cigarettes. What in the world are they doing with this deficit?

Mrs. MALONEY. I reserve the balance of my time for a closing statement.

Mr. BRADY of Texas. I would yield myself such time as I may consume.

First, let me thank the gentlelady from New York, the chairman of the Joint Economic Committee, for not just the tone of tonight's debate, but the tone of your leadership on the Joint Economic Committee. I truly enjoy serving with you.

While we're sitting here, I got an e-mail from a constituent who asked, How do you make debt go away by spending 10 times as much? Are they trying to sell America magic beans?

Sounds funny, but the truth of the matter is this isn't funny times. America's finances are on the wrong track. We need to change that path now or we risk never seeing a balanced budget in our life time.

We can't spend, tax, and borrow our way back to prosperity. The Republican alternative I like focuses on job creation through small businesses; doesn't raise taxes—it lowers them; it creates incentives to hire and keep workers; encourages private investment rather than bailout; and it starts whittling down this debt so that we will see a balanced budget again.

Madam Chair, we are at a historic moment in America's history. We have a path of bigger debt and higher taxes and huge loads on our children. Or we can get back on the right path again. The Republican alternative does that.

We urge a ''no'' on this fiscally irresponsible Democrat budget. Let's work together—both parties—to get back to balance the budget. The first start is the Republican alternative.

I yield back the balance of my time.

Mrs. MALONEY. Madam Chair, the policies advocated by my colleagues on the other side of the aisle have been tried and we are all living through the disastrous results. Our budget is an important blueprint forgetting our economy back on path that restores confidence, produces growth, and puts people back to work.

We make critical investments in health care, clean energy, and education that will create jobs and enhance our global competitiveness. We will also restore fiscal responsibility by cutting the deficit by nearly two-thirds by 2013.

A budget is fundamentally about priorities—and our priority is to strengthen the economy and help struggling families regain their footing. Americans are optimistic by nature, and I am optimistic that the investments we make now will pay off later and that together we will emerge from this current crisis stronger and better prepared for the 21st century challenges that we face.

Mr. LEWIS of California. Madam Chair, it's only fitting that we begin consideration of the Democrat budget resolution on April 1st. Like April Fool's Day itself, this budget is full of mischief and sleight of hand that will have Uncle Sam dipping his fingers into your pocket as if your wallet was his very own personal ATM.

The President's budget request proposes huge spending increases now with only intentionally vague promises to make hard choices to cut spending in the future. All of this spending is couched in the same soothing rhetoric we heard during the stimulus debate—while kicking the can down the road on many tough decisions.

As Daniel Hannan, a Member of the European Parliament, said in remarks last week, "Perhaps you would have more moral authority in this House if your actions matched your words. The truth is you have run out of our money."

While the House majority portrays their spending plan as a reduction from the President's request, the fact is this budget resolution represents more spending, more taxes, and more debt. The only proposed cuts in this plan are within the area of national defense, an ill-advised course of action as our country continues to engage in the Global War on Terror.

Since Democrats assumed control of Congress, they have proposed increases of at least nine percent each year for non-defense discretionary programs. For next year, they propose yet another 11 percent increase and a 27 percent boost over the next five years.

The proposed surge of federal spending represents the largest non-war government expansion since the New Deal. Domestic discretionary spending—including the spending in the stimulus package—has been hiked over 80 percent since just last year. As a result, Washington will run a budget deficit of 12.3 percent of GDP, by far the largest since World War II.

Some in the majority will justify this out-of-control spending as a necessary, temporary response to a recession. But there's nothing temporary about it. After harshly criticizing budget deficits under President Bush—which averaged $300 billion annually—President Obama has proposed a budget that would run deficits through the roof for a generation or more.

Three expected developments—the end of the recession, the withdrawal of troops from Iraq, and the phase-out of temporary stimulus spending—would by themselves cut the deficit in half by 2013.

The President's budget shows deficits averaging $600 billion a year even after the economy recovers from the recession and even after our troops come home from Iraq. That's not good enough. Between 2008 and 2013, the budget will add $5.7 trillion, or $48,000 per household, in new government debt. The annual interest alone would equal nearly the entire U.S. defense budget by the year 2019.

On top of this mountain of debt, consider the unsustainable costs of paying Social Security and Medicare benefits to 77 million retiring Baby Boomers.

Without real reform, the result is likely to be devastating tax increases for decades to come.

These higher debt levels will accelerate an increase in interest rates. Higher interest rates will slow down the economic recovery by making it more expensive for businesses to invest and more difficult for families to afford homes and auto loans. This isn't economic, recovery, this is economic madness.

To quote again from Daniel Hannan from the European Parliament, "You cannot spend your way out of recession or borrow your way out of debt."

Mrs. MALONEY. Madam Chair, I yield back the balance of my time, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. MALONEY) having assumed the chair, Mrs. DAHLKEMPER, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the concurrent resolution (H. Con. Res. 85) setting forth the congressional budget for the United States Government for fiscal year 2010 and including the appropriate budgetary levels for fiscal years 2009 and 2011 through 2014, had come to no resolution thereon.

GENERAL LEAVE

Mrs. DAHLKEMPER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 1256.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Pennsylvania?

There was no objection.

COMMUNICATION FROM THE REPUBLICAN LEADER

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN A. BOEHNER, Republican Leader:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 1, 2009.

Hon. NANCY PELOSI,
Speaker, U.S. Capitol,
Washington, DC

DEAR SPEAKER PELOSI: Pursuant to Section 841(b) of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 101–181), I am pleased to appoint The Honorable Christopher Shays of Connecticut, to the Commission on Wartime Contracting. My previous appointee, Mr. Dean G. Popps resigned in October 2008, creating a vacancy.

Mr. Shays has expressed interest in serving in this capacity and I am pleased to fulfill his request.

Sincerely,

JOHN A. BOEHNER,
Republican Leader.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LEVIN (at the request of Mr. HOYER) for today.

Mrs. SCHMIDT (at the request of Mr. BOEHNER) for today on account of an illness.

ADJOURNMENT

Mrs. DAHLKEMPER. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 30 minutes a.m.), under its previous order, the House adjourned until today, Thursday, April 2, 2009, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

1116. A letter from the Secretary, Department of Transportation, transmitting notification of several violations of the Antideficiency Act in the Department's Maritime Administration's Operation and Training Account, pursuant to 31 U.S.C. 1517(b) and 1351; to the Committee on Appropriations.

1117. A letter from the Vice Chair and First Vice President, Export-Import Bank, transmitting a report on transactions involving U.S. exports to Mexico pursuant to Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

1118. A letter from the Vice Chair and First Vice President, Export-Import Bank, transmitting a report on transactions involving U.S. exports to Mexico pursuant to Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

1119. A letter from the Acting Chair, Occupational Safety and Health Review Commission, transmitting the Commission's report on the amount of acquisitions made by the agency from entities that manufacture articles, materials, and supplies outside of the United States for Fiscal Year 2008, pursuant to Public Law 109-115, section 837; to the Committee on Education and Labor.

1120. A letter from the Deputy Chief Human Capital Officer and Director for Human Resources Management, Department of Commerce, transmitting notification that the Department continues to utilize hiring flexibilities such as category rating, in addition to traditional rating, in order to increase its opportunity to select the best qualified candidates in support of Human Capital strategies and succession planning; to the Committee on Oversight and Government Reform.

1121. A letter from the White House Liaison, Department of Education, Office for Civil Rights, transmitting a report pursuant

to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1122. A letter from the White House Liaison, Department of Education, Office of Communications and Outreach, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1123. A letter from the White House Liaison, Department of Education, Office of Elementary and Secondary Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1124. A letter from the White House Liaison, Department of Education, Office of Inspector General, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1125. A letter from the White House Liaison, Department of Education, Office of Inspector General, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1126. A letter from the White House Liaison, Department of Education, Office of Management, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1127. A letter from the White House Liaison, Department of Education, Office of Planning, Evaluation and Policy Development, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1128. A letter from the White House Liaison, Department of Education, Office of Postsecondary Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1129. A letter from the White House Liaison, Department of Education, Office of Special Education and Rehabilitative Services, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1130. A letter from the White House Liaison, Department of Education, Office of Vocational and Adult Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1131. A letter from the White House Liaison, Department of Education, Office of the Deputy Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1132. A letter from the White House Liaison, Department of Education, Office of the General Counsel, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1133. A letter from the White House Liaison, Department of Education, Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1134. A letter from the Deputy Chief Human Capital Officer, Department of Energy, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1135. A letter from the Deputy Chief Human Capital Officer, Department of Energy, National Nuclear Security Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1136. A letter from the Deputy Chief Human Capital Officer, Department of Energy, Office of Assistant Secretary for Energy Efficiency & Renewable Energy, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1137. A letter from the Deputy Chief Human Capital Officer, Department of Energy, Office of Assistant Secretary for Energy Efficiency & Renewable Energy, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1138. A letter from the Deputy Chief Human Capital Officer, Department of Energy, Office of the General Counsel, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1139. A letter from the Deputy Chief Human Capital Officer, Department of Energy, Office of the General Counsel, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1140. A letter from the Deputy Chief Human Capital Officer, Department of Energy, Under Secretary for Science, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1141. A letter from the Acting Assoc. Gen. Counsel for General Law, Department of Homeland Security, Customs and Border Protection, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1142. A letter from the Department of Transportation—Federal Aviation Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1143. A letter from the Department of Transportation—Federal Aviation Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1144. A letter from the Department of Transportation—Federal Highway Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1145. A letter from the Department of Transportation—Federal Motor Carrier Safety Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1146. A letter from the Department of Transportation—Federal Railroad Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1147. A letter from the Department of Transportation—Federal Transit Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1148. A letter from the Department of Transportation—Maritime Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1149. A letter from the Department of Transportation—National Highway Traffic Safety Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1150. A letter from the Department of Transportation—Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1151. A letter from the Department of Transportation—Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1152. A letter from the Department of Transportation—Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1153. A letter from the Department of Transportation—Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1154. A letter from the Department of Transportation—Office of the Secretary, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1155. A letter from the Department of Transportation—Pipelines and Hazardous Materials Safety Administration, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1156. A letter from the Director, Administrative Office of the United States Courts, transmitting the Office's report entitled, ''2008 Annual Report of the Director of the Administrative Office of the U.S. Courts,'' pursuant to 28 U.S.C. 604(a)(4); to the Committee on the Judiciary.

1157. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F Airplanes; and Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes [Docket No. FAA-2008-0736; Directorate Identifier 2008-NM-102-AD; Amendment 39-15804; AD 2009-03-03] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1158. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Change of Using Agency for Restricted Area 6320; Matagorda, TX [Docket No. FAA-2009-0108; Airspace Docket No. 08-ASW-8] (RIN: 2120-AA66) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1159. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Modification of Class D and E Airspace; Removal of Class E Airspace; Aguadilla, PR [Docket No. FAA-2009-0053; Airspace Docket No. 09-ASO-11] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1160. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Dornier Model 328-300 Airplanes [Docket No. FAA-2008-0857; Directorate Identifier 2007-NM-317-AD; Amendment 39-15785; AD 2009-01-06] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C.

801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1161. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Avidyne Corporation Primary Flight Displays (Part Numbers 700-00006-000, -001, -002, -003, and -100) [Docket No. FAA-2008-1210; Directorate Identifier 2008-CE-047-AD; Amendment 39-15829; AD 2009-05-05] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1162. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 727 Airplanes [Docket No. FAA-2008-1065; Directorate Identifier 2008-NM-126-AD; Amendment 39-15827; AD 2009-05-03] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1163. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP Series Airplanes [Docket No. FAA-2008-0731; Directorate Identifier 2008-NM-058-AD; Amendment 39-15812; AD 2009-04-06] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1164. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Airplanes [Docket No. FAA-2008-1141; Directorate Identifier 2008-NM-025-AD; Amendment 39-15799; AD 2009-02-09] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1165. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Fokker F.28 Mark 0700 and 0100 Airplanes [Docket No. FAA-2008-1119; Directorate Identifier 2008-NM-112-AD; Amendment 39-15800; AD 2009-02-10] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1166. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702) Airplanes and Model CL-600-2D24 (Regional Jet Series 900) Airplanes [Docket No. FAA-2008-1115; Directorate Identifier 2008-NM-134-AD; Amendment 39-15801; AD 2009-02-11] (RIN: 2120-AA64) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1167. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Amendment of Class D Airspace; Anderson AFB, GU; Guam International Airport, GU; and Saipan International Airports, CQ [Docket No. FAA-2008-0861; Airspace Docket No. 08-AWP-8] (RIN: 2120-AA66) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1168. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Milwaukee, WI [Docket No. FAA-2008-1291; Airspace Docket No. 08-AGL-20] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1169. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Sioux City, IA [Docket No. FAA-2008-1104; Airspace Docket No. 08-ACE-2] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1170. A letter from the Secretary, Department of Transportation, transmitting the Department's report of obligations and unobligated balances of funds provided for Federal-aid highway and safety construction programs for fiscal year 2006 as of September 30, 2006, pursuant to 23 U.S.C. 104(j); to the Committee on Transportation and Infrastructure.

1171. A letter from the Secretary, Department of Transportation, transmitting the Department's report of obligations and unobligated balances of funds provided for Federal-aid highway and safety construction programs for fiscal year 2007 as of September 30, 2007, pursuant to 23 U.S.C. 104(j); to the Committee on Transportation and Infrastructure.

1172. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; MacDill AFB, FL [Docket No. FAA-2008-0983; Airspace Docket No. 08-ASO-14] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1173. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Umiat, AK [Docket No. FAA-2008-0455; Airspace Docket No. 08-AAL-14] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1174. A letter from the Attorney Advisor, Department of Transportation, transmitting the Department's final rule — Environmental Impact and Related Procedures [Docket No. FTA-2006-26604] (RIN: 2132-AA87) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1175. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Guam Island, GU, and Saipan Island, CQ [Docket No. FAA-2008-0897; Airspace Docket No. 08-AWP-9] (RIN: 2120-AA66) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1176. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Revision of Class D and E Airspace; King Salmon, AK [Docket No. FAA-2008-1162; Airspace Docket No. 08-AAL-33] received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

1177. A letter from the Assistant Secretary, Department of Homeland Security, transmitting the Department's report entitled, ''United States Department of Homeland Security Other Transaction Authority Report to Congress Fiscal Year 2008,'' pursuant to Public Law 107-296, section 831(a)(1), as amended; to the Committee on Homeland Security.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MCGOVERN: Committee on Rules. House Resolution 316. Resolution providing for further consideration of the concurrent resolution (H. Con. Res. 85) setting forth the congressional budget for the United States Government for fiscal year 2010 and including the appropriate budgetary levels for fiscal years 2009 and 2011 through 2014 (Rept. 111–73). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. FRANKS of Arizona (for himself, Mr. BURTON of Indiana, Mr. BROUN of Georgia, Mr. LAMBORN, Mr. KLINE of Minnesota, Mr. DANIEL E. LUNGREN of California, Mr. KING of Iowa, Mr. BISHOP of Utah, Mr. CAMPBELL, Mr. BLUNT, Mr. GERLACH, Mr. SOUDER, Mr. HENSARLING, Mr. COLE, Mr. HOEKSTRA, Mrs. BACHMANN, and Mr. PITTS):

H.R. 1833. A bill to amend the Internal Revenue Code of 1986 to provide for a credit which is dependent on enactment of State qualified scholarship tax credits and which is allowed against the Federal income tax for charitable contributions to education investment organizations that provide assistance for elementary and secondary education; to the Committee on Ways and Means.

By Mrs. KIRKPATRICK of Arizona:

H.R. 1834. A bill to amend the Small Business Act to expand and improve the assistance provided to Indian tribe members, Alaska Natives, and Native Hawaiians, and for other purposes; to the Committee on Small Business.

By Mr. BOREN (for himself, Mr. LARSON of Connecticut, Mr. SULLIVAN, Mr. ABERCROMBIE, Mr. BISHOP of Georgia, Mr. BURGESS, Mr. CONAWAY, Mr. KAGEN, Mr. MCMAHON, Ms. MARKEY of Colorado, Mr. MILLER of Florida, Mr. MINNICK, Mr. TEAGUE, and Mr. THOMPSON of California):

H.R. 1835. A bill to amend the Internal Revenue Code of 1986 to encourage alternative energy investments and job creation; to the Committee on Ways and Means, and in addition to the Committees on Oversight and Government Reform, and Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MINNICK (for himself and Mr. SCHOCK):

H.R. 1836. A bill to amend the Internal Revenue Code of 1986 to provide a payroll tax holiday for small businesses; to the Committee on Ways and Means.

By Mr. ENGEL (for himself, Mr. BURTON of Indiana, Mr. BERMAN, and Mr. WEXLER):

H.R. 1837. A bill to amend the Andean Trade Preference Act to add Paraguay to the list of countries that are eligible to be designated as beneficiary countries and ATPDEA beneficiary countries; to the Committee on Ways and Means.

By Ms. FALLIN (for herself, Ms. CLARKE, and Mrs. MCMORRIS RODGERS):

H.R. 1838. A bill to amend the Small Business Act to modify certain provisions relating to women's business centers, and for other purposes; to the Committee on Small Business.

By Mr. BUCHANAN:

H.R. 1839. A bill to amend the Small Business Act to improve SCORE, and for other

purposes; to the Committee on Small Business.

By Mr. CAMP (for himself and Mr. RANGEL):

H.R. 1840. A bill to ensure States receive adoption incentive payments for fiscal year 2008 in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008; to the Committee on Ways and Means.

By Mr. MCHUGH:

H.R. 1841. A bill to amend the Clean Air Act to reduce sulfur dioxide, nitrogen oxide, and mercury emissions, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Natural Resources, Science and Technology, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LUETKEMEYER:

H.R. 1842. A bill to amend the Small Business Act to improve the Small Business Administration's entrepreneurial development programs, and for other purposes; to the Committee on Small Business.

By Mr. CONYERS (for himself, Mr. NADLER of New York, Mr. SCOTT of Virginia, Ms. WATERS, Mr. CLEAVER, Ms. LEE of California, Mr. GRIJALVA, and Ms. JACKSON-LEE of Texas):

H.R. 1843. A bill to provide a mechanism for a determination on the merits of the claims brought by survivors and descendants of the victims of the Tulsa, Oklahoma, Race Riot of 1921 but who were denied that determination; to the Committee on the Judiciary.

By Mrs. CAPPS (for herself and Mr. BOUSTANY):

H.R. 1844. A bill to amend title XVIII of the Social Security Act to provide for coverage of comprehensive cancer care planning under the Medicare Program and to improve the care furnished to individuals diagnosed with cancer by establishing a Medicare hospice care demonstration program and grants programs for cancer palliative care and symptom management programs, provider education, and related research; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCHOCK:

H.R. 1845. A bill to amend the Small Business Act to modernize Small Business Development Centers, and for other purposes; to the Committee on Small Business.

By Mr. BACA (for himself and Mrs. SCHMIDT):

H.R. 1846. A bill to amend the Truth in Lending Act to establish additional payday loan disclosure requirements and preempt certain State laws, and for other purposes; to the Committee on Financial Services.

By Mrs. CAPITO (for herself and Mr. SHIMKUS):

H.R. 1847. A bill to require the inclusion of coal-derived fuel at certain volumes in aviation fuel, motor vehicle fuel, home heating oil, and boiler fuel; to the Committee on Energy and Commerce.

By Ms. CLARKE (for herself, Mr. MILLER of North Carolina, Ms. CORRINE BROWN of Florida, Mr. COHEN, Mr. DAVIS of Illinois, Ms. FUDGE, Mr. GRIJALVA, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KILPATRICK of Michigan, Ms. KILROY, Mr. MCNERNEY, Ms. NORTON, Mr. SCOTT of Virginia, and Mr. TOWNS):

H.R. 1848. A bill to provide funding for the Neighborhood Reinvestment Corporation for mortgage foreclosure mitigation activities; to the Committee on Appropriations.

By Mr. CLEAVER (for himself, Mr. AKIN, Mr. BLUNT, Mr. CARNAHAN, Mr. CLAY, Mrs. EMERSON, Mr. GRAVES, Mr. LUETKEMEYER, and Mr. SKELTON):

H.R. 1849. A bill to designate the Liberty Memorial at the National World War I Museum in Kansas City, Missouri, as the National World War I Memorial, to establish the World War I centennial commission to ensure a suitable observance of the centennial of World War I, and for other purposes; to the Committee on Oversight and Government Reform, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. DEGETTE (for herself and Mr. PLATTS):

H.R. 1850. A bill to amend titles V, XVIII, and XIX of the Social Security Act to promote tobacco use cessation under the Medicare Program, the Medicaid Program, and the maternal and child health program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FLAKE:

H. Res. 312. A resolution raising a question of the privileges of the House.

By Ms. HERSETH SANDLIN (for herself and Mr. DONNELLY of Indiana):

H.R. 1851. A bill to amend title 10, United States Code, to require that certain members of the Armed Forces receive employment assistance, job training assistance, and other transitional services provided by the Secretary of Labor before separating from active duty service; to the Committee on Armed Services.

By Mr. KILDEE:

H.R. 1852. A bill to designate the facility of the United States Postal Service located at 4282 Beach Street in Akron, Ohio, as the ''Akron Veterans Memorial Post Office''; to the Committee on Oversight and Government Reform.

By Mrs. KIRKPATRICK of Arizona:

H.R. 1853. A bill to clarify the jurisdiction of the Secretary of the Interior with respect to the C.C. Cragin Dam and Reservoir, and for other purposes; to the Committee on Natural Resources.

By Mr. LEWIS of California:

H.R. 1854. A bill to amend the Water Resources Development Act of 1992 to modify an environmental infrastructure project for Big Bear Lake, California; to the Committee on Transportation and Infrastructure.

By Mr. LOEBSACK (for himself and Mr. PLATTS):

H.R. 1855. A bill to promote industry growth and competitiveness and to improve worker training, retention, and advancement, and for other purposes; to the Committee on Education and Labor, and in addition to the Committees on Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LYNCH:

H.R. 1856. A bill to reauthorize the Financial Crimes Enforcement Network; to the Committee on Financial Services.

By Mr. MARCHANT:

H.R. 1857. A bill to amend the Internal Revenue Code of 1986 to increase the limitation on the allowance of capital losses of taxpayers other than corporations; to the Committee on Ways and Means.

By Ms. MARKEY of Colorado:

H.R. 1858. A bill to provide for a boundary adjustment and land conveyances involving Roosevelt National Forest, Colorado, to correct the effects of an erroneous land survey that resulted in approximately 7 acres of the Crystal Lakes Subdivision, Ninth Filing, encroaching on National Forest System land, and for other purposes; to the Committee on Natural Resources.

By Mr. PALLONE (for himself, Mr. WAXMAN, Mr. RANGEL, and Mr. STARK):

H.R. 1859. A bill to amend the Public Health Service Act to provide grants or contracts for prescription drug education and outreach for healthcare providers and their patients; to the Committee on Energy and Commerce.

By Mr. SALAZAR (for himself and Mr. COFFMAN of Colorado):

H.R. 1860. A bill to provide certain counties with the ability to receive television broadcast signals of their choice; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCHIFF (for himself and Mr. PENCE):

H.R. 1861. A bill to highlight and promote freedom of the press worldwide; to the Committee on Foreign Affairs.

By Mr. VAN HOLLEN (for himself, Mr. THOMPSON of California, Mr. BLUMENAUER, and Mr. DOGGETT):

H.R. 1862. A bill to cap the emissions of greenhouse gases through a requirement to purchase carbon permits, to distribute the proceeds of such purchases to eligible individuals, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WEXLER:

H.R. 1863. A bill to amend the Internal Revenue Code of 1986 to impose a tax on the amount of wages in excess of the contribution and benefit base, and for other purposes; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina (for himself, Mr. BOEHNER, Mr. CANTOR, Mr. MCHUGH, Mr. ADLER of New Jersey, Mr. BILIRAKIS, Mr. LOBIONDO, Mr. JOHNSON of Illinois, Mr. ROONEY, Mr. MILLER of Florida, Mr. NYE, Mr. FLEMING, Mr. PASTOR of Arizona, Mr. RODRIGUEZ, Mr. BARTLETT, Ms. GINNY BROWN-WAITE of Florida, Mr. JONES, Mr. OLSON, Mr. CONAWAY, Mr. LAMBORN, Mr. CHAFFETZ, Mr. AKIN, Ms. ROS-LEHTINEN, Mr. SHADEGG, Mr. MASSA, Mr. KLINE of Minnesota, Mr. SHUSTER, Mr. FRANKS of Arizona, Mr. HARPER, Ms. FALLIN, Mr. HUNTER, Mr. ROGERS of Michigan, Mr. LUETKEMEYER, Mr. DAVIS of Kentucky, Mr. FORBES, Mr. REICHERT, Mr. WITTMAN, Mr. BROUN of Georgia, Mr. HELLER, Mrs. BLACKBURN, Mrs. MCMORRIS RODGERS, Mrs. BIGGERT, and Mr. PRICE of Georgia):

H.R. 1864. A bill to provide a pay increase of 3.4 percent for members of the uniformed services for fiscal year 2010; to the Committee on Armed Services.

By Mr. KING of New York (for himself and Mr. JACKSON of Illinois):

H. Con. Res. 91. Concurrent resolution expressing the sense of Congress that the

President should grant a posthumous pardon to John Arthur ''Jack'' Johnson for the 1913 racially motivated conviction of Johnson, which diminished his athletic, cultural, and historic significance, and tarnished his reputation; to the Committee on the Judiciary.

By Mr. ENGEL (for himself, Ms. BALDWIN, Ms. ROS-LEHTINEN, Mr. FRANK of Massachusetts, Mr. BERMAN, Ms. BERKLEY, Mrs. CAPPS, Mr. FARR, Mr. FILNER, Mr. GUTIERREZ, Mr. HOLT, Mr. LEWIS of Georgia, Mrs. LOWEY, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. NADLER of New York, Ms. NORTON, Mr. PALLONE, Mr. POLIS of Colorado, Ms. WOOLSEY, Mr. HARE, Ms. WASSERMAN SCHULTZ, Ms. LEE of California, Mr. HONDA, Mr. GRIJALVA, Mr. SERRANO, Mrs. DAVIS of California, Mr. MORAN of Virginia, Mr. ANDREWS, Ms. LINDA T. SÁNCHEZ of California, Mr. ELLISON, Mrs. MALONEY, Ms. CLARKE, Ms. SCHAKOWSKY, and Mr. FATTAH):

H. Con. Res. 92. Concurrent resolution supporting the goals and ideals of the National Day of Silence in bringing attention to anti-lesbian, gay, bisexual, and transgender name-calling, bullying, and harassment faced by individuals in schools; to the Committee on Education and Labor, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FLAKE:

H. Res. 312. A resolution raising a question of the privileges of the House.

By Mr. OBERSTAR (for himself, Mr. MICA, Mr. DEFAZIO, Mr. DUNCAN, Mr. COSTELLO, Mr. PETRI, Ms. NORTON, Mr. MARIO DIAZ-BALART of Florida, Ms. CORRINE BROWN of Florida, Mr. SHUSTER, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BOOZMAN, Mr. CUMMINGS, and Mr. LOBIONDO):

H. Res. 313. A resolution supporting the goals and ideals of National Public Works Week, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. YARMUTH:

H. Res. 314. A resolution honoring and saluting Hillerich & Bradsby Co. on the 125th anniversary of the Louisville Slugger; to the Committee on Energy and Commerce.

By Ms. ROS-LEHTINEN (for herself, Ms. BERKLEY, Mr. BROWN of South Carolina, and Ms. BORDALLO):

H. Res. 315. A resolution supporting the goals and ideals of Alcohol Awareness Month; to the Committee on Energy and Commerce.

By Mr. MOORE of Kansas (for himself, Ms. JENKINS, Mr. SKELTON, Mr. CLEAVER, and Mr. GRAVES):

H. Res. 317. A resolution recognizing the region from Manhattan, Kansas, to Columbia, Missouri, as the Kansas City Animal Health Corridor, and for other purposes; to the Committee on Agriculture.

By Mr. SHIMKUS:

H. Res. 318. A resolution recognizing July 2009 as ''Energy Independence Month'' and encouraging awareness and promoting education on energy independence in the United States; to the Committee on Oversight and Government Reform.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 22: Mr. DRIEHAUS, Ms. FOXX, Mrs. LOWEY, Mr. TIAHRT, and Mr. PETERSON.

H.R. 23: Mrs. BLACKBURN, Mr. SMITH of Washington, Mr. CLEAVER, Mr. DEFAZIO, Ms. KAPTUR, Mrs. CAPPS, Mr. PUTNAM, Mr. FATTAH, Mr. HOLT, and Mr. GEORGE MILLER of California.

H.R. 52: Mr. CARNAHAN and Mr. PIERLUISI.

H.R. 118: Mr. PASCRELL.

H.R. 240: Mr. ISSA, Mr. MCCOTTER, Mr. BARRETT of South Carolina, and Mr. BROUN of Georgia.

H.R. 270: Mr. FILNER and Mr. TANNER.

H.R. 272: Mr. CARNEY.

H.R. 275: Mr. ROHRABACHER and Mr. PAUL.

H.R. 327: Mr. PUTNAM, Mr. KLEIN of Florida, Ms. CORRINE BROWN of Florida, and Mr. GRAYSON.

H.R. 345: Mr. ROSS and Mr. BARTLETT.

H.R. 346: Mr. BURGESS.

H.R. 406: Mr. DRIEHAUS.

H.R. 422: Mr. GRAYSON, Mr. GALLEGLY, Mr. DAVIS of Kentucky, Mr. MITCHELL, and Mr. TIBERI.

H.R. 430: Mrs. MCMORRIS RODGERS.

H.R. 433: Mr. COURTNEY and Mr. WELCH.

H.R. 463: Mr. HIMES.

H.R. 466: Mr. SESTAK.

H.R. 509: Mr. WITTMAN.

H.R. 564: Mr. LEVIN.

H.R. 593: Mr. COHEN.

H.R. 627: Mr. SERRANO, Mrs. DAVIS of California, and Mr. WATT.

H.R. 644: Mr. FILNER.

H.R. 669: Mr. SABLAN.

H.R. 745: Mr. KIND, Mr. CHANDLER, Mr. GERLACH, Mr. SPRATT, Mr. BISHOP of Georgia, Mr. WAMP, Mr. JOHNSON of Georgia, Mrs. MALONEY, Mr. BERMAN, Mr. DOYLE, Ms. KAPTUR, Mr. SESSIONS, Mr. ISRAEL, Mr. PAYNE, Mr. DAVIS of Illinois, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. VAN HOLLEN, Ms. SHEA-PORTER, Mr. ENGEL, Mr. FARR, Mr. Grayson, Mr. MORAN of Virginia, Mr. HOLDEN, Mr. MURTHA, Mr. SCHIFF, Mr. HASTINGS of Florida, Ms. SCHAKOWSKY, Mr. TIERNEY, Mr. THOMPSON of California, Mr. LANGEVIN, Mr. RUPPERSBERGER, Mr. LATHAM, Mr. Pierluisi, Mr. BARTLETT, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. HINCHEY, and Mr. MOORE of Kansas.

H.R. 753: Mr. COURTNEY.

H.R. 789: Ms. WASSERMAN SCHULTZ.

H.R. 803: Mr. Tonko, Mr. JOHNSON of Georgia, and Mr. ISRAEL.

H.R. 808: Mr. POLIS of Colorado.

H.R. 816: Mrs. CAPPS, Mr. HEINRICH, Mr. ALEXANDER, Mr. BOSWELL, and Mr. ETHERIDGE.

H.R. 870: Mr. GOODLATTE.

H.R. 874: Mr. SCOTT of Georgia.

H.R. 877: Mr. JORDAN of Ohio and Mr. BARRETT of South Carolina.

H.R. 885: Mr. LOBIONDO.

H.R. 942: Mr. REHBERG.

H.R. 946: Mr. MORAN of Virginia.

H.R. 952: Mr. FILNER.

H.R. 1016: Mr. DOYLE.

H.R. 1017: Mr. MORAN of Kansas and Mr. BOUCHER.

H.R. 1062: Mr. LINDER and Mr. GERLACH.

H.R. 1067: Mr. SCHIFF, Mr. JONES, and Mr. RAHALL.

H.R. 1074: Mr. BROWN of South Carolina.

H.R. 1075: Mr. MILLER of Florida, Ms. KILPATRICK of Michigan, and Mr. FLEMING.

H.R. 1118: Mr. WAMP, Mr. GINGREY of Georgia, Mr. MARCHANT, Mr. BONNER, Mr. HUNTER, Mr. POSEY, Mr. PENCE, Mr. HENSARLING, Ms. FALLIN, Mr. SHADEGG, and Mrs. LUMMIS.

H.R. 1136: Mr. PERRIELLO and Ms. MARKEY of Colorado.

H.R. 1190: Mr. ROGERS of Alabama and Mr. MINNICK.

H.R. 1191: Mr. CARNAHAN and Mr. CARSON of Indiana.

H.R. 1204: Mr. WEXLER.

H.R. 1207: Mrs. CAPITO, Mr. WITTMAN, Ms. SLAUGHTER, Mr. ELLISON, and Mr. WAXMAN.

H.R. 1210: Mr. BARROW and Mr. WELCH.

H.R. 1214: Ms. KOSMAS, Mr. ELLSWORTH, Mr. FOSTER, Mr. KANJORSKI, Mr. MOORE of Kansas, and Mrs. MCCARTHY of New York.

H.R. 1233: Mr. TIAHRT.

H.R. 1243: Mr. ADLER of New Jersey, Mr. ALEXANDER, Mr. ALTMIRE, Mr. BAIRD, Ms. BALDWIN, Mr. BARROW, Ms. BEAN, Mr. BERMAN, Mr. BERRY, Mrs. BIGGERT, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BISHOP of New York, Mr. BOREN, Mr. BOSWELL, Mr. BOUSTANY, Mr. BRADY of Texas, Mr. BRIGHT, Ms. CORRINE BROWN of Florida, Mr. CAMP, Mr. CARSON of Indiana, Mr. COBLE, Mr. COHEN, Mr. CROWLEY, Mr. DAVIS of Kentucky, Mr. DICKS, Mr. DOGGETT, Mr. DREIER, Ms. EDWARDS of Maryland, Mr. ELLSWORTH, Mr. ETHERIDGE, Mr. FILNER, Mr. GORDON of Tennessee, Mr. GRAYSON, Mr. GRIFFITH, Mr. HELLER, Mr. HILL, Mr. HINCHEY, Mr. HODES, Mr. HOLT, Mr. HOYER, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. KENNEDY, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. KIND, Mr. KING of Iowa, Mr. KRATOVIL, Mr. KUCINICH, Mr. LAMBORN, Mr. LARSEN of Washington, Mr. LATOURETTE, Ms. LEE of California, Mr. LEWIS of California, Mr. LEWIS of Georgia, Mr. LOBIONDO, Mr. MCCOTTER, Mr. MCHENRY, Mr. MATHESON, Mr. MEEKS of New York, Mr. MICA, Mr. MILLER of North Carolina, Mrs. MILLER of Michigan, Mr. GEORGE MILLER of California, Mr. MINNICK, Mr. MITCHELL, Ms. MOORE of Wisconsin, Mr. MORAN of Kansas, Mr. MURPHY of Connecticut, Mr. TIM MURPHY of Pennsylvania, Mr. NADLER of New York, Mr. NYE, Mr. OBERSTAR, Mr. PALLONE, Mr. PAYNE, Mr. PENCE, Mr. PITTS, Mr. PLATTS, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. REHBERG, Ms. RICHARDSON, Mr. ROGERS of Alabama, Mr. ROHRABACHER, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. ROTHMAN of New Jersey, Mr. RUPPERSBERGER, Mr. RUSH, Mr. SCHIFF, Mr. SENSENBRENNER, Mr. SHIMKUS, Mr. SHUSTER, Mr. SIMPSON, Mr. SIRES, Mr. SKELTON, Mr. SMITH of Washington, Ms. SPEIER, Mr. SULLIVAN, Mr. THOMPSON of Mississippi, Mr. THOMPSON of Pennsylvania, Mr. THOMPSON of California, Mr. TIBERI, Mr. UPTON, Mr. VAN HOLLEN, Mr. WALZ, Ms. WASSERMAN SCHULTZ, Ms. WATSON, Mr. WATT, Mr. WEINER, Mr. WILSON of Ohio, Mr. WOLF, Ms. WOOLSEY, and Mr. YOUNG of Florida.

H.R. 1255: Mr. ROSKAM.

H.R. 1261: Mr. SPRATT.

H.R. 1265: Mr. PETERS.

H.R. 1270: Ms. GIFFORDS.

H.R. 1277: Mr. BARRETT of South Carolina, Mr. AKIN, and Mr. FLAKE.

H.R. 1325: Mr. HONDA.

H.R. 1327: Mrs. MILLER of Michigan, Mr. PRICE of Georgia, Mr. SENSENBRENNER, Mr. PETERS, Mrs. MCMORRIS RODGERS, Mr. CONNOLLY of Virginia, Ms. GINNY BROWN-WAITE of Florida, Mr. TIAHRT, and Mr. PERLMUTTER.

H.R. 1349: Mr. CHILDERS and Mr. TERRY.

H.R. 1362: Mr. PUTNAM, Ms. CASTOR of Florida, Mr. LEVIN, and Mr. FORTENBERRY.

H.R. 1406: Mr. BROUN of Georgia.

H.R. 1425: Mr. WEINER and Ms. WASSERMAN SCHULTZ.

H.R. 1426: Mr. MCHENRY, Mr. THORNBERRY, and Mr. COLE.

H.R. 1427: Mr. SARBANES.

H.R. 1454: Mr. FLEMING, Mr. BOSWELL, Mr. PIERLUISI, and Mr. ROYCE.

H.R. 1458: Mr. FRANK of Massachusetts.

H.R. 1466: Mr. CARSON of Indiana.

H.R. 1470: Mr. MASSA.

H.R. 1476: Mr. BRALEY of Iowa.

H.R. 1485: Mr. PALLONE, Mr. SIRES, and Mrs. CAPPS.

H.R. 1505: Mr. GORDON of Tennessee.

H.R. 1509: Mrs. MYRICK.

H.R. 1521: Mr. CARSON of Indiana and Mr. MCHENRY.

H.R. 1523: Ms. SCHAKOWSKY.

H.R. 1528: Ms. LEE of California.

H.R. 1530: Ms. LEE of California.

H.R. 1531: Ms. LEE of California.

H.R. 1548: Mr. SESSIONS, Mr. MEEKS of New York, Mr. KAGEN, and Ms. ROS-LEHTINEN.

H.R. 1550: Mr. KUCINICH.

H.R. 1577: Mr. WAMP.

H.R. 1585: Ms. GIFFORDS, Ms. ESHOO, Ms. HIRONO, Mr. Nye, Mr. LOEBSACK, Mr. PASTOR of Arizona, Ms. BALDWIN, Mr. CUMMINGS, Mr. SMITH of Washington, Mr. MCGOVERN, Mr. RYAN of Ohio, Mr. MCINTYRE, and Mrs. CAPPS.

H.R. 1612: Mr. DOGGETT.

H.R. 1618: Mr. CLAY.

H.R. 1666: Mr. VAN HOLLEN.

H.R. 1670: Mr. COURTNEY, Mr. GENE GREEN of Texas, and Mrs. CAPPS.

H.R. 1676: Mr. SMITH of Texas.

H.R. 1684: Mr. SMITH of Texas.

H.R. 1689: Mr. SHIMKUS and Mr. MATHESON.

H.R. 1708: Ms. SCHAKOWSKY and Mr. HOLT.

H.R. 1757: Ms. MARKEY of Colorado.

H.R. 1770: Mr. PLATTS.

H.R. 1789: Mr. MICA.

H.R. 1792: Mr. BISHOP of New York.

H.R. 1809: Mr. SABLAN.

H.R. 1815: Mr. WITTMAN.

H.J. Res. 26: Mrs. MILLER of Michigan.

H.J. Res. 41: Mr. FRANKS of Arizona.

H. Con. Res. 70: Mr. ROHRABACHER.

H. Con. Res. 83: Mr. JORDAN of Ohio.

H. Con. Res. 87: Mr. GALLEGLY.

H. Res. 81: Mr. JORDAN of Ohio and Mrs. MYRICK.

H. Res. 130: Mr. BISHOP of New York and Mr. MAFFEI.

H. Res. 171: Mr. BRALEY of Iowa.

H. Res. 175: Mr. COSTA.

H. Res. 200: Mr. LAMBORN.

H. Res. 236: Ms. TITUS and Mr. CROWLEY.

H. Res. 238: Mr. CARSON of Indiana.

H. Res. 249: Ms. FALLIN.

H. Res. 258: Ms. CASTOR of Florida.

H. Res. 262: Ms. WOOLSEY.

H. Res. 269: Mr. MOORE of Kansas and Mr. DUNCAN.

H. Res. 270: Mr. OLSON and Mr. NEUGEBAUER.

H. Res. 299: Mr. WAXMAN and Ms. BORDALLO.

H. Res. 300: Mr. BARTLETT, Mrs. MALONEY, Mr. ENGEL, Mr. LEE of New York, and Mr. HINCHEY.

H. Res. 302: Mrs. CAPPS, Mr. CROWLEY, Mr. ISRAEL, Mrs. MALONEY, Mr. GEORGE MILLER of California, Mr. GONZALEZ, Ms. VELÁZQUEZ, Ms. LINDA T. Sánchez of California, Ms. ROYBAL-ALLARD, Mr. CAO, Mr. ACKERMAN, and Mr. COHEN.

H. Res. 309: Mr. CROWLEY and Mr. CAPUANO.

H. Res. 311: Mr. MORAN of Virginia, Mr. OLSON, and Mr. GRIJALVA.